

**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 Q
Lockbox Agreement**

**Step One Proposals Are Due No Later Than
5:00 P.M. MT 15 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
Web site: www.pscmhc.com

APPENDIX Q. LOCKBOX AGREEMENT

LOCKBOX AGREEMENT

among

THE SECRETARY OF THE AIR FORCE,
as the Air Force

as the Borrower

as the Construction Lender

as the Senior Lender

and

as the Lockbox Agent

Dated as of

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LOCKBOX AGREEMENT

THIS LOCKBOX AGREEMENT, dated as of _____ (hereinafter "Lockbox Agreement"), is by and among THE UNITED STATES OF AMERICA represented by THE SECRETARY OF THE AIR FORCE (the "Secretary or the Government"), _____, a _____ limited liability company (the "Lessee"), _____, a _____ corporation (the "Construction Lender"), and _____, a _____ corporation, as the Lockbox Agent (the "Lockbox Agent") (all capitalized terms used herein shall have the meanings set forth in Section 1.01 hereof).

WITNESSETH:

WHEREAS, in response to Request for Proposals No. _____ issued by the Secretary, the Lessee has been selected by the Secretary to perform the demolition of certain existing residential facilities and the rehabilitation of existing residential facilities and related facilities located at Cannon Air Force Base, New Mexico ("Cannon Air Force Base") and the construction of new residential facilities and related facilities located at Cannon Air Force Base (such demolition, construction and rehabilitation being herein referred to as the "Project"); and

WHEREAS, the Lessee is leasing a portion of the land for the Project (the "Project Site") pursuant to the terms and provisions of a Department of the Air Force Lease of Property on Cannon Air Force Base, New Mexico, dated as of _____ (the "Air Force Lease"), between the Secretary and the Lessee; and

WHEREAS, the Secretary has transferred to the Lessee an ownership interest in certain improvements now located on the Project Site; and

WHEREAS, the Lessee will demolish certain existing improvements and rehabilitate certain existing improvements on the Project Site and will construct additional improvements on the Project Site (collectively, the "Improvements"); and

WHEREAS, the Project Site and the Improvements (collectively, the "Property") are subject to the terms and conditions of the Government; and

WHEREAS, pursuant to the terms and provisions of a Construction Loan Agreement, dated as of _____ (the "Loan Agreement"), between the Lessee and the Construction Lender, the Construction Lender has made a loan (the "Construction Loan") to the Lessee in the principal amount of _____; and

WHEREAS, to evidence the Construction Loan, the Lessee has executed and delivered a promissory note (the "Construction Note") to the Construction Lender; and

WHEREAS, to secure its obligations under the Construction Note, the Lessee has executed and delivered a Multifamily Deed to Secure Debt, Assignment of Rents and Security Agreement, dated

as of _____ (the "Construction Mortgage"), to and for the benefit of the Construction Lender; and

WHEREAS, pursuant to the terms and conditions of the Forward Commitment, dated _____ (the "Forward Commitment"), between the Secretary and the Lessee, upon the completion of the Project, the Secretary will make a loan (the "Direct Loan") to the Lessee in an amount not to exceed _____ for the purpose of repaying the Construction Loan; and

WHEREAS, from and after the making of the Direct Loan to evidence the Direct Loan, the Lessee will execute and deliver a Multifamily Note (the "Government Note") to the Secretary; and

WHEREAS, to secure its obligations under the Government Note, the Lessee will execute and deliver a Multifamily Deed to Secure Debt, Assignment of Rents and Security Agreement (the "Government Mortgage") to and for the benefit of the Secretary; and

WHEREAS, upon the funding of the Direct Loan, the Secretary, any subordinate lenders, if any, and the Lessee will enter into an Intercreditor Agreement (the "Intercreditor Agreement") governing, among other things, the repayment of the Direct Loan and any subordinate loans, and the exercise of remedies by the Secretary and the Construction Lender upon a default by the Lessee; and

WHEREAS, the Government Lease requires the execution and delivery of a lockbox agreement among the Secretary, the Construction Lender, the Lessee, and the Lockbox Agent to provide for (a) the operation of the Property in accordance with the terms and provisions of the Government Lease, (b) the demolition, rehabilitation, construction and other work comprising the Project, (c) the funding of certain accounts described herein for the continued maintenance of the Property as required by the Government Lease, and (d) the timely repayment of the Construction Loan and the Direct Loan and the payment of certain fees and expenses relating to the foregoing.

NOW, THEREFORE, it is mutually covenanted and agreed as follows:

ARTICLE I

DEFINITIONS AND USE OF PHRASES

Section 1.01. Definitions. Capitalized terms used but not defined herein shall have the meanings set forth below:

"Account" means any of the Accounts established pursuant to Section 4.01 hereof.

"Government Loan" means that loan made by the Government to the Project Owner in the original principal amount of \$ _____ as reflected by the Government Note.

"Government Mortgage" means the Multifamily Mortgage (Deed of Trust, Assignment of Rents and Security Agreement) to and for the benefit of the Secretary, as amended and modified from time to time.

"Government Note" means the Multifamily Note to be executed by the Project Owner and evidencing the Direct Loan, as amended and modified in accordance with its terms.

"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.

"Completion Date" means the date that the Project has been accepted by the Secretary, as certified to the Lockbox Agent by a certificate signed by authorized officers of the Lessee, the Secretary, and the Construction Lender.

"Construction Escrow Account" means the Account by that name established pursuant to Section 4.01 hereof.

"Construction Lender" means _____, a _____ corporation, including any of its successors, assigns, or agents as designated in the Construction Loan Documents, in its capacity as a lender providing financing for the rehabilitation and/or construction of the Project.

"Construction Loan" means the mortgage loan made by the Construction Lender to the Project Owner in the original principal amount of \$XX, which loan is secured by the liens, security interests and rights affecting the Property, and improvements located thereon, evidenced by the Construction Loan Documents, and all indebtedness arising under the Construction Loan Documents and secured thereby.

"Construction Mortgage" means the mortgage and security documents, dated as of _____, to and for the benefit of the Construction Lender, as amended and modified pursuant to the terms thereof.

"Construction Note" means the promissory note executed by the Project Owner and evidencing the Construction Loan.

"Consultant" means any Person at the time employed by or on behalf of the Lessee to carry out the duties imposed by or pursuant to this Lockbox Agreement, which Person shall be experienced, have a national and favorable reputation in the matters for which such Person is so employed and be independent of the Lessee.

"Direct Loan" means the permanent loan in original principal amount of \$XX made to the Project Owner by the Government.

"Event of Default" has the meaning set forth in Section 6.01 hereof.

"Fiscal Year" means the 12-month period ending December 31 of each year, or such other date as approved by the Internal Revenue Service as the ending date of the tax year for the Project Owner.

"Forward Commitment" means the Forward Commitment, dated _____, between the Secretary and the Lessee, as amended and supplemented pursuant to the terms thereof.

"Impositions Reserve Account" means the Account by that name established pursuant to Section 4.01 hereof.

"Improvements" means the improvements now located or hereafter constructed on the Project Site.

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

"Investment Securities" means any investment set forth below which matures (or is redeemable at the option of the Lockbox Agent or is marketable prior to maturity) at such time or times as to enable disbursements to be made from the Account in which such investment is held in accordance with the terms of this Lockbox Agreement:

(a) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in clause (b) of this definition);

(b) direct obligations of (including obligations issued or held in book-entry form on the books of) the Department of the Treasury of the United States of America;

(c) obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:

--Export-Import Bank

--Farm Credit System Financial Assistance Corporation

--Rural Economic Community Development Administration (formerly the Farmers Home Administration)

--General Services Administration

--U.S. Maritime Administration

--Small Business Administration

--Government National Mortgage Association (GNMA)

--U.S. Department of Housing & Urban Development

--Federal Housing Administration

--Federal Financing Bank;

(d) direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:

--Senior debt obligations rated "Aaa" by Moody's and "AAA" by S&P issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC)

--Obligations of the Resolution Funding Corporation (REFCORP)

--Senior debt obligations of the Federal Home Loan Bank System

--Senior debt obligations of other Government Sponsored Agencies approved by the Government, the Senior Lender and the Construction Lender;

(e) U.S. dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of "A-I" or "A-I+" by S&P and "P-I" by Moody's and maturing no more than 360 days after the date of purchase (Ratings on holding companies are not considered as the rating of the bank.);

(f) commercial paper which is rated at the time of purchase in the single highest classification, "A-I+" by S&P and "P-I" by Moody's and which matures not more than 270 days after the date of purchase;

(g) investments in a money market fund rated "AAAm" or "AAAm-G" or better by S&P;

(h) pre-refunded municipal obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

(i) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of S&P and Moody's or any successors thereto: or

(ii) (A) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (b) of this definition, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (B) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate;

(i) general obligations of states with a rating of at least "A2/A" or higher by both Moody's and S&P;

(j) An investment agreement with a provider rated as least "A3" or higher by Moody's or "A-" of higher by S&P, or other investment agreements approved in writing by the Secretary and the Construction Lender; and

(k) other forms of investments (including repurchase agreements) approved in writing by the Secretary and the Construction Lender.

