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# United States Department of the Air Force

Air Education and Training  
Command  
**Air Force Center for  
Environmental Excellence  
(AFCEE)**



## **Privatization of Military Family Housing AETC Group I**

Solicitation No. AFCEE-05-0004

## **APPENDIX P Intercreditor Agreement**

**STEP ONE PROPOSALS ARE DUE NO LATER THAN  
5:00 P.M. EST 7 March 2005 AT:**

PSC MILITARY HOUSING COMPANY  
132 South 600 East  
Salt Lake City UT 84102  
Voice 866-801-2253 Fax 801-363-1912  
Email [binks@psc-evg.com](mailto:binks@psc-evg.com)  
Web site [www.pscmhc.com](http://www.pscmhc.com)

## INTERCREDITOR AND SUBORDINATION AGREEMENT

THIS INTERCREDITOR AND SUBORDINATION AGREEMENT (as amended and modified from time to time, this "Intercreditor Agreement") is made and entered into as of \_\_\_\_\_, 200\_, by and among THE UNITED STATES OF AMERICA acting by and through THE SECRETARY OF THE AIR FORCE (the "Secretary" or the "Government"); **[[NAME OF CONSTRUCTION LENDER]**\_\_\_\_\_, a \_\_\_\_\_ ("Construction Lender"); **[[NAME OF SENIOR LENDER]**\_\_\_\_\_, a \_\_\_\_\_, [not in its individual capacity, but solely as trustee] ("Senior Lender") [under that certain Trust Indenture (as supplemented, amended and extended from time to time, the "Indenture") dated as of \_\_\_\_\_, 200\_ between the Borrower (as hereinafter defined) and Senior Lender for the benefit of the owners of the Bonds described below (the "Bondholders"); **[[NAME OF BONDHOLDER REPRESENTATIVE]**] \_\_\_\_\_, a \_\_\_\_\_ ("Bondholder Representative"); and **[[NAME OF BORROWER]** \_\_\_\_\_, a \_\_\_\_\_ (the "Borrower").

### RECITALS:

A. In response to Request for Proposals No. AFCEE-\_\_\_\_\_ issued by the Secretary, Borrower has been selected by the Secretary to perform the demolition of certain existing residential facilities and the rehabilitation of certain existing residential facilities and related facilities located at Basename Air Force Base, Basecounty County, Basestate (the "Installation") and the design and construction of new residential facilities and related improvements located at the Installation (such demolition, design, construction, operation, maintenance, replacement and rehabilitation, as applicable, of a privately-owned rental housing development primarily for use by military personnel and their families authorized to live on the Installation being herein referred to as the "Project").

B. [In accordance with the terms of the Construction Loan Documents, the Construction Lender has made a mortgage loan to Borrower in the original principal amount of \$\_\_\_\_\_, which is secured by among other things, a first mortgage lien on and security interest in Borrower's ground leasehold estate in certain real property in Basecounty County, Basestate, as more particularly described on Exhibit A attached hereto (the "Land") and Borrower's fee interest in the improvements, fixture and personalty located thereon pursuant to that certain [Deed of Trust, Security Agreement, Assignment of Rents and Financing Statement"] dated of even date herewith made by the Borrower for the benefit of the Construction Lender (the "Construction Deed of Trust").]

[C.] [In accordance with the terms of the Indenture, Borrower has issued its revenue bonds designated \_\_\_\_\_ in the original aggregate principal amount of \$\_\_\_\_\_. The Bonds; are secured by, among other things, a first mortgage lien on, and security interest in, Borrower's ground leasehold estate in certain real property in Basecounty County, Basestate, as more particularly described on Exhibit A attached hereto (the "Land") and Borrower's fee interest in the improvements, fixtures and personalty located thereon pursuant to that certain [Deed of Trust, Security Agreement, Assignment of Rents and Financing Statement] dated of even date with the Indenture and made by Borrower for the benefit of the Senior Lender (the "Senior Deed of Trust").] [In accordance with the terms of Senior Loan Documents, the Senior Lender has a mortgage loan to Borrower in the original principal amount of \$\_\_\_\_\_, which is secured by among other things, a first mortgage lien on and security interest in Borrower's ground leasehold estate in certain real property in Basecounty County, Basestate, as more particularly described on Exhibit A attached hereto (the "Land") located thereon pursuant to that certain [Deed of Trust, Security Agreement, Assignment of Rents and Financing Statement"] dated of even date herewith made by the Borrower for the benefit of the Senior Lender (the "Senior Deed of Trust").]

[D.] Concurrently herewith, and in accordance with the terms of the Forward Commitment (as hereinafter defined) and the Direct Loan Documents (as hereinafter defined), the Government has agreed to make a mortgage loan to the Borrower in the original principal amount of \$\_\_\_\_\_, the proceeds of which will be deposited into the Direct Loan Subaccount created pursuant to the Lockbox Agreement.

[E.] The execution by each of [the Construction Lender,] the Senior Lender and the Government of this Intercreditor Agreement is an express condition of the [Indenture] [Construction Loan Documents and] [Senior Loan Documents] and the Forward Commitment.

[F.] The Liens (as hereinafter defined) securing the Senior Loan [and the Construction Loan] shall be [pari passu, and] superior in priority to the Liens securing the Direct Loan.

[G.] The parties desire to execute this Intercreditor Agreement in order to establish certain rights and responsibilities among the parties, to coordinate their financing arrangements, and to confirm certain agreements with respect to procedures for approvals, inspections, documentation, subordination and other matters in connection with the Loans.

### **AGREEMENT:**

NOW, THEREFORE, in consideration of the above recitals, the mutual representations, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**1. Definitions.** The terms defined in this Section 1 and in the Recitals (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Intercreditor Agreement shall have the respective meanings specified in this Section 1 and the Recitals.

"Authorized Representative" means with respect to all parties to this Intercreditor Agreement, an officer, a principal, an agent or other person who is authorized to act on behalf of and whose actions are binding upon that party. As of the date of execution of this Intercreditor Agreement, the primary Authorized Representative of the Borrower is [Name], [Title]; of the Senior Lender is [Name], [Title]; and of the Government is Fred W. Kuhn, Deputy Assistant Secretary of the Air Force (Installations). Any party may designate additional or substitute persons to act as an Authorized Representative on its behalf at any time by a written notice to the other parties.

"Bonds" has the meaning given thereto in the Recitals.

