

**United States Department of the Air Force  
Air Combat Command  
(ACC)  
Air Force Center for  
Environmental Excellence  
(AFCEE)**



**Privatization of Military Family Housing  
Cannon Air Force Base, New Mexico**

Solicitation Number: AFCEE-03-0003

**APPENDIX N  
Government Direct Loan and  
Associated Legal Instruments**

**Step One Proposals Are Due No Later Than  
5:00 P.M. MT 18 Aug 03 At:**

PSC MILITARY HOUSING COMPANY

132 South 600 East

Salt Lake City, Utah 84102

Voice 801.363.2277 Fax 801.363.1912

Email: [rusty@psc-evg.com](mailto:rusty@psc-evg.com)

Web site: [www.pscmhc.com](http://www.pscmhc.com)

## **APPENDIX N. GOVERNMENT DIRECT LOAN AND ASSOCIATED LEGAL INSTRUMENTS**

The Government, at its option, shall use the then most current version of either the Fannie Mae or Freddie Mac form of note and security instrument for the State of New Mexico in documenting its direct loan. Whether the Government chooses to use the Fannie Mae or Freddie Mac form of note and security instrument, in the case of a DoD direct loan, a Military Housing Rider to Note and a Military Housing Rider to Security Instrument shall be attached to the note and security instrument, as applicable. Forms of the required Military Housing Riders are also included herein.

## MILITARY HOUSING RIDER TO SECURITY INSTRUMENT

### (DoD Direct Loan)

This Rider is attached to and incorporated into the foregoing Multifamily Mortgage (the "Instrument") dated \_\_\_\_\_, 20\_\_ from the undersigned (the "Borrower") to the Secretary of the Air Force (the "Lender"), and this Rider amends, modifies and supplements the Instrument.

#### 1. Definitions

Capitalized terms which are not defined below in Section 1 of this Rider or elsewhere in the body of this Rider shall have the meanings set forth in the Instrument.

"Lease of Property" means the Department of the Air Force Lease of Property by and between the Secretary of the Air Force and the Borrower, as amended and modified from time to time.

"Guaranteed Lender" means the maker of a mortgage loan, its successors and/or permitted assigns, that extends DoD guaranteed loans to the private sector for financing of the Project. In this transaction, the Guaranteed Lender is a lender approved or pending approval by the DoD.

"Guaranteed Mortgage" means that certain Multifamily Mortgage (DoD Guaranteed Loan) dated \_\_\_\_\_, 200\_\_, including all riders and addenda, from the Borrower to the Guaranteed Lender to secure the repayment of the Guaranteed Note, as amended or modified in accordance with its terms, which Guaranteed Mortgage is to be recorded in the Land Records of Curry County, New Mexico prior to the recordation of the Instrument.

"Guaranteed Note" means that certain Multifamily Note (DoD Guaranteed Loan) in the principal amount of \$ \_\_\_\_\_ dated \_\_\_\_\_, 200\_\_, including all riders and addenda, from the Borrower to the Guaranteed Lender, as amended or modified in accordance with its terms.

"Intercreditor Agreement" means the Intercreditor Agreement to be entered into among the Secretary, all lenders and the Borrower, as may be amended and modified from time to time.

"Project" means a privately-owned rental housing development consisting of improvements located or to be located on the Land, as described in and required to be designed, constructed, operated, maintained, demolished, replaced and rehabilitated in accordance with the Project Documents.

"Use Agreement" means one or more agreements entitled "Declaration of Restrictive Covenants and Use Agreement for Military Housing Project" which has been executed between the Borrower and the Government, and sets forth the deed restrictions, restrictive covenants, and other terms and conditions, under which the Borrower has agreed to design, construct, own, operate, maintain, manage and use the Project.

#### 2. Approval of and Subordination to Guaranteed Note and Mortgage.

a. Notwithstanding the provisions of Section 16 or any other provisions of the Instrument to the contrary, the Lender, for itself and its successors and assigns, hereby approves the execution and delivery by the Borrower of the Guaranteed Note and the Guaranteed Mortgage, including without limitation, the grant by the Borrower to the Guaranteed Lender of an assignment of rents and leases which is prior to the assignment of rents and leases granted by Borrower to Lender under the Instrument. Lender further acknowledges and agrees that its rights and remedies under the Note and the Instrument are subordinate and subject to the rights of the Guaranteed Lender under the Guaranteed Note and Guaranteed Mortgage in accordance with the Intercreditor Agreement.

b. The Borrower covenants and agrees to timely comply with all of the terms and conditions of the Guaranteed Note and the Guaranteed Mortgage, including specifically, but without limitation, to pay all sums

due under the Guaranteed Note and the Guaranteed Mortgage as and when due. The Borrower further agrees that any and all defaults under the Guaranteed Note and the Guaranteed Mortgage shall constitute and be defaults under Instrument entitling the holder to exercise any and all remedies which it may have under the Instruments and/or applicable law.