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

"Lessee" means the Project Owner, _____, a _____, or any of its successors or assigns which are approved as the owner of the Project by the Secretary and which is the lessee under the Lease of Property on the project.

"Lessee Equity Subaccount" means the Lessee Equity Subaccount of the Construction Escrow Account established pursuant to Section 4.0 hereof.

"Loan Agreement" means the Construction Loan Agreement, a mortgage loan made by the Construction Lender to the Project Owner in the original principal amount of ~~XX~~, which loan is secured by the liens, security interests and rights affecting the Property, and improvements located thereon, evidenced by the Construction Loan Documents, and all indebtedness arising under the Construction Loan Documents and secured thereby.

"Lockbox Agent" means, initially, _____, a _____ corporation, and any successor Lockbox Agent designated pursuant to Section 7.0 hereof.

"Lockbox Agreement" means this Lockbox Agreement, dated as of _____, among the Secretary, the Project Owner, all lenders and the Lockbox Agent, as amended and modified from time to time.

"Lockbox Revenue Account" means the Account by that name established pursuant to Section 4.01 hereof.

"Management Agreement" means the management agreement, dated as of _____, between the Project Owner and the Management Company for the Project, as amended and modified from time to time.

"Management Company" means _____, a _____ corporation, or any successor to the property management responsibilities with respect to the Project, and the improvements located thereon, subject to the Government's prior written consent.

"Moody's" means Moody's Investors Service, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to relate to any other nationally recognized securities rating agency designated by the Lessee.

"Net Cash Flow" is defined in Section 4.03(c)(ix) hereof.

"Operating Expenses" means expenses incurred or to be incurred by the Lessee in the operation and maintenance of the Project determined on a cash basis, but shall exclude depreciation, capital improvements, replacements or major repairs, as set forth in the Project Budget.

"Operating Reserve Account" means the Account by that name established pursuant to Section 4.01 hereof.

"Operating Reserve Account Requirement" means an amount equal to one-twelfth (1/12) of the annual Operating Expenses for the then current Fiscal Year as provided in the Project Budget approved by the Secretary and on file with the Lockbox Agent.

"Permitted Liens" shall have the meaning set forth in the Loan Agreement.

"Person" means any individual, public or private corporation, county, district, authority, municipality, political-subdivision or other entity of the state of New Mexico or the United States of America, and any partnership, limited liability company, joint venture, unincorporated organization, association, firm, trust, estate or any other form of entity whatsoever.

"Project" means the demolition of certain existing Improvements and the rehabilitation of certain existing Improvements located on the Project Site, the construction of new Improvements to be located on the Project Site and certain site work.

"Project Budget" means the budget submitted by the Lessee and approved by the Secretary in accordance with Section 5.02 hereof.

"Project Income" means the total of all revenues derived from the Property, excluding Windfall Income, including without limitation, all receipts, revenues, income, investment earnings on funds which are deposited in the Accounts and other money received by or on behalf of the Lessee in respect of the operation of the Property, including, but without limiting the generality of the foregoing, all amounts paid in respect of the use of any portion of the facilities or rights in the Property, including, without limitation, lease payments for the use of real, personal or intangible property developed as a part of the Property and utilities, and all rights to receive the same, whether in the form of accounts, accounts receivable, chattel paper, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence.

"Project Operations Sub account" means the Project Operations Sub account of the Construction Escrow Account established pursuant to Section 4.01 hereof.

"Project Site" means, the land on which the Project is developed by the Project Owner

"Project" means, collectively, the Project Site and the Improvements located thereon.

"Capital Repair and Replacement Plan" means the plan for performing long-term major repairs and replacements with respect to the Project, and the improvements located thereon, (submitted as part of the Selected Proposal and

accepted by the Government), as the same may from time to time be amended or modified with the Government's written consent.

"Reinvestment Account" means the Account by that name established pursuant to Section 4.01 hereof.

"Replacement Reserve Account" means the Account by that name established pursuant to Section 4.01 hereof.

"Cannon Air Force Base" means Cannon Air Force Base, New Mexico.

"S&P" means Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, its successors and assigns, and, if Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, shall for any reason no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Lessee.

"Secretary" means the Secretary of the Air Force or its Authorized Representative representing the United States Government.

"State" means the State of New Mexico.

"Sub account" means any of the Sub accounts established pursuant to Section 4.01 hereof.

"Title Company" means _____ Title Insurance Company.

"Utilities Reserve Account" means the account by that name established at Section 4.08.

"Windfall Income" means income derived from an unexpected increase in the BAH, and not from annual Cost of Living Allowance (COLA) adjustments. The Cohen initiative to reduce out-of-pocket expenses related to the BAH is an example of "Windfall Income."

Section 1.02. Rules of Construction.

(a) The singular form of any word used herein, including the terms defined in Section 1.01 hereof, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders.

(b) All references herein to "Articles," "Sections" and other subdivisions hereof are to the corresponding Articles, Sections or subdivisions of this Lockbox Agreement as originally executed; and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Lockbox Agreement as a whole and not to any particular Article, Section or subdivision hereof.

(c) The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not limit or otherwise affect the meaning, construction or effect of this Lockbox Agreement or describe the scope or intent of any provisions hereof.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with applicable generally accepted accounting principles as in effect from time to time.

(e) Every "request," "order," "demand," "application," "appointment," "notice," "statement," "certificate," "consent" or similar action hereunder by any party shall, unless the form thereof is specifically provided, be in writing signed by a duly authorized representative of such party with a duly authorized signature.

(f) The parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Lockbox Agreement. Accordingly, the parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Lockbox Agreement or any amendment or supplement or exhibit hereto or thereto.

Section 1.03. Effective Date. The provisions of this Lockbox Agreement shall be effective on and as of the date of execution and shall continue until the expiration or earlier termination of the Government Lease. It is expressly agreed and understood that the provisions of this Lockbox Agreement shall survive the repayment in full of the Construction Loan and the Direct Loan if such repayment occurs prior to the termination date of the Government Lease and the Lockbox Agent agrees to continue to serve in that capacity notwithstanding such repayment of such loans.

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01. Representations, Warranties and Covenants by the Lessee. The Lessee represents, warrants and covenants as follows:

(a) The Lessee is a _____ company duly organized and validly existing under the laws of the State of _____ and is in good standing and qualified to do business in the State of New Mexico and in every other state in which the nature of its business requires such qualification. The Lessee has full power and authority to own its properties and to carry on its business as now being conducted and as contemplated to be conducted with respect to the Property, and to enter into, and to perform and carry out the transactions provided for in this Lockbox Agreement, the Loan Agreement, the Government Note, the Construction Note, the Construction Mortgage, the Government Mortgage, the Government Lease, the Intercreditor Agreement and all other documents to which the Lessee is a party and contemplated hereby (collectively, the "Lessee Documents"). This Lockbox Agreement and all other Lessee Documents have been duly authorized, executed and delivered by the Lessee and constitute the legal, valid and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general equitable principles.

(b) Neither the execution and delivery of this Lockbox Agreement or any other Lessee Document, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions of this Lockbox Agreement or any other Lessee Document, will violate any provision of law, any order of any court or other agency of government, or any of the organizational or other governing documents of the Lessee, or any indenture, agreement or other instrument to which the Lessee is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument or any license, judgment, decree, law, statute, order, rule or regulation of any governmental agency or body having jurisdiction over the Lessee or any of its activities or properties, or, except as provided hereunder or under the other Lessee Documents, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee, except for Permitted Liens.

(c) No litigation or proceeding is pending with respect to which the Lessee has been served with process or, to the knowledge of the Lessee or the members of the Lessee, threatened against the Lessee or its members or with respect to the Property or the Project which has a reasonable probability of having a material adverse effect on its financial condition or business, or the transactions contemplated by the Lessee Documents or which in any way would adversely affect the validity or enforceability of the Lessee Documents or the ability of the Lessee to perform its obligations under the Lessee Documents. The Lessee is not presently in default under any document, instrument or commitment to which the Lessee is a party or to which it or any of its property is subject which default would or could adversely affect the ability of the Lessee to carry out its obligations under the Lessee Documents.

(d) There (i) is no completed, pending or threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Lessee, and (ii) has been no assertion or exercise of jurisdiction over the Lessee by any court empowered to exercise bankruptcy powers.

(e) No event has occurred and no condition exists with respect to the Lessee, the Property or the Project that would constitute an Event of Default hereunder or which, with the lapse of time, if not cured, or with the giving of notice, or both, would become an Event of Default hereunder.

(f) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of or filing of or with any governmental authority not already obtained or made (or to the extent not yet obtained or made the Lessee has no reason to believe that such authorizations, consents, approvals, orders, registrations or declarations will not be obtained or made in a timely fashion) is required for the execution and delivery or approval, as the case may be, of the Lessee Documents, or the performance of the terms and provisions hereof or thereof by the Lessee.

Section 2.02. Representations, Warranties and Covenants of the Lockbox Agent. The Lockbox Agent hereby represents, warrants and covenants as follows:

(a) The Lockbox Agent is corporation duly organized and existing under and pursuant to the laws of the State of _____ The Lockbox Agent has duly authorized the execution and delivery of this Lockbox Agreement and this Lockbox Agreement constitutes a legal, valid and binding obligation of the Lockbox Agent, enforceable against the Lockbox Agent in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general equitable principles.