"Borrower" or "Project Owner" means, a\_\_\_\_\_, a \_\_\_\_\_ liability company, or any of its permitted successors or assigns as the owner of the Project pursuant to the terms of the Lease of the Property.

"Business Day" means any day other than a Saturday, a Sunday, or a day on which the federal government is generally closed by statute, regulation, or executive order.

"Day" means a calendar day unless otherwise specified in writing in the project document.

[Construction Lender] means \_\_\_\_\_, a \_\_\_\_\_, and its permitted successors and assigns.]

[Construction Loan] means all obligations and indebtedness of the Borrower now or hereafter arising under or incurred pursuant to the Construction Loan Documents.]

["Construction Loan Documents"] means the note, the Construction Deed of Trust and any related documents, as they may be amended or modified in accordance with the Intercreditor Agreement, evidencing or securing the obligations of the Borrower to the Construction Lender with respect to the Construction Loan.]

["Construction Deed of Trust"] has the meaning given thereto in the Recitals.]

"Direct Loan" means all obligations and indebtedness of the Borrower now or hereafter arising under or incurred pursuant to the Direct Loan Documents.

"Direct Loan Documents" means the note, the security instrument and any related documents, as they may be amended or modified in accordance with this Intercreditor Agreement, evidencing or securing the obligations of the Borrower to the Government with respect to the Direct Loan.

"Enforcement Action" means (i) any judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against the Mortgaged Premises or the Borrower including without limitation, the taking of possession or control of the Mortgaged Premises, or (ii) acceleration of, or demand or action taken in order to collect, all or any indebtedness secured by the Mortgaged Premises, or (iii) exercise of any right or remedy available to (A) Senior Lender under the Senior Loan Documents, at law, in equity or otherwise with respect to the Borrower and/or the Mortgaged Premises[;] [or] (B) [Construction Lender under the Construction Loan Documents, at law, in equity, or otherwise with respect to the Borrower and/or the Mortgaged Premises; or [(C)] the Government under the Direct Loan Documents, at law, in equity or otherwise with respect to the Borrower and/or the Mortgaged Premises, as the case may be. Any Enforcement Action shall be subject to the terms and conditions of the Lease of Property.

"Event of Default" as used herein [(a) with respect to the Construction Loan and the Construction Loan Documents means any Event of Default thereunder which has occurred, is continuing and has not been cured by the Borrower and (b)] with respect to the Senior Loan and the Senior Loan Documents means any Event of Default thereunder which has occurred, is continuing and has not been cured by the Borrower.

["Indenture"] has the meaning given thereto in the Recitals.]

"Land" has the meaning given thereto in the Recitals.

"Lease of Property" means the Department of the Air Force Lease of Property No. \_\_\_\_\_, dated \_\_\_\_\_, 200\_, by and between the Secretary and the Project Owner, pursuant to which the Government has leased the Land to the Project Owner, which amends and restates the Air Force Lease of Property No. \_\_\_\_\_ dated \_\_\_\_\_, 200\_, by and between the Secretary and the Project Owner, as the same is further amended, modified or restated from time to time.

"Leased Premises Improvements" means the improvements and personalty located on the Land and conveyed to Borrower by Quitclaim Deed dated as of \_\_\_\_\_, 200\_, together with any improvements and personalty hereafter constructed or placed on the Land by Borrower.

"Lender(s)" means individually each of the Senior Lender [,the Construction Lender] and the Government and collectively, the Senior Lender [,the Construction Lender] and the Government.

"Lien" means any lien, security interest, collateral assignment, pledge or hypothecation executed, given or made to secure indebtedness of any kind or character.

"Loan Documents" means collectively, the Senior Loan Documents [the Construction Loan Documents] and the Direct Loan Documents.

"Loans" means collectively, the Senior Loan [the Construction Loan] and the Direct Loan.

"Lockbox Agent" means \_\_\_\_\_.

"Lockbox Agreement" has the meaning given thereto in Section 7.

"Mortgaged Premises" means the Borrower's leasehold interest in the Land, the Leased Premises Improvements and any personally owned by Borrower located therein.

"Personal Default" has the meaning given thereto in Section 13.

"Project" has the meaning given thereto in the Recitals.

"Project Receipts" has the meaning given thereto in Section 7.

"Secretary" has the meaning given thereto in the Recitals.

"Senior Deed of Trust" has the meaning given thereto in the Recitals.

"Senior Lender" means, \_\_\_\_\_ [, not in its individual capacity, but solely in its capacity as trustee under the Indenture,] and its successors and permitted assigns, [including, without limitation, any successor trustee under the Indenture.]

"Senior Loan" means all obligations and indebtedness of the Borrower now or hereafter arising under or incurred pursuant to the Senior Loan Documents, whether created directly or acquired by assignment or otherwise, primary or secondary, joint or several, fixed or contingent, as evidenced by [a promissory note in the original principal amount of \$\_\_\_\_\_] [the Bonds] and as evidenced, governed and secured by the [Indenture and other] Senior Loan Documents, and as renewed, extended, amended and increased from time to time in accordance with this Intercreditor Agreement.

"Senior Loan Documents" means [the note, the Senior Deed of Trust] [the Bonds, the Indenture, the Leasehold Mortgage and Security Agreement, and an Assignment of Leases and Rents and Security Agreement assigning Borrower's interests in the revenues, rents and proceeds of the Project,] and all other documents evidencing, governing, securing or otherwise relating to the obligations of the Borrower and Senior Lender with respect to the Senior Loan.

"Subordination Event" has the meaning set forth in Section 9.

"Transfer" has the meaning set forth in Section 17(a).

**2. Borrower's Compliance.** The Borrower agrees to borrow the Loans and to apply the proceeds of the Loans as required under and in compliance with the terms and conditions of the Loan Documents. The Borrower represents and warrants to the Lenders that neither the Borrower nor the Mortgaged Premises nor the Project is in breach, violation or default under any of the Loan Documents or any other document or agreement by which the Borrower or the Mortgaged Premises or the Project is or may be bound, and no event or circumstance has occurred or exists which would constitute such a breach, violation or default with notice or the passage of time or both.

**3. [Approval of Construction Loan Documents.** The Government acknowledges that it has received and reviewed the Construction Loan Documents, and the Government hereby acknowledges that the performance of the Construction Loan Documents shall not constitute a default under the Direct Loan Documents. The Government acknowledges and agrees that Construction Lender has no obligation or duty to monitor the application of the proceeds of the Bonds by the Borrower and any application or use of such proceeds for purposes other than those provided in the Forward Commitment or the Loan Documents shall not affect, impair, or defeat the subordination herein in any manner whatsoever.]

