

**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 S
Government Limited Guaranteed Loan
and Associated Legal Instruments**

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

PSC MILITARY HOUSING COMPANY

132 South 600 East

Salt Lake City, Utah 84102

Voice 801.363.2277 Fax 801.363.1912

Email: rusty@psc-evg.com

Web site: www.pscmhc.com

APPENDIX S. GOVERNMENT LIMITED GUARANTEED LOAN AND ASSOCIATED LEGAL INSTRUMENTS

A Guaranteed Lender shall be required (at its option) to use the then most current version of either the Fannie Mae or Freddie Mac form of note and security instrument for New Mexico in documenting its Guaranteed Loan. No other forms of note and security instrument may be used in connection with a Guaranteed Loan. Copies of the current form of Fannie Mae documents are not included. The Government reserves the right to review and approve the note and security instrument, as well as all other loan documents, to be executed in connection with a Guaranteed Loan. Whether a Guaranteed Lender chooses to use the Fannie Mae or Freddie Mac form of note and security instrument, a Military Housing Rider to Note (DoD Guaranteed Loan) and a Military Housing Rider to Security Instrument (DoD Guaranteed Loan) must be attached to the note and security instrument, as applicable. Forms of the required Military Housing Riders are included herein.

MULTIFAMILY NOTE
(New Mexico)

Use the most current version of either the Fannie Mae or Freddie Mac form of note.

ATTACHED SCHEDULES. The following Schedules are attached to this Note:

- | | | |
|-------------------------------------|------------|--|
| <input checked="" type="checkbox"/> | Schedule A | Prepayment Premium (required) |
| <input type="checkbox"/> | Schedule B | Modifications to Multifamily Note |
| <input checked="" type="checkbox"/> | Schedule C | Military Housing Rider to Note (DoD Guaranteed Loan) |

SCHEDULE A
PREPAYMENT PREMIUM

Any prepayment premium payable under Paragraph 10 of this Note shall be computed as follows:

- (a) If the prepayment is made between the date of this Note and the date that is _____ months after the first day of the first calendar month following the date of this Note (the "**Yield Maintenance Period**"), the prepayment premium shall be the greater of:
- (i) 1.0% of the unpaid principal balance of this Note; or
 - (ii) The product obtained by multiplying:
 - (A) The amount of principal being prepaid,
by
 - (B) The excess (if any) of the Monthly Note Rate over the Assumed Reinvestment Rate,
by
 - (C) The Present Value Factor.

For purposes of subparagraph (ii), the following definitions shall apply:

Monthly Note Rate: one-twelfth (1/12) of the annual interest rate of the Note, expressed as a decimal calculated to five digits.

Prepayment Date: in the case of a voluntary prepayment, the date on which the prepayment is made; in any other case, the date on which Lender accelerates the unpaid principal balance of the Note.

Assumed Reinvestment Rate: one-twelfth (1/12) of the yield rate as of the date 5 Business Days before the Prepayment Date, on the _____% U.S. Treasury Security due _____, as reported in *The Wall Street Journal*, expressed as a decimal calculated to five digits. In the event that no yield is published on the applicable date for the Treasury Security used to determine the Assumed Reinvestment Rate, Lender, in its discretion, shall select the non-callable Treasury Security maturing in the same year as the Treasury Security specified above with the lowest yield published in *The Wall Street Journal* as of the applicable date. If the publication of such yield rates in *The Wall Street Journal* is discontinued for any reason, Lender shall select a security with a comparable rate and term to the Treasury Security used to determine the Assumed Reinvestment Rate. The selection of an alternate security pursuant to this Paragraph shall be made in Lender's discretion.

Present Value Factor: the factor that discounts to present value the costs resulting to Lender from the difference in interest rates during the months remaining in the Yield Maintenance Period, using the Assumed Reinvestment Rate as the discount rate, with monthly compounding, expressed numerically as follows:

$$\frac{I - \left(\frac{I}{I + ARR} \right)^n}{ARR}$$

n = number of months remaining in Yield Maintenance Period

ARR = Assumed Reinvestment Rate

- (b) If the prepayment is made after the expiration of the Yield Maintenance Period but more than _____ days before the Maturity Date, the prepayment premium shall be 1.0% of the unpaid principal balance of this Note.

SCHEDULE B
MODIFICATIONS TO MULTIFAMILY NOTE

[Use, if applicable.]

MILITARY HOUSING RIDER TO NOTE
(DoD Guaranteed Loan)

This Rider is attached to and incorporated into the foregoing Multifamily Note (the "Note") dated _____, 200__ from the undersigned (the "Borrower") to the _____ (the "Lender"), and this Rider amends, modifies and supplements the Note.