**3. Payment of Indebtedness. Section 5 is hereby amended and restated in its entirety as follows:**

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS. Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents."

**4. Escrows For Taxes, Insurance and Other Charges.**

Notwithstanding the provisions of Section 7:

a. So long as the Borrower is specifically required under the terms of the Guaranteed Mortgage to make payments to the holder of the Guaranteed Mortgage for the items set forth in Section 7, and provided that Lender is provided with written evidence from the holder of the Guaranteed Mortgage that such payments have been timely and fully made; and

b. Until there has been a default in the performance by the Borrower in its obligations under the Instrument and/or the Note; the Borrower shall not be required to make the payments to Lender pursuant to Section 7. However, from and after either (i) noncompliance with any or all of the conditions set forth above at subparagraphs a and b, or (ii) the payment in full of the Guaranteed Mortgage, the Borrower shall be required upon notice of the Lender to commence making such payments in accordance with the provisions of Section 7.

**5. Books and Records; Financial Reporting.**

- a. Section 14(b) is hereby amended and restated in its entirety as follows:

"(b) Borrower shall furnish to Lender all of the following:

(1) Within one hundred twenty (120) days after the end of each fiscal year of the Borrower, a copy of its annual financial statements prepared in accordance with generally accepted accounting principles and audited by a certified public accountant;

(2) within one hundred twenty (120) days after the end of each fiscal year of Borrower, a statement of income and expenses for Borrower's operation of the Mortgaged Property for that fiscal year;

(3) within thirty (30) days after the end of each quarter, a statement of income and expenses for Borrower's operation of the Mortgaged Property for the preceding quarter, presented for each month during that quarter;

(4) after an Event of Default has occurred and is continuing, within fifteen (15) days after the end of each month, monthly income and expense statements for the Mortgaged Property;

(5) within one hundred twenty (120) days after the end of each fiscal year of Borrower, a statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year; a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year; a balance sheet, a statement of income

and expenses for Borrower and a statement of changes in financial position of Borrower for that fiscal year;

(6) within thirty (30) days after the end of each quarter, and at any other time upon the request of the Lender, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any requested related information;

(7) within one hundred twenty (120) days after the end of each fiscal year of Borrower, and at any other time upon the request of the Lender, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for the Lender to access information regarding such accounts;

(8) within one hundred twenty (120) days after the end of each fiscal year of Borrower, and at any other time upon the request of the Lender, a statement that identifies all owners of any interest in Borrower and any Controlling Entity and the interest held by each, if Borrower or a Controlling Entity is a corporation, all officers and directors of Borrower and the Controlling Entity, and if Borrower or a Controlling Entity is a limited liability company, all managers who are not members;

(9) within thirty (30) days after the end of each quarter, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants, materials relating to marketing and leasing efforts for the Mortgaged Property, and any other information requested by the Lender;

(10) within thirty (30) days after the end of each quarter, a monthly maintenance report for the Mortgaged Property, showing the number of maintenance requests from tenants and the disposition of such requests, maintenance records and expenditures, and any other information requested by the Lender;

(11) within thirty (30) days of their filing with the required federal, state or local agencies, all income, real and personal property and any other tax returns and any other tax filings relating to Borrower and the Mortgaged Property;

(12) not less than ninety (90) days prior to the end of each calendar year, proposed operating and capital budget(s) for the Mortgaged Property for the upcoming calendar year, including estimated income, source of income and expenses, including taxes, insurance and replacement reserves, and identifying the assumptions underlying such budget(s).

(13) copies of any and all default or deficiency notices provided to the Borrower by the Senior Lender, any government agency, insurance company or other party promptly following Borrower's receipt of same; and

(14) within fifteen (15) days after receipt of a request by the Lender, such additional information, as reasonably requested by the Lender.

b. Section 14(f) is hereby amended and restated in its entirety as follows:

"(f) Borrower and its principals (as such term has been defined by the Department of the Air Force and/or the Department of Defense for purposes of the Debt Collection Improvement Act of 1996) authorize the Lender to obtain a credit report on them at any time."

**6. Transfers of Mortgaged Property.** Notwithstanding the provisions of Section 21 or any other provision in the Instrument to the contrary, or any approval of a transfer granted by the Lender under Section 21, so long as the Mortgaged Property is subject to the Lease of Property, transfers of the Mortgaged Property or transfers of interests in the Borrower shall be governed by the terms and conditions set forth in the Use Agreement.

**7. Additional Responsibilities of Loan Servicer.** Notwithstanding any provision in the Instrument to the contrary, the Lender may, at its option, in addition to any actions described in Section 39, authorize or direct the Loan Servicer to exercise any rights, obligations or remedies available to the Lender pursuant to the Instrument including, without limitation, the right to collect rents under Section 3 and to accept, hold and disburse escrows, reserves and other deposits required under the Instrument. The Loan Servicer may, at Lender's option, also serve as the Trustee (as defined in the Use Agreement) pursuant to the Lockbox Agreement (as defined in the Use Agreement).

