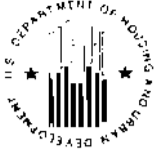


Kerry

U.S. Department of Housing and Urban Development



Richmond Field Office  
Office of Housing  
600 East Broad Street  
Richmond, VA 23219

January 8, 2008

MEMORANDUM FOR: Martha Catlin, Advisory Council on Historic Preservation  
Kathleen S. Kilpatrick, Virginia Department of Historic Resources  
Michael Cobb, Hampton Historical Society  
C. Burton Cutright, Southeastern Capital Investment, LLC  
Carolyn Whatley, Love Funding Corporation

FROM: *Charles C. Famuliner*  
Charles C. Famuliner, Director, Multifamily Program Center

SUBJECT: Memorandum of Agreement among Southeastern Capital Investment, LLC, the Virginia State Historic Preservation Office, and the Department of Housing and Urban Development Relative to the Falcon Creek Apartments, Phase II in the City of Hampton, Virginia

Attached is a fully executed copy of the subject Memorandum of Agreement. Thank you all for your participation in this process.

Attachment

MEMORANDUM OF AGREEMENT  
AMONG SOUTHEASTERN CAPITAL INVESTMENT, LLC, THE VIRGINIA STATE HISTORIC  
PRESERVATION OFFICE, AND THE DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT  
RELATIVE TO THE FALCON CREEK APARTMENTS, PHASE II  
IN THE CITY OF HAMPTON, VIRGINIA

November 30, 2007

**WHEREAS**, Southeastern Capital Investment, LLC (the Applicant) proposes to construct two 3-story garden style apartment buildings, including 24 units each for a total of 48 units, as well as 99 surface parking spaces, 20 garage spaces, and full landscaping on 3.997 acres to be known as Falcon Creek Apartments, Phase II located in the City of Hampton, Virginia (the Project); and

**WHEREAS**, the United States Department of Housing and Urban Development (HUD) may provide Federal loan guarantees to the Project; and

**WHEREAS**, HUD has consulted with the Virginia Department of Historic Resources which serves as the Virginia State Historic Preservation Office (SHPO) in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended through 2001 (NHPA), 16 U.S.C. §470f, and its implementing regulations 36 CFR Part 800; and

**WHEREAS**, pursuant to US Department of Housing and Urban Development, Protection and Enhancement of Environmental Quality standards (24 CFR §50.4), HUD is required to take into account the effects of federally funded undertakings on properties included in or eligible for inclusion in the National Register of Historic Places (National Register) prior to the issuance of guarantees; and to consult with the SHPO; and

**WHEREAS**, pursuant to 24 CFR §50.4, HUD and the Applicant must comply with all environmental requirements, guidelines and statutory obligations under the NHPA and Executive Order 11593 (3 CFR, 1971-1975 Comp., p. 559), and implement Advisory Council on Historic Preservation (ACHP) Procedures for the Protection of Historic and Cultural Properties (36 CFR Part 800); and

**WHEREAS**, HUD in consultation with the SHPO has established the Project's area of potential effects (APE), as defined at 36 CFR 800.16(d), to be located within a an area approximately 365 square feet in size, as depicted on the attached map (Attachment A); and

**WHEREAS**, a Phase I identification survey and a Phase II significance evaluation report entitled *A Phase I Cultural Resources Survey and a Phase II Archaeological Evaluation of Site 44HT0102 at the Proposed Falcon Creek Phase II Build Out in the City of Hampton, Virginia* by the James River Institute for Archaeology, Inc. dated July 2007, has been completed for the entire Project and accepted by the SHPO by a letter dated August 23, 2007; and

**WHEREAS**, HUD, in consultation with the SHPO, has determined that site 44HT0102 is eligible for inclusion in the National Register under Criterion D, as it is likely to yield information important in history and contribute to our understanding of the history of late seventeenth- and eighteenth-century Hampton; and

WHEREAS, HUD has determined, in consultation with the SHPO, that the Project will have an adverse effect on site 44HT0102; and

WHEREAS, the Applicant has been invited to sign this Memorandum of Agreement (Agreement); and

WHEREAS, HUD has invited the participation of the ACHP in this consultation, and the ACHP has declined to participate; and

WHEREAS, HUD has invited the participation of the Hampton Historical Society (Society) in this consultation, and the Society has agreed to participate as a concurring party to this Agreement; and

NOW THEREFORE, HUD and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to satisfy the HUD Section 106 responsibilities to take into account the effects of funded activities on historic properties.