**[4.] Approval of Senior Loan Documents.** The Government acknowledges that it has received and reviewed the Senior Loan Documents, and the Government hereby acknowledges that the performance of the Senior Loan Documents shall not constitute a default under the Direct Loan Documents. The Government acknowledges and agrees that Senior Lender has no obligation or duty to monitor the application of the proceeds of [the Senior Loan] [the Bonds] by the Borrower and any application or use of such proceeds for purposes other than those provided in the Forward Commitment or the Loan Documents shall not affect, impair, or defeat the subordination herein in any manner whatsoever.

**[5.] Approval of Direct Loan Documents.** [Each of Construction Lender and] Senior Lender [, acting pursuant to the Indenture at the direction of the Borrower and the “Initial Purchaser”, as defined in the Indenture pursuant to the Indenture,] hereby consent[s] to the Direct Loan and the Direct Loan Documents. Simultaneous with the execution of this Intercreditor Agreement, the Borrower has delivered a legal opinion to the Government confirming that the execution by Borrower of the Direct Loan Documents shall not constitute a default under the [Construction Loan Documents or] Senior Loan Documents.

**[6.]. Representations of Lenders.**

(a) [Construction Lender hereby represents and warrants to the Government as follows:

(i) The Construction Lender has delivered to the Government complete and accurate copies of all of the Construction Loan Documents described in Exhibit B. The Construction Loan Documents so delivered: (A) are all of the documents executed by the Construction Lender and Borrower in connection with the Construction Loan, (B) have not been amended or modified, and (C) constitute the entire understanding between the Construction Lender and the Borrower with respect to the Construction Loan. To the Construction Lender's knowledge, no default exists under the terms of the Construction Loan Documents.

(ii) Construction Lender has duly executed and delivered this Intercreditor Agreement and this Intercreditor Agreement constitutes the legal, valid and binding agreement of Construction Lender enforceable in accordance with its terms, subject to (A) applicable bankruptcy, reorganization, insolvency and moratorium laws, and (B) principles of equity, which may apply regardless of whether a proceeding is brought at law or in equity.

(iii) The Construction Loan Documents are not cross-defaulted with any other loan from Construction Lender to the Borrower or to any affiliate of the Borrower, and the Mortgaged Premises do not secure any such other loan from the Construction Lender to the Borrower or any affiliate of the Borrower.]

[(b.)]Senior Lender hereby represents and warrants to the Government as follows:

(i) The Senior Lender has delivered to the Government complete and accurate copies of all of the Senior Loan Documents described in Exhibit [C]. The Senior Loan Documents so delivered: (A) are all of the documents executed by the Senior Lender and Borrower in connection with the Senior Loan, (B) have not been amended or modified, and (C) constitute the entire understanding between the Senior Lender and the Borrower with respect to the Senior Loan. To the Senior Lender's knowledge, no default exists under the terms of [the Indenture] [Senior Loan Documents]. [To the Bondholder Representative's knowledge, no default exists under the terms of any of the other Senior Loan Documents.]

(ii) Senior Lender has duly executed and delivered this Intercreditor Agreement and this Intercreditor Agreement constitutes the legal, valid and binding agreement of Senior Lender enforceable in accordance with its terms, subject to (A) applicable bankruptcy, reorganization, insolvency and moratorium laws, and (B) principles of equity, which may apply regardless of whether a proceeding is brought at law or in equity.

(iii) The Senior Loan Documents are not cross-defaulted with any other loan from Senior Lender to the Borrower or to any affiliate of the Borrower, and the Mortgaged Premises do not secure any such other loan from the Senior Lender to the Borrower or any affiliate of the Borrower.

[(c)]The Government hereby represents and warrants to the [Construction Lender and the Senior Lender] [Senior Lender] [and Bondholders] as follows:

(i) The Government has delivered to the [Construction Lender and] Senior Lender complete and accurate copies of all of the Direct Loan Documents described in Exhibit [D]. The Direct Loan Documents so delivered: (A) are all of the documents executed by the Government and Borrower in connection with the Direct Loan, (B) have not been amended or modified, and (C) constitute the entire understanding between the Government and the Borrower with respect to the Direct Loan. To the Government's knowledge, no default exists under the terms of any of the Direct Loan Documents.(ii) The Government is the legal and beneficial owner of the Direct Loan, free and clear of any lien, security interest, option or other charge or encumbrance.(iii) The Government has duly executed and delivered this Intercreditor Agreement and this Intercreditor Agreement constitutes the legal, valid and binding agreement of the Government enforceable in accordance with its terms, subject to (A) applicable bankruptcy, reorganization, insolvency, moratorium and federal laws, and (B) principles of equity, which may apply regardless of whether a proceeding is brought at law or in equity.(iv) To the best of the Government's knowledge, no consent of any other party and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by the Government of this Intercreditor Agreement, or consummation by the Government of the transactions contemplated by this Intercreditor Agreement.

(ii) The Direct Loan Documents are not cross-defaulted with any other loan from the Government to the Borrower or to any affiliate of the Borrower, and the Mortgaged Premises do not secure any such other loan from the Government to the Borrower or any affiliate of the Borrower.

**[7.]. Subordination of Liens securing the Direct Loan.**

(a) The Government hereby covenants and agrees with [Construction Lender and] Senior Lender that the Liens securing the Direct Loan and all payments made with respect to the Direct Loan are hereby expressly fully subordinated and junior to the Liens securing the [Construction Loan and] Senior Loan and all payments made with respect to the [Construction Loan and] Senior Loan and shall at all times, until the [Construction Loan and] Senior Loan [is] [are] paid and performed in full, be and remain inferior to the Liens created by the [Construction Loan Documents and] Senior Loan Documents and all extensions, supplements, modifications, restatements and consolidations thereof.

(b) The Government expressly agrees that the Liens of the Direct Loan Documents shall not be subrogated in any respect to the Liens of the Senior Loan Documents, and any and all such subrogation rights are hereby expressly waived and released.

(c) [The Government acknowledges that in consideration of this subordination and waiver, the Construction Loan is being made to the Borrower by the Construction Lender and that the Construction Loan would not be made but for reliance upon this subordination and subrogation waiver.]