1. Defined Terms.

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

"Direct Mortgage" means the Multifamily Mortgage (DoD Direct Loan) dated _____, 200__, including all riders and addenda, from the Borrower to the Secretary to secure the repayment of the Direct Loan, as amended or modified in accordance with its terms, which Direct Mortgage is to be recorded in the Land Records of Curry County, New Mexico following the recordation of the Security Instrument.

"Direct Loan" means the Multifamily Note (DoD Direct Loan) in the principal amount of \$_____ dated _____, 200__, including all riders and addenda, from the Borrower to the Secretary, as amended or modified in accordance with its terms.

"Guaranty Agreement" means the Military Housing Loan Guaranty Agreement of even date with the Note, by and among the Lender, the Borrower and the Secretary, as amended or modified.

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

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

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

"Project" has the meaning set forth in the Guaranty Agreement.

"Project Documents" has the meaning set forth in the Guaranty Agreement.

"Secretary" means the Secretary of the Air Force or his Authorized Representative (as defined in the Guaranty Agreement).

2. Application of Payments.

Notwithstanding the provisions of Section 4 of the Note to the contrary, any Monthly Shortfall Payments (as defined in the Guaranty Agreement) received by the Lender from the Secretary shall be applied in accordance with the provisions of the Guaranty Agreement.

3. Approval of Direct Loan and Direct Mortgage.

a. Notwithstanding the provisions of Section 16 or any other provisions of the Security Instrument to the contrary, the Lender, for itself and its successors and assigns, hereby approves the execution and delivery by the Borrower of the Direct Loan and the Direct Mortgage.

b. The Borrower covenants and agrees to timely comply with all of the terms and conditions of the Direct Loan and the Direct Mortgage, including specifically, but without limitation,

to pay all sums due under the Direct Loan and the Direct Mortgage as and when due. The Borrower further agrees that any and all defaults under the Direct Loan and the Direct Mortgage shall constitute and be defaults under the Security Instrument entitling the Lender to exercise any and all remedies which it may have under the Security Instrument and/or applicable law.

4. Limitation on Right to Accelerate and Exercise Remedies.

For so long as the Note is guaranteed by the United States pursuant to the Guaranty Agreement, then notwithstanding any provision of the Note or the Security Instrument to the contrary, including specifically but without limitation Paragraph 6 of the Note and Section 43 of the Security Instrument, the Lender's rights to declare a default, accelerate the Note or otherwise exercise default and foreclosure rights or remedies under the Security Instrument shall be subject to the limitations set forth in the Guaranty Agreement and Intercreditor Agreement. Pursuant to one such limitation, in order for the Lender to acquire the Borrower's leasehold interest in the Project or operate the Project as mortgagee-in-possession, the Lender shall be required during such period of ownership or operation to comply with all of the obligations of the Borrower under the Project Documents. Should the Lender desire to sell or otherwise transfer the Borrower's leasehold interest in the Project and its improvements to a third party, any such proposed purchaser or transferee (i) shall have to be approved as a successor owner by the Secretary and (ii) shall have to agree to assume all of the obligations of the Borrower under the Project Documents.

5. Voluntary and Involuntary Prepayments.

For so long as the Note is guaranteed by the United States pursuant to the Guaranty Agreement, Paragraph 10(b) shall be deemed to be amended and restated in its entirety as follows:

(a) Notwithstanding the provisions of Paragraph 10(a), no prepayment premium shall be payable with respect to (a) any prepayment made no more than 90 days before the Maturity Date, (b) any prepayment occurring as a result of the application of any insurance proceeds or condemnation award under the Security Instrument, or (c) the receipt by the Lender of a Guaranty Payment (as defined in the Guaranty Agreement) from the Secretary."

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

7. Conflicts. The terms of the Guaranty Agreement, the Note, the Security Instrument and the Intercreditor Agreement are intended to be consistent and should be so construed. However, any conflict between the terms of the Guaranty Agreement, the Note, the Security Instrument and the

Intercreditor Agreement shall be resolved in the following descending order of precedence:

- (a) The Guaranty Agreement.
- (b) The Intercreditor Agreement.
- (c) The Note and Security Instrument.

BORROWER:

By: _____
Name: _____
Title: _____

THE FOREGOING NOTE IS GUARANTEED BY THE UNITED STATES OF AMERICA, REPRESENTED BY THE SECRETARY OF THE AIR FORCE PURSUANT TO AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF A MILITARY HOUSING LOAN GUARANTY AGREEMENT OF EVEN DATE BY AND AMONG THE BORROWER, [NAME OF GUARANTEED LENDER] AND THE SECRETARY OF THE AIR FORCE AND THE PROVISIONS OF THE FOREGOING NOTE ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE GUARANTY AGREEMENT.

