

## MEMORANDUM OF AGREEMENT

### BETWEEN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE COLORADO STATE HISTORIC PRESERVATION OFFICER REGARDING THE CHATEAU AT SHARMAR, PUEBLO, COLORADO

WHEREAS, the Department of Housing and Urban Development (HUD) has determined that the demolition of the Woodcroft Hospital Dormitory Cottage located at 1201 West Abriendo, Pueblo, Colorado by Continuum at Abriendo, Inc. of P.O. Box 336250, Greeley, CO 80633 may have an adverse effect on the Woodcroft Hospital Dormitory Cottage, which is eligible for listing on the National Register of Historic Places, and has consulted with the Colorado State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f); and

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), HUD has notified the Advisory Council on Historic Preservation (Council) of its adverse effect determination with specified documentation and the Council has chosen not to participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(ii);

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), SHPO has notified the Tribal Organizations (Organizations) known as the Arapaho Tribe of the Wind River Reservation (Wyoming), the Cheyenne-Arapaho Tribes of Oklahoma, and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation (Montana), of its adverse effect determination with specified documentation and the Organizations have chosen to not participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(iii);

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), HUD has notified the Pueblo Historic Preservation Commission (Commission) of its adverse effect determination with specified documentation and the Commission has chosen not to participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(iii);

NOW, THEREFORE, HUD and the Colorado SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

#### STIPULATIONS

##### I. MEASURES.

HUD shall ensure that the following measures are carried out:

Documentation of the Woodcroft Hospital Dormitory Cottage is required to HABS/HAER Level II standards. The Level II standards have been submitted to SHPO and the Pueblo City-County Library.

## II. DURATION.

This agreement will be null and void if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, HUD may consult with the other signatories to reconsider the terms of the agreement and amend in accordance with Stipulation VI below.

## III. POST-REVIEW DISCOVERIES *(when historic properties are likely to be discovered, see Section 800.13(a)(2) of Council's regulations).*

If potential historic properties are discovered or unanticipated effects on historic properties found, HUD requires that work will immediately cease, the SHPO will be contacted, and work will recommence when cleared by SHPO.

## IV. MONITORING AND REPORTING

After Final Endorsement of the Chateau at Sharmar's Section 241 application and following the execution of this agreement until it expires or is terminated, HUD shall provide all parties to this agreement a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in HUD's efforts to carry out the terms of this agreement. Failure to provide such summary report may be considered noncompliance with the terms of this MOA pursuant to Stipulation VI, below.

## V. DISPUTE RESOLUTION

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, HUD shall consult with the objecting party(ies) to resolve the objection. If HUD determines, within 30 days, that such objection(s) cannot be resolved, HUD will:

- A. Forward all documentation relevant to the dispute to the Council in accordance with 36 C.F.R. § 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise HUD on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the MOA, will be taken into account by HUD in reaching a final decision regarding the dispute.
- B. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, HUD may render a decision regarding the dispute. In reaching its decision, HUD will take into account all comments regarding

the dispute from the parties to the MOA.

- C. HUD's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remains unchanged. HUD will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. HUD's decision will be final.

#### VI. AMENDMENTS AND NONCOMPLIANCE

If any signatory to this MOA, including any invited signatory, determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 C.F.R. §§ 800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories is filed with the Council. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Stipulation VII, below.

#### VII. TERMINATION

If an MOA is not amended following the consultation set out in Stipulation VI., it may be terminated by any signatory or invited signatory. Within 30 days following termination, HUD shall notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR §800.6(c)(1) or request the comments of the Council under 36 CFR §800.7(a) and proceed accordingly.

Execution of this Memorandum of Agreement by HUD and Colorado SHPO, the submission of documentation and filing of this Memorandum of Agreement with the Council pursuant to 36 C.F.R. § 800.6(b)(1)(iv) prior to HUD's approval of this undertaking, and implementation of its terms evidence that HUD has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

#### SIGNATORIES:

SECRETARY OF HOUSING AND URBAN DEVELOPMENT  
Acting by and through the FEDERAL HOUSING COMMISSIONER

By: Marcie LaPorte Date: 11/28/07  
Marcie D. LaPorte  
Director, Denver Multifamily Hub

By: *Anna M. Collins, Deputy* Date: *Nov. 28, '07*  
Ms. Georgianna Contiguilia  
State Historic Preservation Officer