[d] The Government further acknowledges that in consideration of this subordination and waiver, the Senior Loan is being made to the Borrower by the Senior Lender and that the Senior Loan would not be made but for reliance upon this subordination and subrogation waiver.

**[8.]. Application of Project Receipts; Lockbox Agreement.** The [Construction Lender,] Senior Lender, the Government, the Borrower and Lockbox Agent, have entered into a Lockbox Agreement dated as of \_\_\_\_\_, 200\_ ( as amended or modified, the "Lockbox Agreement"), which governs the receipt and disbursement of all rents, revenues and other income from the Project ("Project Receipts"), as required under the Lease of Property.

**8. Payment Subordination.** Except as otherwise expressly provided in this Section 8 or the Lockbox Agreement, all of the Government's rights to payment of the Direct Loan and the obligations evidenced by the Direct Loan Documents are hereby expressly fully subordinated to all of [Construction Lender's rights to payment of the Construction Loan and the obligations secured by the Construction Loan Documents and] Senior Lender's rights to payment of the Senior Loan and the obligations secured by the Senior Loan Documents. The Government shall not accept or receive payments (whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from or on behalf of the Borrower prior to the date that the Senior Loan is paid and performed in full. Notwithstanding the provisions of the immediately preceding sentence, (a) the Government may accept current amounts due and payable to the Government subject to and in accordance with the terms and conditions of the Direct Loan Documents and the Lockbox Agreement so long as (i) no Event of Default shall exist and (ii) no Subordination Event has occurred; and (b) the Government may accept prepayments of the Direct Loan as long as (i) such payment is not effected in connection with a refinancing of the Direct Loan which refinancing will not result in the repayment in full of [the Construction Loan and] the Senior Loan, (ii) no Event of Default shall exist, (iii) no Subordination Event has occurred, (iv) such payment is not contrary to the terms of the Lockbox Agreement, and (v) such prepayment is effected with unrestricted funds of the Borrower. All payments or distributions upon or with respect to the Direct Loan which are received by the Government contrary to the provisions of this Intercreditor Agreement or the Lockbox Agreement, prior to the date that the [Construction Loan in accordance with the Construction Loan Documents and] Senior Loan [is] [are] paid and performed in full, shall be received in trust for the benefit of [Construction Lender and] Senior Lender and shall be paid over to [the Construction Lender, if the Construction Loan is outstanding, with the balance, if any, after payment in full of the Construction Loan, paid over to] Senior Lender in the same form as so received (with any necessary assignment or endorsement) to be applied to, or held as collateral for, the payment or performance of

the [Construction Loan and] Senior Loan in accordance with the terms of the Senior Loan Documents [,as applicable].

**[9.] Events of Subordination.** In the event of any dissolution, winding up, liquidation, arrangement, reorganization, adjustment, protection, relief or composition of the Borrower or its debts, whether voluntary or involuntary, in any bankruptcy, insolvency, arrangement, reorganization, receivership, relief or other similar case or proceeding under any Federal or State bankruptcy or similar law or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Borrower or otherwise (each a "Subordination Event"), [each of Construction Lender and] Senior Lender shall, after the occurrence of such Subordination Event, be entitled to receive payment in full of [the Construction Loan and] the Senior Loan [,as applicable,] before the Government is entitled to receive any payment of the Direct Loan (whether in cash, property or securities) that otherwise would be payable with respect to the Direct Loan and any and all such amounts shall be paid [pari passu,] or delivered directly [to the Construction Lender for application to, or as collateral for, the payment of the Construction Loan in accordance with the Construction Loan Documents, and] to the Senior Lender for application to, or as collateral for the payment of the Senior Loan in accordance with the Senior Loan Documents. After the balance, if any, of [the Construction Loan and] the Senior Loan [has] [have] been paid in full shall be paid to Government for application to the Direct Loan.

**[10.] No Fiduciary Duty.** The Government agrees that [neither the Construction Lender nor ] Senior Lender owes [no] [any] fiduciary duty to the Government in connection with the administration of the [Construction Loan and the Construction Loan Documents or the] Senior Loan and the Senior Loan Documents. Senior Lender agrees that the Government owes no fiduciary duty to Senior Lender in connection with the administration of the Direct Loan and the Direct Loan Documents.

**[11.] Rights of Subrogation.** The Government shall not acquire by subrogation, contract or otherwise any Lien upon or other estate, right or interest in any property (including but not limited to any Lien which may arise in respect to real estate taxes, assessments or other governmental charges) which is or may be pari passu with, or prior in right to, the Liens securing the [Construction Loan or] Senior Loan.

**[12.] Repayment of Construction Loan.** The Government may pay the Construction Loan in full at any time from and after the occurrence and during the continuance of an Event of Default or an event of default under the Direct Loan Documents, provided that the Government shall concurrently therewith pay all fees, costs, charges and expenses, that are due and payable under the Construction Loan Documents in connection with such repayment, whereupon Construction Lender will accept such payment and take such actions under the Construction Loan Documents as it would otherwise take upon a repayment of the Construction Loan by the Borrower. In such event, upon the Government's request, Construction Lender will assign all of its right, title and interest in the Construction Loan and the Construction Loan Documents to the Government or its designee, without representation, warranty or covenant, express or implied, or of any kind whatsoever.]

**[13.] Repayment of Senior Loan.** The Government may pay the Senior Loan in full at any time from and after the occurrence and during the continuance of an Event of Default or an event of default under the Direct Loan Documents, provided that the Government shall concurrently therewith pay all fees, costs, charges and expenses, [including any Make-Whole Premium (as defined in the Indenture),] that are due and payable under the Senior Loan Documents in connection with such repayment, whereupon Senior Lender will accept such payment and take such actions under the Senior Loan Documents as it would otherwise take upon a repayment of the Senior Loan by the Borrower. In such event, upon the Government's request, Senior Lender will assign all of its right, title and interest in the Senior Loan and the Senior Loan Documents to the Government or its designee, without representation, warranty or covenant, express or implied, or of any kind whatsoever.