SECRETARY OF THE AIR FORCE

By: _____
Name: _____
Title: _____
Authorized Agent

Dated: _____ 20____

**MULTIFAMILY MORTGAGE,
ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT**

A Guaranteed Lender shall be required (at its option) to use the then most current version of either the Fannie Mae or Freddie Mac form of note and security instrument for New Mexico in documenting its Guaranteed Loan. No other forms of note and security instrument may be used in connection with a Guaranteed Loan. Copies of the current form of Fannie Mae documents are not included. The Government reserves the right to review and approve the note and security instrument, as well as all other loan documents, to be executed in connection with a Guaranteed Loan. Whether a Guaranteed Lender chooses to use the Fannie Mae or Freddie Mac form of note and security instrument, a Military Housing Rider to Note (DoD Guaranteed Loan) and a Military Housing Rider to Security Instrument (DoD Guaranteed Loan) must be attached to the note and security instrument, as applicable. Forms of the required Military Housing Riders are included herein.

EXHIBIT A
DESCRIPTION OF THE LAND

EXHIBIT B
MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit:

Cannon AFB

**MILITARY HOUSING RIDER TO SECURITY INSTRUMENT
(DoD Guaranteed Loan)**

This Rider is attached to and incorporated into the foregoing Multifamily Mortgage (the "Instrument") dated _____, 20__ from the undersigned (the "Borrower") to the _____ (the "Lender"), and this Rider amends, modifies and supplements the Instrument.

1. Definitions.

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

"Direct Loan" means that certain Multifamily Note (DoD Direct Loan) in the principal amount of \$_____ dated _____, 20__, including all riders and addenda, from the Borrower to the Secretary, as amended or modified in accordance with its terms.

"Government Mortgage" means the Multifamily Mortgage (DoD Direct Loan) dated _____, 20__, including all riders and addenda, from the Borrower to the Secretary to secure the repayment of the Direct Loan, as amended or modified in accordance with its terms, which Government Mortgage is to be recorded in the Land Records of Curry County, New Mexico following the recordation of the Instrument.

"Guaranty Agreement" means that certain Military Housing Loan Guaranty Agreement of even date with the Note, by and among the Lender, the Borrower and the Secretary, as amended or modified.

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

"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.

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

"Project Documents" means the documents issued or executed in connection with the Project, including, but not limited to, the Selected Proposal, Lease of Property, Operating agreement, Lockbox Agreement, Use Agreement and other agreements.

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

"Use Agreement" means the agreement entitled "Declaration of Restrictive Covenants and Use Agreement for Military Housing Project" which has been executed between the Project Owner and the Government, and sets forth the deed restrictions, restrictive covenants, and other terms and conditions,

under which the Project Owner has agreed to design, construct, own, operate, maintain, manage and use the Project.

2. Approval of Direct Loan and Direct Mortgage.

a. Notwithstanding the provisions of Section 16 or any other provisions of the Instrument to the contrary, the Lender, for itself and its successors and assigns, hereby approves the execution and delivery by the Borrower of the Direct Loan and the Direct Mortgage, including without limitation, the grant by the Borrower to the Secretary in its capacity as subordinate lender of an assignment of rents and leases which is subordinate to the assignment of rents and leases granted by Borrower to Lender under the Instrument.

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

3. Limitation on Right to Accelerate and Exercise Remedies.

For so long as the Note is guaranteed by the United States pursuant to the Guaranty Agreement, then notwithstanding any provision of the Note or the Instrument to the contrary, including specifically but without limitation Paragraph 6 of the Note and Section 43 of the Instrument, the Lender's rights to declare a default, accelerate the Note or otherwise exercise default and foreclosure rights or remedies under the Instrument shall be subject to the limitations set forth in the Guaranty Agreement and Intercreditor Agreement. Pursuant to one such limitation, in order for the Lender to acquire the Borrower's leasehold interest in the Project or operate the Project as mortgagee-in-possession, the Lender shall be required during such period of ownership or operation to comply with all of the obligations of the Borrower under the Project Documents. Should the Lender desire to sell or otherwise transfer the Borrower's leasehold interest in the Project and its improvements to a third party, any such proposed purchaser or transferee (i) shall have to be approved as a successor owner by the Secretary and (ii) shall have to agree to assume all of the obligations of the Borrower under the Project Documents.