(b) The Lockbox Agent has complied with the provisions of federal law and the laws of the State which are prerequisite to the consummation of, and has all necessary power and authority to consummate, all transactions described in this Lockbox Agreement.

ARTICLE III

NECESSITY OF LOCKBOX

In order to provide for (a) the operation of the Property in accordance with the terms and provisions of the Government Lease, (b) the demolition, rehabilitation, construction and other work comprising the Project, (c) the funding of certain accounts described herein for the continued maintenance of the Property, as required by the Government Lease, and (d) the timely repayment of the Construction Loan, the Direct Loan and certain fees and expenses related to the foregoing, the Secretary, the Construction Lender, the Lessee, and the Lockbox Agent hereby agree that the Lockbox Agent shall provide for the establishment of a lockbox mechanism to accumulate the Project Income derived from the operation of the Property and to distribute such Project Income in accordance with the provisions set forth herein.

ARTICLE IV

ESTABLISHMENT OF LOCKBOX ACCOUNTS

Section 4.01. Creation of Accounts.

(a) There are hereby created and established the following accounts to be held and maintained by the Lockbox Agent:

- (i) Windfall Income Account;
- (ii) Lockbox Revenue Account;
- (iii) Impositions Reserve Account;
- (iv) Replacement Reserve Account;
- (v) Operating Reserve Account;
- (vi) Other Eligible Tenant Security Deposit Account;
- (vii) Utility Reserve Account,
- (viii) Construction Escrow Account, including the Lessee Equity Sub account, and the Project Operations Sub account;
- (ix) Reinvestment Account.

(b) Disbursements from the Impositions Reserve Account, the Operating Reserve Account, the Other Eligible Tenant Security Deposit Account and the Construction Escrow Account shall be made pursuant to a written requisition executed by an authorized officer of the Construction Lender while the Construction Loan is outstanding and thereafter pursuant to a written requisition executed by an authorized officer of the Lessee that has been approved by the Secretary. Disbursements from the Replacement Reserve Account, Windfall Income Account and the Reinvestment Account shall be made pursuant to a written requisition executed by an authorized officer of the Lessee with the written approval of the Secretary. The Lockbox Agent shall provide copies of all such requisitions to the Secretary within thirty (30) days of the Lockbox Agent's receipt of such requisitions.

(c) Notwithstanding anything to the contrary in the documentation for the Construction Loan or in any other loan documents executed by the Lessee or secured by the Property, none of the Construction Loan or any other such loan shall be a lien on the Replacement Reserve Account, or the Reinvestment Account, none of the Construction Lender or the holder of any other such loan shall have a security interest in any of such accounts, and none of such accounts shall be collateral for the repayment of the Construction Loan or any other such loan. Such accounts shall be pledged to the Secretary as collateral for the performance by the Lessee of its obligations under the Government Lease.

(d) At the expiration or termination of the Government Lease, any funds in any of the Accounts (other than the Other Eligible Tenant Security Deposit Account and the Reinvestment Account) shall be utilized, *first*, to pay amounts due and owing to the Secretary under the Government Lease and the amount of any liabilities applicable to or imposed on the Property or the Lessee or to satisfy any obligations of the Lessee or the Property under the Government Lease, *second*, to pay any amounts due under the Construction Loan, *third*, to pay any amounts due under the Direct Loan and, *fourth*, the balance, if any, shall be paid to the Lessee.

(e) If this Lockbox Agreement terminates prior to the expiration or termination of the Government Lease, any funds in any of the Accounts shall be deposited into accounts of the same name held by a Lockbox Agent pursuant to a lockbox agreement, both of which are approved by the Secretary, the Lessee, and, if the Construction Loan has not been paid in full, the Construction Lender.

Section 4.02. Windfall Income Account. Upon the execution and delivery of this Lockbox Agreement, and on a monthly basis thereafter for the entire term of the Government Lease, the Lessee shall deposit in the Windfall Income Account an amount equal to Windfall Income. Thereafter on the first day of every successive quarter, the Lockbox Agent shall disburse 100% the contents of the Windfall Income Account in the following priority order:

- 1) Pay principal on the direct government loan.
- 2) Pay principal on the government guaranteed/private first mortgage loan.
- 3) Transfer money to the Reinvestment Account.

Section 4.03. Lockbox Revenue Account.

(a) Deposits to the Lockbox Revenue Account. The allotment form completed by the service member will specify that the Defense Finance and Accounting Service (DFAS) will remit that allotment directly to [name of Lockbox Agent], as Lockbox Agent. Funds received directly by the Lessee from sources other than allotments shall be deposited, within two (2) Business Days of their receipt, with the Lockbox Agent for deposit into the Lockbox Revenue Account. Further, the Lessee shall instruct the Management Company that the Management Company shall deposit, within two Business Days of its receipt thereof, all Project Income received by it with the Lockbox Agent for deposit into the Lockbox Revenue Account; provided, however, that prior to the Completion Date insurance and condemnation proceeds shall be deposited and applied as provided in the Loan Agreement and after the Completion Date, insurance and condemnation proceeds shall be deposited and applied as provided in the Construction Mortgage. The Lockbox Agent shall deposit into the Lockbox Revenue Account (i) all Project Income and (ii) any other amounts otherwise required to be deposited therein pursuant to this Lockbox Agreement.

(b) Transfers from Lockbox Revenue Account Prior to Completion Date. On the first Business Day of each month prior to the Completion Date, moneys in the Lockbox Revenue Account shall be transferred or applied by the Lockbox Agent to the Accounts or Persons as specified in this Section and in the following order of precedence and priority:

(i) to the Management Company an amount equal to the Operating Expenses set forth for such month in the Project Budget required to be filed pursuant to Section 5.02 hereof, including management fees payable to any other Person is not affiliated with, nor has an identity of interest with, the Lessee or any of the principals of the Lessee;

(ii) to the Impositions Reserve Account, an amount equal to one-twelfth of the annual taxes and insurance premiums set forth in the Project Budget;

(iii) to the Replacement Reserve Account, an amount equal to one-twelfth of the amount required to be deposited annually in the Replacement Reserve Account pursuant to Section 4.05 hereof;

(iv) to the Construction Lender, an amount equal to the monthly interest due on the Construction Loan (including any previously due, but unpaid amounts);

(v) to the Management Company, an amount sufficient to pay the management fees payable to the Management Company or any other Person who is affiliated with, or has an identity of interest with, the Lessee or any of the principals of the Lessee,

(vi) any amounts remaining in the Lockbox Revenue Account, after making the transfers or payments required by paragraphs (i) through (vi) above shall be deposited to the Project Operations Sub account of the Construction Escrow Account.

(c) Transfers from Lockbox Revenue Account after the Completion Date. On the first Business Day of each month following the Completion Date (and on the Completion Date if the Completion Date is the first day of a month), moneys in the Lockbox Revenue Account shall be transferred and applied by the Lockbox Agent to the Accounts or Persons in the following order of precedence and priority:

(i) to the Management Company to pay Operating Expenses, the Operating Expenses set forth for such month in the Project Budget required to be filed pursuant to Section 5.02 hereof, including management fees payable to any Person who is not affiliated with, nor has an identity of interest with, the Lessee or any of the principals of the Lessee;

(ii) to the Impositions Reserve Account, an amount equal to one-twelfth (1/12) of the annual taxes and insurance premiums set forth in the Project Budget;

(iii) to the Replacement Reserve Account, an amount equal to one-twelfth of the amount required to be deposited annually in the Replacement Reserve Account pursuant to Section 4.05 hereof;

(iv) to the Private Lender, an amount equal to the monthly interest due on the Private Loan (including any previously due, but unpaid amounts);

(v) to the Private Lender, an amount equal to the monthly principal due on the Private Loan (including any previously due, but unpaid amounts);

(vi) To the Secretary, an amount equal to the monthly interest due on the Direct Loan (including any previously due, but unpaid amounts)

(vii) To the Secretary, an amount equal to the monthly principal due on the Direct Loan (including any previously due, but unpaid amounts)

(viii) To the Management Company, an amount sufficient to pay the management fees payable to the Management Company or any other Person who is affiliated with, or has an identity of interest with, the Lessee or any of the principals of the Lessee

(ix) To the Operating Reserve Account, the amount, if any, necessary to remedy any deficiency in the Operating Reserve Account so that the balance therein is not less than the Operating Reserve Requirement

(x) To the Management Company, an amount sufficient to pay any extraordinary operating expenses (being Operating Expenses, including late fees, which are in excess of those budgeted pursuant to the current Project Budget) of the Property which have been approved by the Secretary

(xi) Any amounts remaining in the Lockbox Revenue Account after making the transfers or payments required by paragraphs (i) through (ix) above ("Net Cash Flow") shall be deposited or paid as follows: (A) _____% of Net Cash Flow shall be deposited into the Reinvestment Account and (B) _____% of Net Cash Flow shall be paid to the Lessee.