**[14.] Notice of Default, Right to Cure and Standstill Agreement.**

(a) The Government shall simultaneously provide [each of Construction Lender and] Senior Lender with a copy of any notice of default or event of default sent under any Direct Loan Document, and shall provide [each of Construction Lender and] Senior Lender, within five (5) Business Days of its receipt, a copy of any notice of default or event of default received from the Borrower. [Construction Lender shall simultaneously provide each of the Senior Lender and the Government with a copy of any notice of default or Event of Default sent by Construction Lender under any Construction Loan Document and shall provide the Senior Lender and the Government within five (5) days of its receipt, a copy of any notice of default or Event of Default received from Borrower.] Senior Lender shall simultaneously provide [each of Construction Lender and] the Government with a copy of any notice of default or Event of Default sent by the Senior Lender under any Senior Loan Document, and shall provide the Government, within five (5) Business Days of its receipt, a copy of any notice of default or Event of Default received from the Borrower. The failure of a Lender to deliver any notice to [the] [any] other Lender shall not in any way relieve or release [the] [any] other Lender from any of its obligations hereunder; provided, however, that any cure period hereunder shall commence upon the delivery of such notice to the other Lender[s]. Upon receipt of such notice of default, the Lender [s] under the non-defaulted Loan[s] shall have the right but not the obligation, exercisable in [its] [their] sole discretion (and, in the case of the Government, subject if required, to the receipt of an additional appropriation of funds or legislative authority) to cure such default, and will be provided a cure period which is thirty (30) days beyond the cure period given to the Borrower under the terms of the applicable Loan Documents (or in those cases in which the Borrower is not provided any cure period, the applicable Lender shall have a cure period of thirty (30) days) in which to cure the default. If a Lender under [the] [a] non-defaulted Loan cures any such default within the applicable grace period as aforesaid then the Lender under the defaulted Loan shall not have the right to accelerate the Loan or commence an Enforcement Action as a result of such default.

(b) Notwithstanding any other provision of this Intercreditor Agreement to the contrary (i) no Lender shall be required to cure any default of the Borrower which (A) cannot be cured by the payment of money or performance of demolition, design, construction, renovation, operation and maintenance work, or (B) is otherwise not reasonably susceptible of cure by such Lender (a "Personal Default"), and such Personal Default shall be waived by the Government as to [each of the Construction Lender and] the Senior Lender, [and by the Construction Lender as to each of the Government and the Senior Lender,] and by Senior Lender as to [each of the Construction Lender and] the Government; provided that no Lender shall be precluded from taking any Enforcement Action in connection with a Subordination Event.

**[15.] [Amendment of Construction Loan Documents.** The Construction Lender and the Borrower hereby agree that they will not, without the prior written consent of the Government, amend or modify, or consent to any amendment or modification of any of the documents evidencing or securing the Construction Loan (a) to increase the principal amount of the Construction Loan (other than any increases due to protective or curative advances pursuant to the terms of the Construction Loan Documents, capitalization of accrued and unpaid interest or default interest [(consistent with that certain Fee Owner Estoppel, Consent and Agreement Regarding Leasehold Mortgage dated as of \_\_\_\_\_, 200\_, by and between the Construction Lender and the Government)], fees (including attorneys' fees), costs, expenses or otherwise, including amounts payable with respect to any indemnity or any breach of a representation or warranty to Construction Lender under the Construction Loan Documents); or (b) if such amendment or modification would materially or adversely affect the interests of the Government, as set forth in the Direct Loan Documents. Subject thereto, Construction Lender may, at any time and from time to time, without the consent of or notice to the Government, and without impairing or releasing the obligations of the Government hereunder, amend in any manner any of the Construction Loan Documents. Any amendment or modification, supplement of or to the Construction Loan Documents which is not permitted under this Intercreditor Agreement or otherwise consented to in writing by the Government shall be void ab initio and of no effect whatsoever.

**[16.] Amendment of Senior Loan Documents.** The Senior Lender and the Borrower hereby agree that they will not, without the prior written consent of the Government, amend or modify, or consent to any amendment or modification of any of the documents evidencing or securing the Senior Loan (a) to increase the principal amount of the Senior Loan (other than any increases due to protective or curative advances pursuant to the terms of the Senior Loan Documents, capitalization of accrued and unpaid interest or default interest [(consistent with that certain Fee Owner Estoppel, Consent and Agreement Regarding Leasehold Mortgage dated as of \_\_\_\_\_, 200\_, by and between the Senior Lender and the Government)], fees (including attorneys' fees), costs, expenses or otherwise, including amounts payable with respect to any indemnity or any breach of a representation or warranty to Senior Lender under the Senior Loan Documents); or (b) if such amendment or modification would materially or adversely affect the interests of the Government, as set forth in the Direct Loan Documents. Subject thereto, Senior Lender may, at any time and from time to time, without the consent of or notice to the Government, and without impairing or releasing the obligations of the Government hereunder, amend in any manner any of the Senior Loan Documents. Any amendment or modification, supplement of or to the Senior Loan Documents which is not permitted under this Intercreditor Agreement or otherwise consented to in writing by the Government shall be void ab initio and of no effect whatsoever.

**[17.] Amendment of Direct Loan Documents.** The Government and the Borrower shall not amend or modify, or consent to any amendment or modification of the Direct Loan or any of the documents evidencing or securing the Direct Loan without the prior written consent of Senior Lender (a) to increase the principal amount of the Direct Loan (other than any increases due to protective or curative advances pursuant to the Direct Loan Documents, capitalization of accrued and unpaid interest or default interest, fees (including attorneys' fees), costs, expenses or otherwise, including amounts payable with respect to any indemnity or any breach of a representation or warranty to the Government under the Direct Loan Documents), or (b), if such amendment or modification would adversely affect the interests of Senior Lender as set forth in the Senior Loan Documents. Any amendment or modification, supplement of or to the Direct Loan Documents which is not permitted under this Intercreditor Agreement or otherwise consented to in writing by Senior Lender shall be void ab initio and of no effect whatsoever.

**[18.] Insurance Proceeds and Condemnation Awards.** The Government [,Construction Lender and] and Senior Lender agree that any insurance proceeds received as a result of casualty loss to the Mortgaged Premises, or condemnation award received in connection with the Mortgaged Premises, shall be applied in accordance with the terms and conditions of the Lockbox Agreement.

**[19.] Transfers.**

(a) **[Transfer by Construction Lender.** Construction Lender may, from time to time, at its sole discretion and without notice to the Government except as herein provided, assign, transfer, mortgage, encumber or participate, directly or indirectly, by operation of law or otherwise (collectively, a "Transfer"), all or any of the Construction Loan or any interest therein, provided that any such Transfer is subject to Condition 22 of the Lease of Property and the assumption by such transferee of the obligations of Construction Lender hereunder. The Construction Loan and the Construction Loan Documents shall be and remain a senior obligation in all respects to the Direct Loan and the Direct Loan Documents in accordance with the terms and provisions of this Intercreditor Agreement. [The holders of the Bonds may, from time to time, at their sole discretion and without notice to the Government assign, transfer, mortgage, encumber or participate, directly or indirectly, by operation of law or otherwise, all or any of the Bonds or any interest therein.]