4. Books and Records; Financial Reporting.

a. For so long as the Note is guaranteed by the United States pursuant to the Guaranty Agreement, the failure by the Borrower to furnish to the Secretary and the Lender, as and when required, any notice, information or materials required to be delivered to the Secretary and the Lender under the Guaranty Agreement, including specifically, but without limitation, any information required or requested by Lender or the Secretary in connection with a request by the Lender for the payment of a Guaranty Payment, if the same shall remain uncured for a period of fifteen (15) days after written notice of such default shall have been given by the Secretary or the Lender to the Borrower shall also constitute a material default under Section 14 of the Instrument for which the Lender shall have the right to exercise its rights and remedies under the Instrument, including, without limitation, the Lender's rights under Section 14(d) of the Instrument.

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

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

- (1) Within one hundred twenty (120) days after the end of each fiscal year of the Borrower, a copy of its annual financial statements prepared in accordance with generally accepted accounting principles and audited by a certified public accountant;
- (2) Within one hundred twenty (120) days after the end of each fiscal year of Borrower, a statement of income and expenses for Borrower's operation of the Mortgaged Property for that fiscal year;
- (3) Within thirty (30) days after the end of each quarter, a statement of income and expenses for Borrower's operation of the Mortgaged Property for the preceding quarter, presented for each month during that quarter;
- (4) After an Event of Default has occurred and is continuing, within fifteen (15) days after the end of each month, monthly income and expense statements for the Mortgaged Property;
- (5) Within one hundred twenty (120) days after the end of each fiscal year of Borrower, a statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year; a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year; a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for that fiscal year;
- (6) Within thirty (30) days after the end of each quarter, and at any other time upon the request of the Lender, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any requested related information;
- (7) Within one hundred twenty (120) days after the end of each fiscal year of Borrower, and at any other time upon the request of the Lender, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for the Lender to access information regarding such accounts;
- (8) Within one hundred twenty (120) days after the end of each fiscal year of Borrower, and at any other time upon the request of the Lender, a statement that identifies all owners of any interest in Borrower and any Controlling Entity and the interest held by each, if Borrower or a Controlling Entity is a corporation, all officers and directors of Borrower and the Controlling Entity, and if Borrower or a Controlling Entity is a limited liability company, all managers who are not members;
- (9) Within thirty (30) days after the end of each quarter, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants, materials relating

- to marketing and leasing efforts for the Mortgaged Property, and any other information requested by the Lender;
- (10) Within thirty (30) days after the end of each quarter, a monthly maintenance report for the Mortgaged Property, showing the number of maintenance requests from tenants and the disposition of such requests, maintenance records and expenditures, and any other information requested by the Lender;
 - (11) Within thirty (30) days of their filing with the required federal, state or local agencies, all income, real and personal property and any other tax returns and any other tax filings relating to Borrower and the Mortgaged Property;
 - (12) Not less than ninety (90) day prior to the end of each calendar year, proposed operating and capital budget(s) for the Mortgaged Property for the upcoming calendar year, including estimated income, source of income and expenses, including taxes, insurance and replacement reserves, and identifying the assumptions underlying such budget(s).
 - (13) Copies of any and all default or deficiency notices provided to the Borrower by the Senior Lender, any government agency, insurance company or other party promptly following Borrower's receipt of same; and
 - (14) Within fifteen (15) days after receipt of a request by the Lender, such additional information, as reasonably requested by the Lender.
- c. Section 14(f) is hereby amended and restated in its entirety as follows:
- "(f) Borrower and its principals (as such term has been defined by the Department of the Government and/or the Department of Defense for purposes of the Debt Collection Improvement Act of 1996) authorize the Lender to obtain a credit report on them at any time."

5. Transfers of Mortgaged Property.

Notwithstanding the provisions of Section 21 or any other provision in the Instrument to the contrary, so long as the Project is subject to the Use Agreement, transfers of the Mortgaged Property or transfers of interests in the Borrower shall be governed by the terms and conditions set forth in the Use Agreement.

6. Performance Under the Lease of Property and the Use Agreement.

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

7. Conflicts.

The terms of the Guaranty Agreement, the Note, the Security Instrument and the Intercreditor Agreement are intended to be consistent and should be so construed. However, any conflict between the

terms of the Guaranty Agreement, the Note, the Security Instrument and the Intercreditor Agreement shall be resolved in the following descending order of precedence:

- (a) The Guaranty Agreement.
- (b) The Intercreditor Agreement.
- (c) The Note and Security Instrument.

BORROWER:

By: _____

Name: _____

Title: _____