

**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**

Solicitation No. AFCEE-03-0003

**APPENDIX U
Lease of Property**

**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
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LEASE OF PROPERTY
DEPARTMENT OF THE AIR FORCE
LEASE OF PROPERTY
ON CANNON AIR FORCE BASE, CURRY COUNTY, NEW MEXICO

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DEPARTMENT OF THE AIR FORCE
LEASE OF PROPERTY
ON CANNON AIR FORCE BASE, CURRY COUNTY, NEW MEXICO

THIS LEASE (“Lease”) is made as of _____, 20__ between the Secretary of the Air Force (the “Secretary” or the “Government”) and the _____ **[NAME OF LESSEE]**, a _____ created under the laws of the State of _____, with its principal offices located at _____ (“Lessee”). The Government and the Lessee may sometimes be referred to jointly as the “Parties,” and each separately may be referred to as a “Party.”

Recital

The Secretary of the Air Force under the authority contained in 10 U.S.C. § 2878 has determined that the leasing of the property herein will be advantageous to the United States and in the public interest.

Leased Premises

NOW, THEREFORE, the Secretary of the Air Force, by virtue of the authority conferred by law, for the consideration set out below, hereby leases to the Lessee certain premises consisting of two (2) parcels of land thereon situated within the boundaries of Cannon Air Force Base (AFB), the City of Clovis, County of Curry, New Mexico as more specifically described in Exhibit A hereto and shown on Exhibit B hereto (collectively, “Leased Premises” or “Premises”), for purposes of demolition, design, construction renovation, operation and maintenance of a rental housing development containing at all times a minimum of 1225 units, primarily for use by military personnel assigned to Cannon AFB and their dependents, all as more fully provided elsewhere in the Lease.

THIS LEASE is granted subject to the following conditions:

CONDITION 1

TERM AND DELIVERY OF POSSESSION

1.1. **THIS LEASE** shall be for a term beginning on _____, 20__, (“Term Beginning Date”) and of a duration as set forth below:

1.2. Possession of the Leased Premises will be delivered on the Term Beginning Date.

Concurrently with the execution of this Lease, the Government has executed a Quitclaim Deed conveying to the Lessee title to certain improvements located on the Leased Premises. Those improvements together with such improvements as may be constructed or erected on the Leased Premises by the Lessee hereafter being referred to as “Leased Premises Improvements”. A copy of the Quitclaim Deed or Bill of Sale is attached to this Lease as Exhibit H.

CONDITION 2

EASEMENTS AND RIGHTS-OF-WAY

2.1 This Lease is subject to all existing easements and rights-of-way for any purpose with respect to the Leased Premises. The Government shall have the right to reserve unto itself or to grant to third parties additional easements and rights-of-way with respect to the Leased Premises. However, any such additional easements or rights-of-way shall not unreasonably interfere with the Lessee’s use

of the Leased Premises under this Lease. The proposed grant of any new easement or right-of-way shall be coordinated with the Lessee.

In addition, the Government may not unreasonably withhold or delay consent to requests for granting of easements and rights-of-way for utilities and other purposes reasonably necessary to the construction and operation of the Premises by Lessee; however, any such additional easements or rights-of-way shall not interfere with the operations of the Government on portions of the Installation not within the Leased Premises.

2.2 The holders of such easements and rights-of-way (collectively, "Outgrants"), present or future, shall have reasonable rights of ingress and egress over the Leased Premises in order to carry out the purpose of the Outgrant. These rights may also be exercised by workers engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located on the Outgrants and by any federal, state or local official engaged in the official inspection thereof.

CONDITION 3

CONDITION OF LEASED PREMISES

3.1. The Lessee has inspected, knows and accepts the condition and state of repair of the Leased Premises. It is understood and agreed that the Leased Premises are leased in an "AS IS," "WHERE IS" condition without any representation or warranty by the Government concerning their condition and without obligation on the part of the Government to make any alterations, repairs or additions. The Government shall not be liable to Lessee for any damages or losses, whether direct or consequential, incurred by Lessee as the result of the discovery of any latent or patent defect in the Leased Premises. The Lessee acknowledges that the Government has made no representation or warranty concerning the condition and state of repair of the Leased Premises nor any agreement or promise to alter, improve, adapt, or repair them which has not been fully set forth in this Lease.