[(b)] **Transfer by Senior Lender.** Senior Lender may, from time to time, at its sole discretion and without notice to the Government except as herein provided, assign, transfer, mortgage, encumber or participate, directly or indirectly, by operation of law or otherwise (collectively, a "Transfer"), all or any of the Senior Loan

or any interest therein, provided that any such Transfer is subject to Condition 22 of the Lease of Property and the assumption by such transferee of the obligations of Senior Lender hereunder. The Senior Loan and the Senior Loan Documents shall be and remain a senior obligation in all respects to the Direct Loan and the Direct Loan Documents in accordance with the terms and provisions of this Intercreditor Agreement. [The holders of the Bonds may, from time to time, at their sole discretion and without notice to the Government assign, transfer, mortgage, encumber or participate, directly or indirectly, by operation of law or otherwise, all or any of the Bonds or any interest therein.]

[(c)] **Transfer by the Government.** The Government shall not Transfer all or any part of its interest in the Direct Loan and the Direct Loan Documents to a Person that is not an agency or branch of the Government without Senior Lender's prior written consent, which may be given or withheld in its sole discretion for any or no reason.

**[20.] Estoppel.**

(a) The Government shall, within ten (10) days following a request from Senior Lender, provide Senior Lender with a written statement setting forth the then current outstanding principal balance of the Direct Loan, the aggregate accrued and unpaid interest under the Direct Loan, and stating whether to the Government's knowledge any default or event of default exists under any Direct Loan Document.

(b) [Construction Lender shall, within ten (10) days following a request from the Government, provide the Government with a written statement setting forth the current outstanding principal balance of the Construction Loan, the aggregate accrued and unpaid interest under the Construction Loan, and stating whether to Construction Lender's knowledge any default or Event of Default exists under any Construction Loan Document.]

[(c)] Senior Lender shall, within ten (10) days following a request from the Government, provide the Government with a written statement setting forth the current outstanding principal balance of the Senior Loan, the aggregate accrued and unpaid interest under the Senior Loan, and stating whether to Senior Lender's knowledge any default or Event of Default exists under any Senior Loan Document.

**[21.] Distributions of Proceeds of Collateral.** The proceeds resulting from any foreclosure, sale or other disposition of, or realization upon, the Mortgaged Premises under any of the Loan Documents or any other interest in the Mortgaged Premises, or any part thereof, shall be distributed first [to the Construction Lender until all obligations of the Borrower to the Construction Lender under the Construction Loan Documents are paid and performed in full, second] to the Senior Lender until all obligations of the Borrower to the Senior Lender under the Senior Loan Documents are paid and performed in full, and any remaining proceeds shall be paid to the Government until all obligations of the Borrower to the Government under the Direct Loan Documents are paid and performed in full, with any excess being distributed to the Borrower.

**[22.] Obligations Hereunder Not Affected.**

(a) [All rights and interests of Construction Lender hereunder, and all agreements and obligations of the Government under this Intercreditor Agreement, shall remain in full force and effect irrespective of:(i) any lack of validity or enforceability of the Construction Loan Documents or any other agreement relating thereto;

(ii) any change, restructuring or termination of the corporate structure or existence of the Borrower or any of its affiliates; or

(iii) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Borrower or a subordinated creditor.]

[(b)] All rights and interests of Senior Lender hereunder, and all agreements and obligations of [the Construction Lender and] the Government under this Intercreditor Agreement, shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of the Senior Loan Documents or any other agreement relating thereto;

(ii) any change, restructuring or termination of the corporate structure or existence of the Borrower or any of its affiliates; or

(iii) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Borrower or a subordinated creditor.

[(c)] All rights and interests of the Government hereunder, and all agreements and obligations of [the Construction Lender and] the Senior Lender under this Intercreditor Agreement, shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of the Direct Loan Documents or any other agreement relating thereto;

(ii) any change, restructuring or termination of the corporate structure or existence of the Borrower or any of its affiliates; or

(iii) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Borrower or a subordinated creditor.

[(d)] This Intercreditor Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of all or any portion of [the Construction Loan or] the Senior Loan [as applicable,] is rescinded or must otherwise be returned by [Construction Lender or] Senior Lender upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, all as though such payment had not been made.

[(e)] [Each of the Senior Lender and the Government agrees that Construction Lender may, from time to time, do any of the following (by express amendment to the Construction Loan Documents or otherwise) and the Lien securing the Direct Loan shall be and continue to be subject and subordinate to the Lien securing the Construction Loan as provided in this Intercreditor Agreement:

(i) defer enforcement of its remedies following the maturity date of the Construction Loan if Borrower fails to timely pay all amounts due and payable in respect of the Construction Loan on such date;

(ii) subject to the terms and conditions of the Lease of Property, sell, exchange, release, surrender, realize upon or otherwise deal with in any manner any of the Mortgaged Premises, or any part thereof, or any other collateral encumbered by the Liens created by the Construction Loan Documents;

(iii) release any guarantor of the Construction Loan;

(iv) waive any of the terms, covenants or conditions of the Construction Loan Documents;

(v) except as expressly provided herein, make future advances under the Construction Loan Documents;

(vi) retain or obtain a Lien in any property to secure all or any part of the Construction Loan;

(vii) except as expressly provided herein, change the manner, place or terms of payments or change or extend the time of payment of, renew or alter, all or any part of the Construction Loan, any security therefor, or any liability incurred directly or indirectly in respect thereof; or

(viii) settle or compromise the Construction Loan or any part thereof or any security therefor, or any liability incurred directly or indirectly in respect thereof or hereof, and subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of the Borrower.]