*(signatures continued on following page)*

**INVITED SIGNATORIES:**

Continuum at Abriendo, Inc., a Colorado corporation, Mortgage

By:  Date: 1/26/07

Name: STEVEN W. DAISE

Title: PRESIDENT

Notes

*\*\* Tribes that place religious and cultural significance on historic properties located off Tribal lands should be invited to sign the MOA in accordance with Section 800.6 (c)(2)(i). Consulting parties sign the MOA either as "invited signatories" or as "concurring parties" in accordance with Section 800.6(c)(2)(ii) and 800.6(c)(3), respectively.*

AGREEMENT RELATING TO THE REMOVAL OF  
WOODCROFT HOSPITAL DORMITORY COTTAGE AT 1201 WEST ABRIENDO,  
PUEBLO, COLORADO  
PROJECT NUMBER 101-10005

WHEREAS, the Department of Housing and Urban Development (HUD) has determined that the removal of the Woodcroft Hospital Dormitory Cottage located at 1201 West Abriendo, in Pueblo, Colorado by Continuum at Abriendo, Inc. (Collectively, the "Project Sponsor"), in order to construct a parking lot, FHA Project No. 101-10005 ("the Project"), will have an effect on said structure which is a structure eligible for inclusion in the National Register of Historic Places ("Eligible Property") and, thus, such removal will constitute an "Undertaking" pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C.A. § 470f, as amended ("Section 106"); and

WHEREAS, HUD and the Project Sponsor have consulted with the Colorado State Historic Preservation Officer ("SHPO") regarding such removal, pursuant to regulations found at 36 C.F.R. Part 800 as of the date hereof, which regulations implement Section 106; and

WHEREAS, HUD and the Colorado SHPO have entered into a Memorandum of Agreement of even date herewith that provides for implementation of the Undertaking in accordance with certain stipulations set forth therein in order to take into account the effect of the Undertaking on the Historic Property; and

WHEREAS, in spite of its integral role in the removal of the Project, the Project Sponsor is not permitted by the Council to be a party to the Memorandum of Agreement; and

WHEREAS, the Project Sponsor desires to assure HUD that it will carry out the stipulations set forth in the Memorandum of Agreement in order to induce HUD to issue its firm commitment for mortgage insurance for the Project, pursuant to current regulations found at 24 C.F.R. Part 241.

NOW, THEREFORE, in consideration of HUD's acceptance of an application for a firm commitment for mortgage insurance for the Project, and the promises set forth herein, the Project Sponsor and HUD hereby agree as follows:

- I. Project Sponsor shall carry out the following measures:
  - A. RECORDATION OF ARCHITECTURAL AND HISTORICAL DETAIL OF THE PROJECT

Documentation of the Woodcroft Hospital Dormitory Cottage to HABS/HAER Level II standards. The Colorado SHPO has determined that this would be sufficient to mitigate the adverse effect.

- II. If the Project Sponsor at any time defaults in its obligations hereunder and such default prevents HUD from complying with its obligations under the National Historic Preservation Act, 16 U.S.C.A. § 470f as amended, or under the Memorandum of

Agreement entered into pursuant thereto, HUD shall have the following remedies:

- A. HUD may issue administrative sanctions against the Project Sponsor which would have the effect of excluding the Project Sponsor from participating in all programs under the jurisdiction of the Department's Assistant Secretary for Housing pursuant to current regulations found at 24 C.F.R. Part 24.
  - B. HUD may bring an action in the appropriate court of law to specifically enforce the terms of this Agreement, including an action to enjoin further development of the property on which the Project is located.
  - C. HUD may invoke any other remedy available to it at law or in equity.
- III. If (A) HUD does not issue a firm commitment for mortgage insurance for the Project or (B) if the loan covered by such insurance does not close or (C) if both (A) and (B) do not occur within the customary timeframes for such activities, this Agreement shall be null and void and the parties hereto shall have no obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this \_\_\_ day of \_\_\_\_\_, 2007.

SECRETARY OF HOUSING AND URBAN DEVELOPMENT  
Acting by and through the FEDERAL HOUSING COMMISSIONER

By: 

Date: 9/27/07

Marcie D. LaPorte  
Director, Denver Multifamily Hub

CONTINUUM AT ABRIENDO, INC.,  
a Colorado corporation, Mortgagor

By: 

Date: 9/28/07

Name: STEPHEN W. BAISCOE  
Title: PRESIDENT