3.2. A Physical Condition Report ("PCR") of the Leased Premises prepared by the Government and signed by the respective representatives of the Parties, is attached hereto as Exhibit C. The PCR sets forth the agreed physical appearance and condition of the Leased Premises on the Term Beginning Date as determined from a joint inspection of them by the Parties. A separate PCR for each parcel of the Leased Premises will be prepared by the Government, and signed by the Parties, within ten (10) days after the expiration or earlier termination of the Lease for each respective parcel. The final PCRs will be used by the Government to determine whether the Lessee has fulfilled its obligations to maintain and restore the Leased Premises under this Lease, including without limitation, Condition 9 and Condition 11.

3.3. An Environmental Baseline Survey (EBS) of the Leased Premises, signed by the Parties, is attached hereto as Exhibit D. The EBS sets forth those environmental conditions and matters on and affecting the Leased Premises on the Term Beginning Date, as determined from the records and analyses reflected therein. A separate EBS for each parcel of the Leased Premises will be prepared and signed by the Government, after the expiration or earlier termination of the Lease for each respective parcel. Such final EBS will document the environmental conditions and matters on and affecting the Leased Premises on the ending date of the Lease as determined from the records and analyses reflected therein. The final EBS will be used by the Government in determining whether the Lessee has fulfilled its obligations to maintain and restore the Leased Premises under this Lease including without limitation, Condition 9 and Condition 10.

CONDITION 4

RENT

4.1. Base Rent. The Lessee shall pay to the Government nominal cash rent in the amount of ONE DOLLAR (\$1.00) as “Base Rent” for the entire lease term, the receipt and sufficiency of which is hereby acknowledged, and provide other good and valuable consideration as hereinafter provided herein.

4.1.1. Additional Rent. All sums payable by the Lessee to the Government under this Lease, which shall include any and all charges or other amounts which Lessee is obligated to pay Government under this Lease, other than Basic Rent, including but not limited to all items of reimbursement, such as reimbursement for police and fire protections services provided by the Government, not otherwise payable as Base Rent shall be deemed Additional Rent. For the purposes of this Lease, Base Rent and Additional Rent shall sometimes hereinafter be collectively referred to as “Rent.”

4.1.2. Late Charges and Default Interest. If any installment of Base Rent or Additional Rent is not paid within five (5) business days after the due date, then, in consideration of Landlord's additional expense caused by such failure to pay such sums, such arrearage shall bear a late charge equal to five percent (5%) of the amount due, and such amount shall be payable without demand simultaneously with the rent arrearage, and such Base Rent or Additional Rent which is not paid within five (5) business days after the same is due shall bear interest from the due date at the Default Rate (as defined herein) until paid.

4.2. The Lessee shall pay to the Government within thirty (30) days after written notice any sum that may have to be expended after the expiration or termination of this Lease in restoring the Premises to the condition required by Condition 9. Compensation in such case shall be made payable to the Treasurer of the United States and forwarded by the Lessee directly to the Commander, 27th Fighter Wing, Cannon AFB, New Mexico (“Commander”) or his or her successor.

4.3. Notwithstanding anything to the contrary in the Lease, any party (other than the Government) who acquires the Leased Premises and the interests of the Lessee under this Lease pursuant to the exercise of remedies by a mortgagee under a mortgage granted by the Lessee and approved by the Government in accordance with Condition 22 of this Lease, whether such acquisition is the result of a foreclosure, deed-in-lieu of foreclosure, sale or otherwise (“Default Purchaser”), shall at the option of the Government, exercisable in its sole and absolute discretion, pay cash rent to the Government on the following terms and conditions:

4.3.1. Amount of Rent. Rent shall be due in an amount equal to the Fair Market Rental Value of the Leased Premises (as that term is defined below in sub condition 4.3.1.1), as the same is adjusted at the end of each five (5)-year period during the term of this Lease which remains following the Default Purchaser's acquisition of the Leased Premises, including any option or extension periods (“Rental Adjustment Date”).

4.3.1.1. The term, “Fair Market Rental Value,” means the fair market rental value of the Leased Premises, exclusive of those improvements conveyed to the Lessee, or constructed or erected thereon by the Lessee (hereinafter referred to collectively as “Leased Premises Improvements”), as determined by a Government appraisal performed within ninety (90) days of the proposed acquisition of the Leased Premises by a Default Purchaser or any Rental Adjustment Date, as applicable.