Section 4.04. Impositions Reserve Account. Upon the execution and delivery of this Lockbox Agreement, the Lessee shall deposit to the Impositions Reserve Account an amount equal to _____. There shall be deposited in the Impositions Reserve Account, as and when received, (a) all moneys specified in Section 4.03(b)(ii) and Section 4.03(c)(ii) hereof to be transferred from the Lockbox Revenue Account to the Impositions Reserve Account and (b) all other moneys received by the Escrow Agent under and pursuant to any of the provisions hereof which are required to be deposited in the Impositions Reserve Account or which are accompanied by written directions that such moneys are to be deposited to the Impositions Reserve Account. Disbursements from the Impositions Reserve Account shall be made pursuant to a written direction from the Secretary submitted to the Lockbox Agent, together with appropriate documentation indicating the taxes or insurance premiums to be paid and a statement that such draw constitutes a proper draw upon the Impositions Reserve Account. Any moneys on deposit in the Impositions Reserve Account which are in excess of 105% of the estimated taxes and insurance premiums payable in the next 12 months shall be deposited to the Lockbox Revenue Account.

Section 4.05. Replacement Reserve Account. There shall be deposited in the Replacement Reserve Account, as and when received, (a) all moneys specified in Section 4.03(b)(iii) and Section 4.03(c)(iii) hereof to be transferred from the Lockbox Revenue Account to the Replacement Reserve Account and (b) all other moneys received by the Lockbox Agent under and pursuant to any of the provisions hereof which are required to be deposited in the Replacement Reserve Account or which are accompanied by written directions that such moneys are to be deposited to the Replacement Reserve Account. The annual deposit to the Replacement Reserve-Account for the period ending _____ shall be \$ ___ per residential unit within the Property, which amount shall be increased effective October 1, _____ and each October 1 thereafter by a percentage equal to the percentage increase in the Basic Allowance for Housing for Cannon Air Force Base from the immediately preceding October 1. The parties hereto recognize that because expense disbursements from the Replacement Reserve Account are based upon the estimated useful life of the components and the estimated life of the components may vary, amounts deposited in the Replacement Reserve Account may or may not be adequate to cover the replacement costs. It is the intention of the parties hereto that the Replacement Reserve Account shall at all times be maintained in an amount sufficient to pay for all maintenance, capital repair and replacement costs set forth in the Capital Repair and Replacement Plan submitted to

the Secretary by the Lessee, which Capital Repair and Replacement Plan shall be contained in the annual Project Budget for the Property required to be filed pursuant to Section 5.02 hereof. Accordingly, the adequacy of the Replacement Reserve Account shall be analyzed annually by the Secretary. If the Secretary determines in its reasonable discretion that a higher monthly deposit is needed to ensure the future adequacy of the Replacement Reserve Account to accommodate maintenance of the units to industry standards, the Lessee agrees to increase the monthly deposit to the Replacement Reserve Account as directed by the Secretary in writing. The monthly deposits to the Replacement Reserve Account shall be adjusted upon the Lockbox Agent's receipt of a certificate from the Lessee, approved by the Secretary or from the Secretary stating that the Secretary and Lessee have reached agreement on such adjusted monthly deposit in accordance with Section 9.2(b) of the Government Lease such that a different amount shall be deposited to the Replacement Reserve Account pursuant to Section 4.03(b)(iii) or Section 4.03(c)(iii) hereof.

With respect to newly constructed units, such monthly deposits shall begin on the first of the month following the issuance of a certificate of occupancy or its equivalent with respect to such unit or the building in which such unit is located, as applicable, without regard to whether such unit is occupied. With respect to units which are to be renovated by the Lessee (including any units for which certificates of occupancy have not been issued), monthly deposits shall continue until the month in which each such unit is withdrawn from the rental market to undergo renovation, and shall recommence from the first day of the month following the issuance of a certificate of occupancy or its equivalent with respect to such renovated unit, without regard to whether such unit is occupied.

Disbursements from the Replacement Reserve Account shall be made by the Lockbox Agent for the purpose of making major capital improvements and replacements to the Property in accordance with the Capital Repair and Replacement Plan then approved by the Secretary pursuant to a written requisition executed by an authorized officer of the Lessee, which requisition shall be approved in writing by the Secretary, stating (i) the requisition number, (ii) the name and address of the person, firm or corporation to whom payment is due or was made and (iii) the amount to be paid. Disbursements from the Replacement Reserve Account shall not be made more frequently than once per calendar month.

Following either a determination by the Secretary that a default may occur or the occurrence of an uncured default by the Lessee under the Government Lease or the Direct Loan, the Secretary may direct the use of funds in the Replacement Reserve Account to cure such default. Any direction by the Secretary for disbursement of funds in the Replacement Reserve Account pursuant to this paragraph shall be in writing. If any funds in the Replacement Reserve Account are used to cure such a default, the Lessee shall deposit a like amount into the Replacement Reserve Account from funds other than Project Income as soon as possible but no later than ninety (90) days after the disbursement of funds.

Upon the sale or other transfer of the Property, the amounts, if any, then deposited in the Replacement Reserve Account shall be deemed to be assets of the Property and shall be held in the Replacement Reserve Account on behalf of the transferee. In connection with any proposed sale or transfer of the Property, the Secretary shall have the right to review the amounts then deposited in the Replacement Reserve Account, the amount of the monthly deposits then required to be made into the Replacement Reserve Account, the repairs and replacements which the Secretary determines may be required to the Property during the remaining term of the Government Lease and any other issues

which the Secretary deems to be relevant with respect to the Replacement Reserve Account. Based upon such review, the Secretary may require a lump-sum deposit to the Replacement Reserve Account, and/or an increase in the amount of the monthly deposits into the Replacement Reserve Account as a condition to the Secretary's approval to such transfer. In all events, the transferee shall be required to assume the Lessee's duties and obligations under the Government Lease with respect to the Replacement Reserve Account.

Section 4.06. Operating Reserve Account. Upon the execution and delivery of this Lockbox Agreement, the Lessee shall deposit in the Operating Reserve Account an amount equal to one-twelfth of the annual Operating Expenses for the initial Fiscal Year for the Property, as set forth in the initial Project Budget for the Property submitted pursuant to Section 5.02 hereof. There shall also be deposited in the Operating Reserve Account, as and when received, (a) all moneys specified in Section 4.03(c)(vii) hereof to be transferred from the Lockbox Revenue Account to the operating Reserve Account and (b) all other moneys received by the Lockbox Agent under and pursuant to any of the provisions of this Lockbox Agreement which are required to be deposited in the Operating Reserve Account or which are accompanied by written directions that such moneys are to be deposited to the Operating Reserve Account. The Operating Reserve Account shall be maintained at a level equal to the Operating Reserve Account Requirement. Disbursements from the operating Reserve Account shall be made by the Lockbox Agent to the Management Company, upon receiving a written requisition executed by an authorized officer of the Lessee approved by the Secretary, for the purpose of paying operating expenses in excess of the amounts available for such purpose pursuant to Section 4.03(b)(i) or Section 4.03(c)(i) hereof. To the extent moneys on deposit in the operating Reserve Account are in excess of the operating Reserve Account Requirement, such excess shall be deposited to the Lockbox Revenue Account.

Section 4.07. Other Eligible Tenant Security Deposit Account. The Lessee shall cause any security deposit received from a tenant of the Property to be deposited to the Tenant Security Deposit Account. The purpose of the Tenant Security Deposit Account is to maintain tenant's security deposits separate from all other funds. Disbursement from the Tenant Security Deposit Account shall be made by the Lockbox Agent upon receipt of a written requisition executed by an authorized officer of the Lessee to reimburse the Management Company for tenant deposits which have been returned during the preceding month or applied during the preceding month to cure defaults under such tenant's lease. Disbursements from the Tenant Security Deposit Account shall not be made more frequently than once per calendar month, unless otherwise directed by the Lessee. The Tenant Security Deposit Account shall be held and maintained in accordance with all applicable federal and state laws.

Section 4.08 Utilities Reserve Account. Upon any units being separately metered for electricity, water, sewer, natural gas and steam heat, whichever is later, the Lessee shall fund the Utilities Reserve Account by a disbursement from the Lockbox Revenue Account to that account in the amount of \$_____. The Utilities Reserve Account shall serve as a reserve to cover certain increases in the utility costs ("Additional Utility Costs") for electricity, water, sewer, natural gas and steam heat (the "Applicable Utilities") that causes a reduction in the Project Income available for distribution to the Lessee after payment of the amounts specified here. Notwithstanding anything to the contrary herein, Additional Utility Costs shall not include any additional costs relating to the Applicable

Utilities that are incurred by the Lessee as a result of any increased consumption of the Applicable Utilities (or any other utilities) by any tenants of the Project.