## STIPULATIONS

HUD will ensure that the following stipulations are carried out:

### I. TREATMENT OF ARCHAEOLOGICAL SITES

- a. The Applicant shall develop a data recovery plan in consultation with HUD, the Society and the SHPO for site 44HT0102. The data recovery plan shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37)*, and the SHPO's *Guidelines for Conducting Cultural Resource Survey in Virginia: Additional Guidance for the Implementation of the Federal Standards Entitled Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (48 FR 44742, September 29, 1983) (Survey Guidelines; 1999, rev. 2003)*, and shall take into account the ACHP's publications, *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites (1999)* and *Section 106 Archaeology Guidance (June 2007)*. The plan shall specify at a minimum, the following:
  1. the property, properties, or portions of properties where site specific data recovery plans will be carried out;
  2. any property, properties, or portions of properties that will be destroyed or altered without data recovery;
  3. the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
  4. the methods to be used with an explanation of their relevance to the research questions;
  5. the methods to be used in analysis, data management, and dissemination of data, including a schedule;
  6. the proposed disposition of recovered materials and records;

7. proposed methods of disseminating the results of the work to the interested public and/or organizations who have expressed an interest in the data recovery; and
  8. a schedule for the submission of progress reports to HUD and the SHPO.
- b. The Applicant shall submit the treatment plan to HUD for review and approval and to the SHPO and other consulting parties for review and comment. HUD will ensure that all comments submitted within thirty (30) days of receipt of the plan are addressed in the final document.
  - c. The Applicant shall implement the approved treatment plan.
  - d. The Applicant and/or its assignees may photograph the work and artifacts, and to display on a temporary or permanent basis artifacts or images, with the exception of any human remains, funerary objects, or sacred items.

## II. PROFESSIONAL QUALIFICATIONS

- a. All archaeological work carried out pursuant to this Agreement shall be conducted by or under the direct supervision of an individual or individuals who meet(s), at a minimum, the Secretary of the Interior's *Professional Qualifications Standards* (48 FR 44738-9, September 29, 1983).

## III. PREPARATION AND REVIEW OF DOCUMENTS

- a. A draft of all final technical reports will be submitted to HUD and the SHPO and other consulting parties (two copies) for review and comment. HUD shall ensure that all comments received within thirty (30) days of report receipt shall be addressed in the final technical reports. Two copies of all final reports shall be provided to the SHPO.
- b. All technical reports prepared pursuant to this Agreement will be consistent with the federal standards entitled *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44716-44742, September 29, 1983) as well as the SHPO's *Survey Guidelines*.

## IV. CURATION

- a. All archaeological materials and appropriate field and research notes, maps, drawing and photographic records collected as part of this project (with the exception of human skeletal remains and associated funerary objects) will be deposited for permanent curation with an appropriate facility in accordance with the requirements in 36 CFR 79, *Curation of Federally Owned and Administered Archeological Collections*. All such items will be made available to educational institutions and individual scholars for appropriate exhibit and/or research under the operating policies of that facility.

## V. POST-REVIEW DISCOVERIES

- a. The Applicant shall ensure that contracts for activities involving ground disturbance and/or construction contain the following provisions for the treatment of post-review discoveries:

1. In the event that a previously unidentified archaeological resource is discovered during ground disturbing activities, the Applicant shall immediately notify HUD and the SHPO. All construction work involving ground disturbance shall be halted in the area of the resource and in the surrounding area where further subsurface deposits may reasonably be expected to occur. An archaeologist meeting the Secretary of the Interior's *Professional Qualifications Standards* shall inspect the work site and determine the extent and the nature of the affected archaeological property. Construction work may then proceed in the Project Area outside of the area of discovery.
  2. Within two (2) working days of the discovery HUD shall notify the SHPO/THPO and other parties as appropriate. The notification shall describe HUD's assessment of the National Register eligibility of the property and proposed actions to resolve any adverse effects. The SHPO shall respond to this notification within two (2) working days.
  3. If the resource is determined by HUD in consultation with the SHPO to meet the National Register Criteria (36 CFR 60.6), HUD shall ensure compliance with 36 CFR 800.13.
- b. Work in the affected area shall not proceed until either:
1. the development and implementation of appropriate data recovery or other recommended mitigation procedures, or
  2. the determination is made that the located resources are not eligible for inclusion on the NRHP.
- c. Any disputes over the evaluation or treatment of previously unidentified resources will be resolved as provided in Section VII of this Agreement entitled Dispute Resolution.