[(f)] [Each of the Construction Lender and the] [The] Government agrees that Senior Lender may, from time to time, do any of the following (by express amendment to the Senior Loan Documents or otherwise) and the Lien securing the Direct Loan shall be and continue to be subject and subordinate to the Lien securing the Senior Loan as provided in this Intercreditor Agreement:

(i) defer enforcement of its remedies following the maturity date of the Senior Loan if Borrower fails to timely pay all amounts due and payable in respect of the Senior Loan on such date;

(ii) subject to the terms and conditions of the Lease of Property, sell, exchange, release, surrender, realize upon or otherwise deal with in any manner any of the Mortgaged Premises, or any part thereof, or any other collateral encumbered by the Liens created by the Senior Loan Documents;

(iii) release any guarantor of the Senior Loan;

(iv) waive any of the terms, covenants or conditions of the Senior Loan Documents;

(v) except as expressly provided herein, make future advances under the Senior Loan Documents;

(vi) retain or obtain a Lien in any property to secure all or any part of the Senior Loan;

(vii) except as expressly provided herein, change the manner, place or terms of payments or change or extend the time of payment of, renew or alter, all or any part of the Senior Loan, any security therefor, or any liability incurred directly or indirectly in respect thereof; or

(viii) settle or compromise the Senior Loan or any part thereof or any security therefor, or any liability incurred directly or indirectly in respect thereof or hereof, and

subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of the Borrower.

[(g)] [Each of the Construction Lender and the] [The] Senior Lender agrees that the Government may, from time to time, do any of the following (by express amendment to the Direct Loan Documents or otherwise):

(i) defer enforcement of its remedies following the maturity date of the Direct Loan if Borrower fails to timely pay all amounts due and payable in respect of the Direct Loan on such date;

(ii) subject to the terms and conditions of the Lease of Property, sell, exchange, release, surrender, realize upon or otherwise deal with in any manner any of the Mortgaged Premises, or any part thereof, or any other collateral encumbered by the Liens created by the Direct Loan Documents;

(iii) release any guarantor of the Direct Loan;

(iv) waive any of the terms, covenants or conditions of the Direct Loan Documents;

(v) except as expressly provided herein, make future advances under the Direct Loan Documents;

(vi) retain or obtain a Lien in any property to secure all or any part of the Direct Loan;

(vii) except as expressly provided herein, change the manner, place or terms of payments or change or extend the time of payment of, renew or alter, all or any part of the Direct Loan, any security therefor, or any liability incurred directly or indirectly in respect thereof; or

(viii) settle or compromise the Direct Loan or any part thereof or any security therefor, or any liability incurred directly or indirectly in respect thereof or hereof, and subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of the Borrower.

**[23.] Lenders' Standard of Care.** The Government's actions and omissions pursuant to this Intercreditor Agreement shall not result in any liability on the part of the Government to [the Construction Lender or] Senior Lender, for performance or responsibility for any certain standard of care, and [each of Construction Lender and] Senior Lender expressly waives all claims against the Government for damages caused by any such action or omission by the Government for performance or responsibility. [Construction Lender's actions and omissions pursuant to this Intercreditor Agreement shall not result in any liability on the part of the Construction Lender to the Senior Lender or the Government for performance or responsibility for any certain standard of care, and each of Senior Lender and the Government expressly waives all claims against the Construction Lender for damages caused by any such action or omission by the Construction Lender for performance or responsibility.] Senior Lender's actions and omissions pursuant to this Intercreditor Agreement shall not result in any liability on the part of Senior Lender to [the Construction Lender or] the Government, for performance or responsibility for any certain standard of care, and [each of Construction Lender and] the Government expressly waives all claim against Senior Lender for damages caused by any such action or omission by Senior Lender for performance or responsibility. The agreements contained in the preceding two sentences do not extend to claims for damages caused by the gross negligence or willful misconduct of officers, agents or employees of the Government [,Construction Lender] or Senior Lender, as applicable, without contributory fault on the part of any other person, firm, entity or party.

**[24.] Termination.** This Intercreditor Agreement shall in all respects be a continuing agreement and shall remain in full force and effect until the earlier of the payment in full of the Senior Loan or the Direct Loan. Upon such payment in full, this Intercreditor Agreement shall automatically terminate (subject to Section [21.(c)]); provided that the parties agree to each execute such instruments as may be reasonably requested by any party to further evidence such termination.

**[25.] Consent by the Borrower.** The Borrower is executing this Intercreditor Agreement to evidence its consent to its terms.

**[26.] Conflicts.** [Between] [Among] the Lenders, in the event of a conflict between any provision of this Intercreditor Agreement and any provision of any of the [Construction Loan Documents,] Senior Loan Documents and the Direct Loan Documents, the provisions of this Intercreditor Agreement shall control.

**[27.] Interpretation.** The words "hereof," "herein," and other words of similar import refer to this Intercreditor Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. References to sections, subsections, and provisions are to the applicable sections, subsections and provisions of this Intercreditor Agreement as originally executed. The headings of this Intercreditor Agreement are for convenience only and shall not define or limit its provisions. A reference to a document includes an amendment, supplement, or addition to, or replacement, substitution, or novation of, that document, but, if applicable, only if such amendment, supplement, addition, replacement, substitution or novation is permitted by and in accordance with this Intercreditor Agreement, [the Construction Loan Documents,] the Senior Loan Documents and the Direct Loan Documents. The words "including" and "includes" and words of similar import are deemed to be followed by the phrase "without limitation". The parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Intercreditor Agreement. Accordingly, the parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Intercreditor Agreement.

**[28.] Delay or Omission Not Waiver.** No delay or omission of the [Construction Lender,] Senior Lender or Government to exercise any right or remedy provided under this Intercreditor Agreement upon a default of the other party (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Intercreditor Agreement or by law to such party may be exercised from time to time, and as often as may be deemed expedient by such party. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**[29.] No Release.** Nothing herein contained shall operate to release the Borrower from (a) any obligation to keep and perform all of the terms, covenants, conditions, obligations and agreements contained in the [Construction Loan Documents, the] Senior Loan Documents and the Direct Loan Documents, or (b) any liability of the Borrower under the [Construction Loan Documents, the] Senior Loan Documents and the Direct Loan Documents.

**[30.] Performance of Obligations.** Each party hereby covenants to keep and perform faithfully all of its covenants and undertakings contained in this Intercreditor Agreement. Every "request", "order", "demand", "direction", "application", "appointment", "notice", "statement", "certificate" , "consent", "approval", "waiver", "identification" or similar action hereunder by any party shall unless the form thereof is specifically provided, be in writing signed by the Authorized Representative of such party with a duly authorized signature.