- (a) The Secretary will review utility rates to validate the adequacy of existing utility allowances and will report needed adjustments to the Lessee. Upon receipt of a request for adjustment from the Secretary, the Lessee shall recalculate and submit to the Secretary for approval the adjusted utility allowances based upon the new rates together with its plan for payment of such Additional Utility Costs.
- (b) Subsequent to (a) above, the Secretary shall direct the Lockbox Agent to make a deduction from the Utilities Reserve Account. These funds shall be applied to the payment of the specified Additional Utility Costs incurred by the Lessee, upon the Lessee's delivery of supporting documentation, satisfactory in form and substance to the Secretary, demonstrating that as a direct result of a utility rate increase with respect to the Applicable utilities, the aggregate rates for such Applicable utilities for the applicable year has increased by an amount in excess of the percentage increase in the Basic Allowance for Housing or the aggregate utility cost increase set forth in its Selected Proposal, whichever is greater. Notwithstanding anything to the contrary, the Secretary shall not be obligated to direct the Lockbox Agent to make any such deduction from the Utilities Reserve Account if the Lessee is then in default under the Government Lease and/or this Lockbox Agreement.
- (c) If the amounts in the Utilities Reserve Account are not sufficient to cover any such Additional Utility Costs, the Lessee shall pay the difference to the applicable utility providers. Annually, the Utilities Reserve Account shall be replenished to its original amount using funds from the Reinvestment Account.
- (d) If any funds remain in the Utilities Reserve Account on the 49th anniversary of the term beginning date of the Lease, all such remaining funds, if any, shall then be considered Project Income and shall be applied as set forth in Section 4.03 (c).

Section 4.09. Construction Escrow Account. Upon the execution and delivery of this Lockbox Agreement, the Lessee shall deposit in the Lessee Equity Sub account of the Construction Escrow Account an amount equal to \$_____, representing the initial equity deposit of the Lessee. Upon the funding of the Construction Loan, the proceeds thereof shall be deposited to the Construction Loan Sub account of the Construction Escrow Account. In addition, there shall be deposited in the Project Operations Sub account of the Construction Escrow Account, as and when received, (a) all moneys specified in Section 4.03(b)(vi) hereof to be transferred from the Lockbox Revenue Account to the Project Operations Sub account of the Construction Escrow Account and (b) all other moneys received by the Lockbox Agent under and pursuant to any of the provisions hereof which are required to be deposited in the Construction Escrow Account or which are accompanied by written directions that such moneys are to be deposited to the Construction Escrow Account. Moneys deposited to the Construction Escrow Account shall be used to acquire, construct, improve, renovate and equip the Improvements. Disbursements from the Construction Escrow Account shall be made by the Lockbox Agent to the Title Company pursuant to a written requisition executed by an authorized officer of the Construction Lender while the Construction Loan is outstanding stating (i) the requisition number and (ii) the amount to be paid. Disbursements from the Construction Escrow Account shall be

made, *first*, from moneys on deposit in the Lessee Equity Sub account therein, and, *second*, from the Project Operations Sub account therein, unless otherwise directed by the Construction Lender. Disbursements from the Construction Escrow Account shall not be made more frequently than once per calendar month, unless otherwise directed by the Construction Lender.

Any amounts remaining in the Construction Escrow Account on the Completion Date shall be deposited into the Reinvestment Account; provided, however, if the Government Lease or the Lessee's operation of the Property is terminated for default, or there is a sale or other transfer of the Property, before the Completion Date, any remaining balance in the Construction Escrow Account shall be deemed to be assets of the Property and shall remain in the Construction Escrow Account to be used in connection with the construction and continued operation of the Property without regard to whether the Property is owned or operated by the Secretary, or any other party approved by the Secretary as the owner or operator of the Property following such termination.

Section 4.10. Reinvestment Account. There shall be deposited in the Reinvestment Account, as and when received, (a) all moneys specified in Section 4.03(c)(ix) hereof to be transferred from the Lockbox Revenue Account to the Reinvestment Account and (b) all other moneys received by the Lockbox Agent under and pursuant to any of the provisions hereof which are required to be deposited in the Reinvestment Account, including but not limited to the quarterly Windfall Income Account fund transfers, or which are accompanied by written directions that such moneys are to be deposited to the Reinvestment Account. The Reinvestment Account shall be used for the purpose of protecting and enhancing the Property through reinvestment in the Property in the form of quality of life improvement which will directly benefit the residents of the Property as determined by the Secretary pursuant to a reinvestment plan submitted by the Lessee or otherwise approved by the Secretary. Disbursements from the Reinvestment Account shall be made by the Lockbox Agent pursuant to a written requisition executed by an authorized officer of the Lessee, which requisition shall be approved in writing by the Secretary, stating (i) the requisition number, (ii) the name and address of the person, firm or corporation to whom payment is due or was made, (iii) the amount to be paid, (iv) that none of the items for which payment is proposed to be made has formed the basis for any payment theretofore made from the Reinvestment Account, (v) the nature of each item for which the payment is proposed to be made and that such item is a proper charge against the Reinvestment Account and (vi) in the case of construction of improvements, a statement that every general contractor has filed with the Lessee receipts or waivers of liens for all amounts theretofore disbursed for work, materials and equipment furnished by such general contractor, and, upon completion of a subcontract by any subcontractor, receipts or waivers of liens by such subcontractor for all amounts theretofore disbursed for work, materials and equipment furnished by the subcontractor and shall include the actual invoices of contractors, subcontractors, material men and suppliers for materials and equipment or services provided. Disbursements from the Reinvestment Account shall not be made more frequently than once per calendar month.

Net Cash Flow shall be reconciled on a quarterly and annual basis in accordance with the actual operating statements of the Property submitted under Section 5.02 hereof. If the aggregate of the monthly deposits required pursuant to Section 4.03(c)(ix) hereof is less than ____ percent (___%) of the actual Net Cash flow as set forth in the annual or quarterly financial statement for the Property, the Lessee shall deposit any such shortfall into the Reinvestment Account within 30 days of becoming aware of such shortfall. If the aggregate of such monthly deposits is more than _____ percent (___%)

of the actual Net Cash flow as set forth in the annual or quarterly financial statement for the Property, any such excess shall be released from the Reinvestment Account to the Lessee within 30 days of the Secretary being provided with a financial statement that demonstrates such excess to the Secretary's reasonable satisfaction. Upon the expiration or other termination of the Government Lease or of this Lockbox Agreement, or at other times as may be directed by the Secretary, all amounts in the Reinvestment Account shall be transferred as directed by the Secretary.

Section 4.11. Investment of Funds Held by the Lockbox Agent. The Lockbox Agent shall invest money held for the credit of any Account held by the Lockbox Agent hereunder as directed in writing (or orally, confirmed in writing) by an authorized representative of the Lessee, to the fullest extent practicable and reasonable, in Investment Securities which shall mature or be redeemed at the option of the holder prior to the respective dates when the money held for the credit of such Account is expected to be required for the purposes intended. Notwithstanding the foregoing, upon the occurrence of any Event of Default by the Lessee under the Government Mortgage (as defined in such Government Mortgage), investments shall be in Investment Securities as directed by the Government.

The Investment Securities purchased shall be held by the Lockbox Agent and shall be deemed at all times to be part of such Account or combination of Accounts. Earnings with respect to, and any net gain on the disposition of, any such investments in the Lockbox Revenue Account, the Impositions Escrow Account, the Replacement Reserve Account and the Operating Reserve Account shall be deposited to the Lockbox Revenue Account. Earnings with respect to, and any net gain on the disposition of, any such investments in the Construction Escrow Account shall be deposited to the Project Operations Sub account of the Construction Escrow Account. Earnings with respect to, and any net gain on the disposition of, any such investments in the Reinvestment Account shall be retained in the Reinvestment Account. Earnings with respect to, and any net gain on the disposition of, any such investments in the Tenant Security Deposit Account shall be retained in the Tenant Security Deposit Account. Upon direction in writing (or orally, confirmed in writing) from an authorized representative of the Lessee (or the Secretary, as applicable), the Lockbox Agent shall use its best efforts to sell at the best price obtainable, or present for redemption, any Investment Securities purchased by it as an investment whenever it shall be necessary to provide money to meet any payment from the applicable Account. The Lockbox Agent shall advise the Lessee, the Secretary and the Construction Lender in writing, on or before the fifteenth day of each calendar month (or such later date as reasonably consented to by the Lessee, the Secretary and the Construction Lender), of all investments held for the credit of each Account in its custody under the provisions of this Lockbox Agreement as of the end of the preceding month and the value thereof, and shall list any investments which were purchased, sold or liquidated during the preceding month.

With the exception of security deposits received from non-referred tenants, money in any account may be pooled for the purpose of making investments and may be used to pay accrued interest on Investment Securities purchased. Any purchase of Investment Securities may be made by or through the Lockbox Agent or any of its affiliates.

Notwithstanding the foregoing, the Lockbox Agent shall not be responsible or liable for any losses on investments made by it hereunder or for keeping all Accounts held by it fully invested at all times, its only responsibility being to comply with the investment instructions of the Lessee, the Secretary or their designees in a non-negligent manner.