**8. Performance Under the Lease of Property and the Use Agreement.** The Borrower covenants and agrees to timely comply with all of the terms and conditions of the Lease of Property and the Use Agreement during the applicable period. The Borrower further agrees that any and all defaults under the Lease of Property or the Use Agreement shall constitute and be defaults under the Note entitling the Lender to exercise any and all remedies which it may have under the Security Instrument and/or applicable law.

**9. Conflicts With Intercreditor Agreement.** The terms of the Intercreditor Agreement, the Note and the Security Instrument are intended to be consistent and should be so construed. However, any conflict between the terms of the Intercreditor Agreement, and the Note and the Security Instrument shall be resolved in the following descending order of precedence:

- i. The Intercreditor Agreement.
- ii. The Note and the Security Instrument.

**BORROWER:**

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

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

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

## MILITARY HOUSING RIDER TO NOTE

### (DoD Direct Loan)

This Rider is attached to and incorporated into the foregoing Multifamily Note (the "Note") dated \_\_\_\_\_, 200\_\_ from the undersigned (the "Borrower") to the Secretary of the Air Force (the "Lender"), and this Rider amends, modifies and supplements the Note.

#### 1. Definitions.

Capitalized terms which are not defined below in Section 1 of this Rider or elsewhere in the body of this Rider shall have the meanings set forth in the Note.

"Lease of Property" means one or more land leases executed by and between the Secretary of the Air Force, as Lessor, and the Borrower, as Lessee, with respect to the Project.

"Guaranteed Lender" means [NAME OF GUARANTEED LENDER] and its successors and permitted assigns.

"Guaranteed Mortgage" means that certain Multifamily Mortgage (DoD Guaranteed Loan) dated \_\_\_\_\_, 20\_\_, including all riders and addenda, from the Borrower to the Guaranteed Lender to secure the repayment of the Guaranteed Note, as amended or modified in accordance with its terms, which Guaranteed Mortgage is to be recorded in the Land Records of Curry County, New Mexico prior to the recordation of the Security Instrument.

"Guaranteed Note" means that certain Multifamily Note (DoD Guaranteed Loan) in the principal amount of \$\_\_\_\_\_ dated \_\_\_\_\_, 200\_\_, including all riders and addenda, from the Borrower to the Guaranteed Lender, as amended or modified in accordance with its terms.

"Intercreditor Agreement" means the Intercreditor Agreement by and between the Lender and the Guaranteed Lender, as the same may be amended or modified pursuant to its terms.

"Project" means a privately-owned rental housing development to be developed by the Borrower primarily for use by military personnel and their families assigned to Cannon AFB, Yuba County, New Mexico.

"Use Agreement" means one or more agreements entitled "Declaration of Restrictive Covenants and Use Agreement for Military Housing Project" which has been executed between the Borrower and the Government, and sets forth the deed restrictions, restrictive covenants, and other terms and conditions, under which the Borrower has agreed to design, construct, own, operate, maintain, manage and use the Project.

#### 2. Approval of and Subordination to Guaranteed Note and Mortgage.

a. Notwithstanding the provisions of Section 16 or any other provisions of the Security Instrument to the contrary, the Lender, for itself and its successors and assigns, hereby approves the execution and delivery by the Borrower of the Guaranteed Note and the Guaranteed Mortgage. Lender further acknowledges and agrees that its rights and remedies under the Note and the Security Instrument are subordinate and subject to the rights of the Guaranteed Lender under the Guaranteed Note and Guaranteed Mortgage in accordance with the Intercreditor Agreement.

b. The Borrower covenants and agrees to timely comply with all of the terms and conditions of the Guaranteed Note and the Guaranteed Mortgage, including specifically, but without limitation, to pay all sums due under the Guaranteed Note and the Guaranteed Mortgage as and when due. The Borrower further agrees that any and all defaults under the Guaranteed Note and the Guaranteed Mortgage shall constitute and be defaults under the Security Instrument entitling the holder to exercise any and all remedies which it may have under the Security Instrument and/or applicable law.

**3. Prepayment.** Notwithstanding anything to the contrary in the foregoing Note, the indebtedness evidenced by the Note may be prepaid in whole or in part at anytime without prepayment penalty or premium.

**4. Performance Under the Lease of Property and Use Agreement.** The Borrower covenants and agrees to timely comply with all of the terms and conditions of the Lease of Property and the Use Agreement during the applicable period. The Borrower further agrees that any and all defaults under the Lease of Property or the Use Agreement shall constitute and be defaults under the Note entitling the Lender to exercise any and all remedies which it may have under the Security Instrument and/or applicable law.

**5. Conflicts With Intercreditor Agreement.** The terms of the Intercreditor Agreement, the Note and the Security Instrument are intended to be consistent and should be so construed. However, any conflict between the terms of the Intercreditor Agreement, and the Note and the Security Instrument shall be resolved in the following descending order of precedence:

- i. The Intercreditor Agreement.
- ii. The Note and the Security Instrument.

**BORROWER:**

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

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

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