## VI. HUMAN REMAINS

- a. In the event that human remains are encountered, whether prehistoric or historic, the Applicant will immediately notify HUD, the SHPO, and the Virginia Council on Indians (VCI). The Applicant shall ensure that human skeletal remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement shall be treated in accordance with the Regulations Governing Permits for the Archaeological Removal of Human Remains (Virginia Register 390-01-02) found in the *Code of Virginia* (10.1-2305, et seq., Virginia Antiquities Act). The Applicant may obtain a permit from the SHPO for the removal of human remains in accordance with the regulations stated above.
- b. The treatment of Native American human remains and associated funerary objects will be determined in consultation with the VCI. Reasonable efforts will be made to avoid disturbing Native American gravesites and associated artifacts. To the extent possible, the Applicant will ensure that the general public is excluded from viewing any Native American gravesites and associated artifacts. No photographs of any Native American gravesites and/or associated funerary objects will be released by HUD, the Applicant, or its agents, contractors, or representatives to the press or to the general public.



## VII. DISPUTE RESOLUTION

- a. Should any Parties to this Agreement object in writing to HUD regarding any action carried out or proposed with respect to any undertakings covered by this Agreement or to implementation of this Agreement, HUD will consult with the objecting party to resolve the objection.
- b. If, after initiating such consultation, HUD determines that the objection cannot be resolved through consultation, HUD shall forward all documentation relevant to the objection to the ACHP, including the proposed response to the objection.
- c. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
  1. Advise HUD that the ACHP concurs with the proposed response to the objection, whereupon HUD will respond to the objection accordingly; or
  2. Provide HUD with recommendations, which HUD shall take into account in reaching a final decision regarding its response to the objection; or
  3. Notify HUD that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4), and proceed to refer the objection and comment. HUD shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4) and Section 110(l) of the NHPA.
- d. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, HUD may assume the ACHP's concurrence in its proposed response to the objection.
- e. HUD shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; it is HUD responsibility to carry out all the actions under this Agreement that are not the subjects of the objections shall remain unchanged.
- f. At any time during implementation of the measures stipulated in this Agreement should an objection pertaining to this Agreement be raised by a member of the public, HUD shall notify the parties to this Agreement and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this Agreement to resolve the objection.

## VIII. AMENDMENTS AND TERMINATION

- a. Any party to this Agreement may propose to HUD that the Agreement be amended, whereupon HUD will consult with the other parties to this Agreement to consider such an amendment. All signatories to the Agreement must agree to the proposed amendment in accordance with 800.6(c)(7).
- b. If the Applicant decides it will not proceed with the undertaking, it shall so notify HUD and the SHPO, and this Agreement shall become null and void.

- c. If the Applicant determines that it cannot implement the terms of this Agreement, or if HUD or SHPO determines that the Agreement is not being properly implemented, the Applicant, HUD, or the SHPO may propose to the other parties to this Agreement that it be amended or terminated.
- d. This Agreement may be terminated by any signatory to the Agreement in accordance with the procedures described in 800.6(c)(8). Termination shall include the submission of a technical report by the Applicant on any work done up to and including the date of termination. If HUD is unable to execute another memorandum of Agreement following termination, HUD may choose to modify, suspend, or revoke HUD mortgage insurance guarantees.

#### IX. DURATION OF AGREEMENT

This Agreement will continue in full force and effect until five (5) years after the date of the last signature. At any time in the six-month period prior to such date, HUD may request the signatory parties to consider an extension or modification of this Agreement. No extension or modification will be effective unless all parties to the Agreement have agreed with it in writing.

Execution of this Memorandum of Agreement by HUD, the Applicant, and the SHPO and its submission to the ACHP in accordance with 36 CFR 800.6(b)(1)(iv), shall, pursuant to 36 CFR 800.6(c), be considered to be an agreement with the ACHP for the purposes of Section 110(l) of the NHPA. The execution, submission, and implementation of this Agreement is evidence that HUD has afforded the ACHP an opportunity to comment on the proposed undertaking and its effect on historic properties, and that HUD has taken into account the effect of the undertaking on historic properties.

#### Signatures:

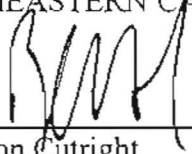
VIRGINIA HISTORIC PRESERVATION OFFICER

for By: Julie D. Langan  
Kathleen S. Kilpatrick  
Director, Virginia Department of Historic Resources

Date: 12/27/2007



SOUTHEASTERN CAPITAL INVESTMENT, LLC

By:   
C. Burton Cutright  
Managing Partner

Date: 12/5/07

US DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

By: *Charles C. Famuliner*  
Charles C. Famuliner  
Director, Virginia Multi-family Program Center

Date: 12/21/67

Concurring:

HAMPTON HISTORICAL SOCIETY

By: Michael Cobb  
Michael Cobb

Date: Dec. 6, 2007

ATTACHMENT A