**[31.] No Third Party Beneficiaries.** There shall be no third party beneficiaries of this Intercreditor Agreement other than the Bondholders, and the Government shall have no obligation to recognize or deal with

any party other than [the Construction Lender,] the Senior Lender [(or the Bondholder Representative on behalf of the Bondholders)] or the Borrower with respect to rights, benefits, and obligations of [the Construction Lender,] the Senior Lender, the Borrower and the Government, as applicable, under this Intercreditor Agreement.

**[32.] Successors and Assigns.** This Intercreditor Agreement shall bind all successors and permitted assigns of the Government, the Borrower [,the Construction Lender] and Senior Lender and shall inure to the benefit of all successors and permitted assigns of the Government, the Borrower [, the Construction Lender] and Senior Lender.

**[33.] Amendment.** The Government [, the Construction Lender] and the Senior Lender hereby covenant and agree that this Intercreditor Agreement shall be amended only by an instrument in writing executed by their duly Authorized Representatives.

**[34.] Further Assurances.** So long as [any portion of the Construction Loan remains unpaid and the Construction Loan Documents encumber any of the Mortgaged Premises or] any portion of the Senior Loan remains unpaid and the Senior Loan Documents encumber any of the Mortgaged Premises, the Government agrees to execute and deliver such further documents or instruments and to perform such other acts as [either the Construction Lender or] Senior Lender [,as applicable] may reasonably require in order to carry out the intention of this Intercreditor Agreement, including, without limitation, instruments confirming the subordination herein set forth.

**[35.] No Individual Liability.** No covenant or agreement contained herein shall be deemed to be the covenant or agreement of any individual shareholder, partner, member, director, officer, agent, employee or representative of the Government [, the Construction Lender] or the Senior Lender, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Intercreditor Agreement, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

**[36.] Notices.** Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to [the Construction Lender, or to] Senior Lender, or the Government, or the Borrower shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below. Senior Lender, the Government and the Borrower may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent:

[If intended for Construction  
Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_]

If intended for Senior Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If intended for Borrower: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Attn: \_\_\_\_\_

[If intended for Bondholder  
Representative: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ ]

If intended for the Secretary: Department of the Air Force  
Deputy Assistant Secretary of the Air Force  
(Installations)  
1665 Air Force Pentagon  
Washington, DC 20330-1665  
**(all notices, requests and other communications to  
any party except for financial records and reports)**

with copies to: Department of the Air Force  
Office of the General Counsel  
Deputy General Counsel  
(Installations and Environment)  
1740 Air Force Pentagon  
Washington, D.C. 20330-1740  
**(all notices, requests and other communications to  
any party except for financial records and reports)**

and

HQ AFCEE/HDP  
Attn: Portfolio Manager  
2735 Louis Bauer Drive  
Brooks City-Base, TX 78235-5133

And with a copy to: [Construction Lender (as provided above)]  
  
Senior Lender (as provided above)  
  
Borrower (as provided above)  
  
[Bondholder Representative] (as provided above)

**[37.] Governing Law.** This Intercreditor Agreement shall be construed, and the rights and obligations of the Government, [the Construction Lender] and the Senior Lender under this Intercreditor Agreement shall be determined, in accordance with the laws of the United States of America.

**[38.] Severability.** If any provision of this Intercreditor Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement of the Government contained herein shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Government to the full extent permitted by law.

**[39.] Entire Agreement.** This Intercreditor Agreement embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, consents and understandings relating to such subject matter.

**[40.] Multiple Counterparts.** This Intercreditor Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed this Intercreditor Agreement as of the date first above written.

**Senior Lender**

, a \_\_\_\_\_, [not in its individual capacity, but solely, as Trustee]

By: \_\_\_\_\_

[Name]\_\_\_\_\_

[Title]\_\_\_\_\_

COMMONWEALTH OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as \_\_\_\_\_ of \_\_\_\_\_, as trustee, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said \_\_\_\_\_, before me.

Notary Public:

My Commission Expires:

[Signatures Continue on Following Page]

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IN WITNESS WHEREOF, the parties have executed this Intercreditor Agreement as of the date first above written.

**Construction Lender**

, a \_\_\_\_\_, [not in its individual capacity, but solely, as Trustee]

By: \_\_\_\_\_

[Name]\_\_\_\_\_

[Title]\_\_\_\_\_

COMMONWEALTH OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as \_\_\_\_\_ of \_\_\_\_\_, as trustee, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said \_\_\_\_\_, before me.

Notary Public:

My Commission Expires:

[Signatures Continue on Following Page]

**THE UNITED STATES OF AMERICA BY  
THE SECRETARY OF THE AIR FORCE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Deputy Assistant Secretary of the Air Force  
(Installations)

COMMONWEALTH OF VIRGINIA

) SS:

COUNTY OF ARLINGTON

On the \_\_\_\_day of \_\_\_\_\_, 200\_, before me, \_\_\_\_\_, the undersigned Notary Public, personally appeared , personally known to me to be the person whose name is subscribed to the foregoing \_\_\_\_\_, and personally known to me to be the Deputy Assistant Secretary of the Air Force (Installations), and acknowledged that the same was the act and deed of the Secretary of the Air Force and that he executed the same as the act of the Secretary of the Air Force.

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*Notary Public, Commonwealth of Virginia*

**My commission expires:**

**[Bondholder Representative]**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ company, and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of said company, before me.

\_\_\_\_\_

Notary Public:

My Commission Expires:

**ATTACHMENTS**

**Exhibit A. Description of the Land**

**Exhibit B. List of Construction Loan Documents**

**Exhibit [C.] List of Senior Loan Documents**

**[Exhibit [D.] List of Direct Loan Documents]**

The undersigned Borrower is executing this Intercreditor Agreement for the purposes of acknowledging that the Loans are subject to its terms and conditions.

**[Borrower]**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, the undersigned notary public, personally appeared, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and acknowledged the foregoing instrument to be [his][her] free act and deed and the free act and deed of said \_\_\_\_\_, before me.

\_\_\_\_\_

Notary Public:

My Commission Expires:

**EXHIBIT A**

**DESCRIPTION OF THE LAND**

[to be provided]

**EXHIBIT B**  
**LIST OF SENIOR LOAN DOCUMENTS**

**EXHIBIT C**

**LIST OF DIRECT LOAN DOCUMENTS**

1. Multi-Family Note;
2. Note Rider;
3. Multi-Family Mortgage, Assignment of Rents and Security Instrument;
4. Security Instrument Rider; and
5. Guaranty

**EXHIBIT D**  
**LIST OF CONSTRUCTION LOAN DOCUMENTS**