Section 4.12. Credit to Lockbox Revenue Account. Credit and collections of the money deposited to the Lockbox Revenue Account shall be subject to the Lockbox Agent's standard collection and credit procedure for similar deposits received by the Lockbox Agent through other channels. Without limiting the generality of the foregoing, (a) the Lockbox Agent will accept for deposit items payable to or endorsed in favor of the Lessee (or a reasonable variation of the Lessee's name); (b) all undated checks will be dated as of the date of receipt and processed as described above; (c) where written and numeric amounts differ, a check shall be processed for the written amount; (d) checks which do not bear the drawer's signature shall be marked or stamped "refer to maker" and processed; (e) checks with alterations will be processed and such alterations shall be ignored; and (f) checks drawn on foreign currency will be processed in accordance with the Lockbox Agent's normal procedure for such checks. The Lessee hereby agrees to indemnify and hold the Lockbox Agent harmless against any loss, cost, attorneys' fees, claims, interest expense or suit suffered by the Lockbox Agent and arising out of or in connection with its receiving, processing or depositing of checks, drafts or other payment items pursuant to this Lockbox Agreement, other than such arising out of the Lockbox Agent's gross negligence or willful misconduct. If a payment item is received that is made payable to, or is endorsed to, a payee other than as stated above, the Lessee shall fully and completely cooperate with the Lockbox Agent without delay in causing the Project Income represented by the item to be credited to the Lockbox Revenue Account. The Lockbox Agent will maintain a record (microfilm or otherwise) of all checks and other negotiable items received by it in collecting the contents of the Lockbox Revenue Account to facilitate reconstruction of a deposit should the need arise and the request be made. The Lockbox Agent shall, on or before the eleventh day of each month, provide the Lessee with summary of all amounts received by it for deposit to the Lockbox Revenue Account during the previous calendar month. The Lockbox Agent shall not be liable, however, for any failure to make and/or provide such a record due to clerical error, unexpected film or equipment failure, inability to obtain film or equipment or otherwise.

Section 4.13. Uncollectable Drafts. Any item deposited by or on behalf of the Lessee in the Lockbox Revenue Account which is returned for insufficient or uncollected funds will be re-deposited by the Lockbox Agent one time. If such item is returned unpaid a second time or if such amount is otherwise uncollectable by the Lockbox Agent ("Uncollectable Draft"), including without limitation by any "stop payment order" having been applied to such draft, the Lockbox Agent may debit the Lockbox Revenue Account as an Operating Expense for (i) any fees due to the Lockbox Agent or charges incurred by the Lockbox Agent in connection with its deposit or collection attempts, and (ii) the amount represented by such Uncollectable Draft if such amount has actually been paid by Lockbox Agent prior to the Lockbox Agent's collection thereof (together, "Costs of Uncollectable Drafts"); provided, however, that amounts in the Lockbox Revenue Account will first be applied to reimburse the Lockbox Agent for amounts contemplated by the foregoing clause (ii). If amounts in the Lockbox Revenue Account are insufficient to fully reimburse the Lockbox Agent for the Costs of Uncollectable Drafts, the Lessee agrees to pay such deficiency to the Lockbox Agent.

ARTICLE V

COVENANTS OF THE LESSEE

Section 5.01. Lease Payments Assigned to Lockbox Agent. The Lessee shall (i) instruct all tenants of units within the Property to deposit their lease payments (whether paid by check or electronic

transfer) with the Lockbox Agent for deposit to the Lockbox Revenue Account pursuant to Section 4.03 hereof and (ii) instruct the Management Company to deposit all Project Income received by it with the Lockbox Agent for deposit to the Lockbox Revenue Account pursuant to Section 4.03 hereof.

Section 5.02. Annual Project Budgets. Not less than 90 days prior to the commencement of each Fiscal Year, the Lessee shall submit to the Secretary, the Construction Lender and the Lockbox Agent, a preliminary Project Budget (as defined below), in a format acceptable to the Secretary, for the next succeeding Fiscal Year. The preliminary budget shall be subject to the approval of the Secretary, which approval shall not be unreasonably withheld, and the Secretary shall notify the Lessee within thirty (30) days after its receipt of the preliminary budget, if the Secretary approves such budget or whether the Secretary has any objections to the same. The Secretary shall specify in detail the reasons for any objections. The Lessee shall correct or modify the preliminary budget as requested, shall advise the Secretary of the Lessee's refusal or inability to make the requested changes, or advise the Secretary of alternatives or modifications to the Secretary's requested changes. If the Lessee and the Secretary fall to reach agreement with respect to the preliminary budget within thirty (30) days after the Secretary's response to such budget, the Lessee shall operate the Project using the prior year's budget until such time as the Secretary and the Lessee have settled their dispute over the preliminary budget in accordance with the dispute provisions of the Government Lease. The Lessee shall, at least 30 days prior to the end of each Fiscal Year, adopt a project-budget ("Project Budget") that includes the Project Income, Operating Expenses, taxes and insurance premiums for the succeeding Fiscal Year and an R&R Plan for the Property (which Project Budget shall have been previously approved by the Secretary and the Construction Lender) and file copies of such Project Budget with the Secretary, the Construction Lender and the Lockbox Agent. Expenditures for Operating Expenses and taxes and insurance premiums for any Fiscal Year in excess of the amounts budgeted therefore shall be paid from the Operating Reserve Account. If the Lessee, the Secretary and the Construction Lender determine that Operating Expenses, taxes and insurance premiums or maintenance, capital repair or replacement costs for the Property have been materially overstated in the current Project Budget, the Lessee shall deliver an amendment to the current Project Budget approved in writing by the Secretary and the Construction Lender to the Secretary, the Construction Lender and the Lockbox Agent.

If the Project Budget proposed by the Lessee does not provide for Project Income, after the payment of Operating Expenses and taxes and insurance premiums and the required funding of the Replacement Reserve Account, equal to at least 115% of the annual debt service on the Direct Loan, the Lessee shall, prior to submitting such Project Budget to the Secretary and the Construction Lender, engage a Consultant to conduct a study to recommend such actions as will provide sufficient Project Income, after the payment of Operating Expenses and taxes and insurance premiums and the required funding of the Replacement Reserve Account, in the next Fiscal Year, equal to at least 115% of the annual debt service on the Direct Loan. A copy of such study and recommendations shall be filed with the Secretary, the Construction Lender and the Lockbox Agent and the Lessee must comply with such recommendations as are reasonably specified by the Secretary or the Construction Lender. Notwithstanding any of the foregoing sentences or anything else to the contrary in this Lockbox Agreement, in no event shall the amounts set forth in any Project Budget be less than the amounts reasonably determined to be necessary in order for the Lessee to operate and maintain the Project in accordance with the standards required under the Government Lease. Furthermore in the event of any dispute about the Project Budget between the Secretary and the Construction Lender, the Secretary's determination shall govern.

Section 5.03. Annual Audit. So long as the Construction Loan or the Direct Loan remain outstanding, the Lessee covenants and agrees to cause an audit of the operation of the Property to be prepared by a firm of certified public accountants using generally accepted auditing standards within 90 days of the conclusion of each Fiscal Year and shall deliver such audit to the Secretary, the Construction Lender and the Lockbox Agent.

Section 5.04. Appointment of Lockbox Agent as Attorney-in-Fact to Collect Project Income. The Lessee hereby appoints the Lockbox Agent as its true and lawful attorney-in-fact with full power of substitution to receive the Project Income derived from the operation of the Property with the full power to endorse the name of the Lessee upon any notes, checks, acceptances, drafts, money orders instruments and documents relating to the Project Income and to effect the deposit and collection thereof and to do any and all things necessary to take such action in the name and on behalf of the Lessee to carry out the intent of this Lockbox Agreement. The Lessee agrees that neither the Lockbox Agent nor any of its agents, designees or attorneys-in-fact shall be liable for any acts or omissions or for any error in judgment or mistake of fact or law in respect to the exercise of this power of attorney, except for the gross negligence or willful misconduct of the Lockbox Agent or its employees or agents. This power of attorney is coupled with an interest and shall be irrevocable during the term of this Lockbox Agreement.

Section 5.05. Lessee to Provide Access to Property and Books. The Secretary, the Construction Lender, the Lockbox Agent and their duly designated agents and representatives shall be provided such access to the Property and the books and records thereof by the Lessee (such access to be during business hours and to be upon reasonable advance written notice) as shall be reasonably necessary to permit the Secretary, the Construction Lender, the Lockbox Agent and such duly authorized agents and representatives to take all necessary action to assure the compliance by the Lessee with the terms and conditions of this Lockbox Agreement.

Section 5.06. Lessee to Provide Information. The Lessee shall comply with all reasonable requests for information by the Secretary, the Construction Lender, the Lockbox Agent or their duly designated agents or representatives from time to time.

Section 5.07. Lessee Remains Liable. None of the Secretary, the Construction Lender, or the Lockbox Agent shall, by reason of this Lockbox Agreement, have any obligation or liability under the tenant leases, nor shall the Secretary, the Construction Lender, or the Lockbox Agent be obligated to perform any of the obligations or duties of the Lessee thereunder, all of which shall remain the sole obligations of the Lessee.

ARTICLE VI

DEFAULTS AND REMEDIES

Section 6.01. Event of Default Defined. For the purpose of this Lockbox Agreement, each of the following events are hereby defined as, and are declared to be, "Events of Default":

(a) failure of the Lessee or the Management Company to deposit the Project Income with the Lockbox Agent pursuant to Section 4.03 hereof within two Business Days after such deposits are to be made;

(b) default in the performance or observance of any other of the covenants, agreements, or conditions by any party hereto to be kept, observed, and performed under this Lockbox Agreement and continuation of such default for a period of 90 days after written notice thereof by another party hereto or by the Construction Lender; and

(c) any representation made hereunder shall be false or misleading in any material respect when made by such party.

Any notice herein provided to be given to the Secretary, the Construction Lender or the Lockbox Agent with respect to any default shall be deemed sufficiently given if sent by registered mail with postage prepaid to the address indicated in Section 8.01 hereof. Notice of the occurrence of an Event of Default hereunder shall be immediately provided by the Lockbox Agent or the party providing notice thereof pursuant to paragraph (b) above to each other party to this Lockbox Agreement.

Section 6.02. Remedy on Default. Upon the happening and continuance of an Event of Default hereunder, any party hereto may proceed to protect and enforce its rights hereunder by such of the following remedies as such party shall deem most effectual to protect and enforce its rights:

(a) by mandamus or other suit, action or proceeding at law or in equity, to enforce the deposit of Project Income to the Lockbox Revenue Account; and

(b) take whatever action at law or in equity may appear necessary or desirable to enforce any covenant, obligation of agreement of the defaulting party hereunder.

Section 6.03. Limitation on Waivers.

(a) No delay or omission to exercise any right or power occurring upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed appropriate.

(b) In the event any covenant, agreement or condition contained in this Lockbox Agreement shall be breached by a party and thereafter waived by another party, such waiver shall not bind any party which has not waived the breach and shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder nor be a waiver of the same breach on a future occasion.

Section 6.04. Right to Cure. The Secretary, the Construction Lender and the Lockbox Agent shall have the right, but not the obligation, to cure any Event of Default by the Lessee (and, in the case of the Secretary, subject, if required, to the receipt of an additional appropriation of funds or legislative authority), and upon performance by the Secretary, the Construction Lender and the Lockbox Agent to the satisfaction of the other parties hereto of the covenant, agreement or obligation of the Lessee with

respect to which an Event of Default has occurred, the parties hereto shall be restored to their former respective positions, it being agreed that the Secretary, the Construction Lender and the Lockbox Agent shall have the right to repayment from the Lessee of moneys it has expended and any other appropriate redress for actions it has taken to cure any Event of Default by the Lessee.

Section 6.05. Rights Cumulative. All rights and remedies herein given or granted to any party hereunder are cumulative, nonexclusive and in addition to any and all rights and remedies that may have or may be given by reason of any law, statute, ordinance or otherwise.

Section 6.06. No Effect on Other Remedies. Nothing contained herein shall in any way prohibit the Lessee, the Secretary, the Construction Lender and the Lockbox Agent from exercising any remedy available to it either under the Loan Agreement, the Construction Mortgage, the Government Mortgage or the Government Lease or by operation of law.

ARTICLE VII

DUTIES OF THE LOCKBOX AGENT

Section 7.01. Acceptance of Duties. The Lockbox Agent hereby accepts the trusts imposed upon it by this Lockbox Agreement, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Lockbox Agent shall exercise its duties hereunder with the same degree of care and skill, as a corporate trustee would exercise or use under the circumstances in the conduct of its own affairs.

(b) The Lockbox Agent agrees to accept, hold and disburse the Accounts in accordance with the terms of this Lockbox Agreement.

(c) The Lockbox Agent may execute any of the duties or powers hereof and perform any of its duties by or through attorneys, agents, receivers, or employees but shall be answerable for the conduct of the same in accordance with the standard specified below. The Lockbox Agent may rely and act upon the opinion or advice of any attorneys (who may be the attorney or attorneys for the Lessee, the Construction Lender, the Secretary (or the Secretary's agents or contractors) or the Lockbox Agent). The Lockbox Agent shall not be responsible for any loss or damage resulting from any action or nonaction in good faith in reliance upon such opinion or advice. The Lockbox Agent shall not be responsible for any acts required to be performed by any Person other than the Lockbox Agent.

(d) The Lockbox Agent assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Lockbox Agreement or shall incur any responsibility in respect thereof, other than in connection with the duties or obligations herein assigned to or imposed upon it. The Lockbox Agent shall not be liable in connection with the performance of its duties hereunder, except for its own gross negligence or misconduct.

(e) The Lockbox Agent shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram, or other paper or document reasonably believed to be genuine and correct and to have been signed or sent by the proper person or persons. The Lockbox Agent shall not withhold unreasonably its consent, approval, or action to any reasonable request of the Secretary, the Construction Lender or the Lessee.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Lockbox Agent shall be entitled to rely upon a certificate signed by an authorized officer of the Secretary, the Construction Lender or the Lessee, as the case may be, as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Lockbox Agent has been notified as provided in subsection (h) of this Section, or of which by said subsection it is deemed to have notice, and shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction, or action is necessary or expedient, but may, at its discretion, secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Lockbox Agent to do things enumerated in this Lockbox Agreement shall not be construed as a duty, and it shall not be answerable for other than its gross negligence or misconduct.

(h) The Lockbox Agent shall not be required to take notice or be deemed to have notice of any default hereunder, unless the Lockbox Agent shall be specifically notified in writing of such default by the Lessee, the Secretary or the Construction Lender, and all notices or other instruments required by this Lockbox Agreement to be delivered to the Lockbox Agent must, in order to be effective, be delivered as set forth in Section 8.01 hereof, and, in the absence of such notice so delivered, the Lockbox Agent may conclusively assume there is no default except as aforesaid; provided, however, that if the deposits being made by the Management Company and the Lessee to the Lockbox Revenue Account are materially different than the projected deposits contained in the Project Budget, the Lockbox Agent shall have a duty to inquire as to the discrepancy.

(i) At any and all reasonable times, the Lockbox Agent, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right fully to inspect any and all of the Project Income herein conveyed.

(j) The Lockbox Agent shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Lockbox Agreement contained, in respect of the withdrawal of any cash, or the taking of any action whatsoever within the purview of this Lockbox Agreement, the Lockbox Agent shall have the right, but shall not be required, to demand any showings, certificates, opinions, appraisals, or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Lockbox Agent, deemed desirable for the purpose of establishing the right to the withdrawal of any cash, or the taking of any other action by the Lockbox Agent.

(l) All money received by the Lockbox Agent or any paying agent shall, until used or applied or invested as herein provided, be held in trust for the purposes for which it was received and need not be segregated from other funds except to the extent required by law. The Lockbox Agent shall not be under any liability for interest on any money received hereunder except such as may be agreed upon in writing.

Section 7.02. Compensation of Lockbox Agent. The Lockbox Agent shall be entitled to compensation for all services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties hereunder of the Lockbox Agent; provided that such fees shall not exceed the customary fees and expenses of the Lockbox Agent for providing similar services and a schedule of such fees and expenses shall be provided to the parties not less than annually. The Lockbox Agent's fees and expenses related to its duties pursuant to this Lockbox Agreement shall be deemed Operating Expenses of the Property; provided, however, as long as the Lockbox Agent is also the servicer of the Construction Loan, the Lockbox Agent shall not receive any additional compensation for the fees and expenses related to its duties pursuant to this Lockbox Agreement, other than the reasonable fees and expenses of outside counsel to the Lockbox Agent in connection with the enforcement of this Lockbox Agreement.

The Lockbox Agent shall also be indemnified by the Lessee for, and held harmless against, any loss, liability, expense or advance incurred or made without gross negligence or willful misconduct on the part of the Lockbox Agent, arising out of or in connection with the acceptance and performance of its duties under this Lockbox Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the Property, the Project, the Project Income and any Account or Sub account.

Any bank fees, charges and expenses incurred by Lockbox Agent in connection with its performance of its duties hereunder shall be deemed Operating Expenses of the Property. The Lessee acknowledges and agrees that it solely shall be, and at all times remains, liable to Lockbox Agent for all such fees, charges, costs and expenses, for the reasonable fees and expenses of outside counsel to the Lockbox Agent in connection with the enforcement of this Lockbox Agreement and for any other amounts due to Lockbox Agent hereunder

Section 7.03. Successor Lockbox Agent. Any company or national banking association into which the Lockbox Agent may be merged or converted or with which it may be consolidated, or any company or national banking association resulting from any merger, conversion or consolidation to which it shall be a party or any company or national banking association to which the Lockbox Agent may sell or transfer all or substantially all of its business (provided any such company or national banking association shall be a company organized under the laws of any state of the United States or a national banking association and shall be eligible to perform all of the duties imposed upon it by this Lockbox Agreement) shall be the successor to the Lockbox Agent without the execution or filing of any paper or the performance of any further act. The Lockbox Agent shall notify all other parties of any such merger, conversion or consolidation within 30 days of its occurrence.

Section 7.04. Resignation by Lockbox Agent. The Lockbox Agent and any successor Lockbox Agent may at any time resign from the trusts hereby created by giving 30 days' written notice by registered or certified mail to the Lessee, the Secretary and the Construction Lender, all at the Lockbox Agent's expense, and such resignation shall take effect only upon the appointment of a successor Lockbox Agent. A successor Lockbox Agent shall be appointed by the Lessee and approved by the Secretary and the Construction Lender or, if the Lessee is in default hereunder, the Secretary with the consent of the Construction Lender. If an instrument of acceptance by a successor Lockbox Agent is not delivered to the resigning Lockbox Agent within 30 days after the giving of such notice of resignation, the resigning Lockbox Agent may petition any court of competent jurisdiction for the appointment of a successor Lockbox Agent.

Section 7.05. Removal of Lockbox Agent. The Secretary may remove the Lockbox Agent at any time, and shall remove the Lockbox Agent if at any time the Lockbox Agent shall cease to be eligible in accordance with the provision of this Lockbox Agreement, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Lockbox Agent of its property shall be appointed, or any public officer shall take control or charge of the Lockbox Agent or of its property or affairs for the purposes of rehabilitation, conservation, or liquidation, in each case giving written notice of such removal to the Lockbox Agent, and thereupon shall appoint a successor Lockbox Agent by an instrument in writing; provided, however, that if the Lockbox Agent is the Construction Lender, the Lockbox Agent shall not be removed unless the Lockbox Agent is in default hereunder.

Any removal of the Lockbox Agent and appointment of a successor Lockbox Agent shall become effective upon acceptance of appointment by the successor Lockbox Agent under this Lockbox Agreement. The Lockbox Agent being removed is entitled to the payment of all of its fees and expenses up to the date of its termination. Promptly upon such acceptance, the Lockbox Agent shall give notice thereof to the Lessee, the Secretary and the Construction Lender. If no successor Lockbox Agent shall have been appointed and have accepted appointment within 45 days of giving notice of removal, the Lockbox Agent, the Secretary or the Construction Lender may petition any court of competent jurisdiction for as it may deem proper, appoint such successor Lockbox Agent.

Section 7.06. Concerning Any Successor Lockbox Agent. Every successor Lockbox Agent appointed hereunder shall execute, acknowledge and deliver to its or his predecessor and also to the Lessee, the Secretary and the Construction Lender an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed, or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless execute and deliver an instrument transferring to such successor Lockbox Agent all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Lockbox Agent shall, upon receipt of payment in full of its outstanding fees and expenses, deliver all securities and money held by it hereunder to its or his successor.

Section 7.07. Lockbox Agent to Provide Access to Books. The Lessee, the Secretary and the Construction Lender and their duly designated agents and representatives shall be provided such access to the books and records thereof by the Lockbox Agent (such access to be during business hours and to be upon reasonable advance notice) as shall be reasonably necessary to permit the Lessee, the Secretary, the Construction Lender and their duly authorized agents and representatives to take all necessary action to assure the compliance by the Lockbox Agent with the terms and conditions of this Lockbox Agreement.

Section 7.08. Lockbox Agent to Provide Records, Accounts, and Reports

(a) The Lockbox Agent shall keep and maintain accurate, true and complete books and records (hereinafter collectively referred to as “books and records”), which shall fully reflect the status of the Lockbox Accounts. These books, records, accounts, and reports shall be in addition to those documents and information required to be maintained or delivered to the Government by the closing documents.

(b) All books and records shall be kept at the Lockbox Agent’s principal office in [city, state] or at such other place as the Government and the Lockbox Agent both agree upon in writing. The books and records shall be available to the Government and the Borrower and their respective representatives for examination, audit, inspection and transcription. The Government and the Borrower are herewith granted the right to photocopies of same, at the sole expense of the Lockbox Agent. The Lockbox Agent’s fees and expenses related to its duties imposed by this Section shall be deemed Operating Expenses of the Property pursuant to Section 7.0 of this Lockbox Agreement.

(c) The Lockbox Agent shall deliver to the Government, with a copy to the Borrower, upon such schedule as the Government may establish from time to time, and in such media, including electronic media, as the Government shall select all information and supporting documentation which:

(i) The Lockbox Agent has maintained; or

- (ii) The Government deems necessary to assure compliance with the terms and conditions of the Lockbox Agreement and this Amendment; or
- (iii) The Government is required to submit to any governmental or nongovernmental agency; or
- (iv) The Government needs to assess the financial condition, performance, occupancy, physical condition, maintenance and operational status of the Project.

(d) Such items shall: (i) be in a form satisfactory to the Government, (ii) be certified to the Government and to the Borrower as true, complete and accurate by the Lockbox Agent, and (iii) be taken from the books and records maintained by the Lockbox Agent as aforesaid.

(e) Upon the written request of any party to the Lockbox Agreement, the Lockbox Agent shall provide, at its sole expense, to that party or their duly authorized agents and representatives, those documents necessary for the parties to assure the compliance by the Lockbox Agent with the terms and conditions of this Lockbox Agreement.

(f) In addition to those documents previously referenced in this Lockbox Agreement, the Lockbox Agent is to provide the records, reports, and accountings listed below. Unless otherwise stated, said documentation shall be provided in quarterly reports, as of the last day of the calendar quarter.

(i) **Cash Flow Summary.** A monthly cash flow summary that reflects the receipt, allocation and distribution of funds through the cash flow waterfall as defined in Section 4.0 of this Lockbox Agreement. This summary should include both the amounts and calculations for each allocation and distribution. Amounts that are precalculated, such as loan payments, need not be calculated but simply reference that fact. The summary should reflect Section 4.0 after the Final Completion Date.

(ii) **Lockbox Account Balances.** A summary of all Lockbox Account balances, as of the last day of each month during the quarter, which includes the beginning balance, deposits, withdrawals and ending balance for each account.

(iii) **Securities, Cash, Money Market Funds.** A list of the securities that have been invested with the Lockbox Funds, as well as uninvested amounts (cash or money market funds), such that the sum matches the account balances.

(iv) **Lockbox Fees.** All lockbox related fees charged during the quarter.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Notices. All notices, requests and other communications to any party hereunder shall be in writing (including bank wire, telex or similar writing), shall be sent to the following addresses, and

each address shall constitute each party's respective principal office for purposes of this Lockbox Agreement:

If intended for the Secretary of the Air Force:

Department of the Air Force
Deputy Assistant Secretary of the Air Force
(Installations)
1660 Air Force Pentagon
Washington, D.C. 20330-1600

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

and

HQ AFCEE/DCP
Attn: Cannon AFB Project Manager
2735 Louis Bauer Drive
Brooks City-Base, TX 78235-5133

and

HQ AFCEE/DCP/Portfolio Management
2735 Louis Bauer Drive
Brooks City-Base, TX 78235-5133
(financial reports and records only)

and

Contracting Officer
27th Contracting Squadron
511 N. Torch Blvd.
Cannon AFB, NM, 88103

If intended for the Construction Lender:

If intended for the Lessee

If intended for the Lockbox Agent:

Any party may change the address to which subsequent notices to such party are to be sent, or of its principal office, by notice to the others, delivered by hand or received by telex or facsimile or registered first-class mail, postage prepaid. Each such notice, request or other communication shall be effective when delivered by hand or received by telex or facsimile or registered first-class mail, postage prepaid.

Section 8.02. Amendment. No amendment to this Lockbox Agreement shall be binding upon any party hereto until such amendment is reduced to writing and executed by the parties hereto.

Section 8.03. Entire Agreement. This Lockbox Agreement contains all agreements among the parties hereto, and there are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties hereto, unless reference is made thereto in this Lockbox Agreement.

Section 8.04. Binding Effect. This Lockbox Agreement shall be binding upon the parties hereto and their respective successors and assigns.

Section 8.05. Severability. If any clause, provision or section of this Lockbox Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections.

Section 8.06. Execution in Counterparts. This Lockbox Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.07. Term of this Lockbox Agreement. This Lockbox Agreement shall be in full force and effect from its date to and including such date the Government Lease is terminated by the Secretary; provided, however, that the provisions of Section 7.02 hereof shall survive the termination hereof.

Section 8.08. No Mortgagee in Possession; No Joint Venture. The Lessee agrees that neither the Secretary nor the Construction Lender is a mortgagee in possession with respect to the Property or the Project Site and that this Lockbox Agreement does not create any obligation on the part of the Secretary or the Construction Lender to manage or operate the Property or the Project Site. The relationship among the Secretary, the Construction Lender and the Lessee is that of creditor and debtor and not that of partners or joint venturers. The Lessee agrees that neither the Secretary nor the Construction Lender shall have any fiduciary obligations or trust obligations with respect to managing or operating the Property or the Project Site.

Section 8.9. References to Construction Lender. Upon the repayment in full of the Construction Loan, all references to the Construction Lender in this Lockbox Agreement and the rights, powers and privileges granted to such party in this Lockbox Agreement shall be automatically terminated and of no further effect.

Section 8.10, Conflicts between this Lockbox Agreement and the Government Lease. If the provisions of this Lockbox Agreement conflict with the provisions of the Government Lease, the provisions of the Government Lease shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Lockbox Agreement to be executed by their duly authorized representatives as of the date of execution set forth below,

SECRETARY OF THE AIR FORCE

By: _____
Name: _____
Title: _____

_____, as Lessee

By: _____
Name: _____
Title: _____

_____, as Construction
Lender

By: _____
Name: _____
Title: _____

_____, as Lockbox Agent

By: _____
Name: _____
Title: _____