4.3.1.2. The rent payable by the Lessee to the Government following a Rental Adjustment Date shall in no event be less than the rent payable by the Lessee to the Government during the last lease year prior to such Rental Adjustment Date.

4.3.2. Rent Payments. Any rent required to be paid by a Default Purchaser hereunder shall be payable in twelve (12) equal monthly installments on the first (1st) day of each and every calendar month during the remaining term of this Lease, beginning with the first (1st) month in which the Default Purchaser shall assume possession of the Leased Premises. If the Default Purchaser shall assume possession of the Leased Premises on a day other than the first day of a calendar month, the first monthly installment of rent payable by the Default Purchaser shall be prorated accordingly.

4.3.2.1. All rent due from the Default Purchaser shall be paid in lawful money of the United States of America without deduction or offset, prior notice or demand, to the Treasurer of the United States of America and forwarded directly to the Commander.

4.3.2.2. Any amount due from the Default Purchaser to the Government under this Lease which is past due for ten (10) days or more shall bear interest at the rate prescribed by the Secretary of the Treasury for amounts past due to the Federal Government until paid in full.

CONDITION 5 OPERATING AGREEMENT

5.1. The Operating Agreement attached hereto as Exhibit E is hereby incorporated into and made a part of this Lease. The Operating Agreement sets forth certain detailed procedures and requirements to be followed by the Lessee in operating and maintaining the Leased Premises. In the event of any amendment of the Operating Agreement, the amended Operating Agreement will be deemed to be substituted in lieu of the existing one.

5.2. The Lessee shall operate the Project in accordance with each of the following plans included as attachments to the Operating Agreement:

- Construction Management Plan
- Rental Rate Management Plan
- Unit Occupancy Plan
- Property Operations and Management Plan
- Facilities Maintenance Plan
- Capital Repair and Replacement Plan
- Reinvestment Plan
- Final Plans (to be attached upon approval by the Government)

5.3. In the event of any inconsistency between any provisions of the Operating Agreement, as it presently exists or may be amended in the future, and any provisions of this Lease, the provisions of this Lease will control.

CONDITION 6 USE OF LEASED PREMISES

6.1. The sole purpose for which the Leased Premises and the improvements that are now and will be erected thereon may be used, in the absence of prior written approval of the Government for any other use, is for design, construction, renovation, operation and maintenance of a rental housing

development containing at all times a minimum of 1225 units primarily for use by military personnel and their dependents referred by Cannon AFB in accordance with the terms of this Lease.

6.2. Specifically, but without limitation, in no event shall the Leased Premises be used by the Lessee for the development of any resale merchandise, services and commercial recreational operations or activities with the exception of those activities specifically approved in Appendix W – Mandatory Lease Clauses.”

CONDITION 7

DEFAULT, REMEDIES AND TERMINATION

7.1. Any one or more of the following shall constitute a default and breach of this Lease by the Lessee:

7.1.1. The failure of the Tenant to pay any installment of Annual Base Additional Rent or other sum of money within Five (5) days after notice to the Tenant that the same is due, provided that the Landlord shall not be obligated to give the Tenant notice of late payments more than one (1) time in any twelve (12) month period, and on the second time a payment is late it shall be an immediate Event of Default without notice or grace period.

7.1.2. The failure of the Tenant to pay any installment of Annual Base Rent or Additional Rent or other sum of money within Five (5) days after notice to the Tenant that the same is due, provided that the Landlord shall not be obligated to give the Tenant notice of late payments more than one (1) time in any twelve (12) month period, and on the second time a payment is late it shall be an immediate Event of Default without notice or grace period.

7.1.3. The failure to comply with any provision of this Lease, where such failure to comply continues for thirty (30) days after delivery of written notice thereof by the Government to the Lessee. If, however, the time required to return to compliance exceeds the thirty-day (30-day) period, the Lessee shall not be deemed to be in default and breach if the Lessee within such period shall begin the actions necessary to bring it into compliance with the Lease in accordance with a compliance schedule approved by the Government

7.1.4. The Lessee voluntarily files for bankruptcy protection under the United States Bankruptcy Code or voluntarily becomes subject to any reorganization, receivership, insolvency proceeding or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights, or an involuntary case is commenced against the Lessee by any creditor of Lessee pursuant to the United States Bankruptcy Code or other federal or state law affecting debtor and creditor rights and is not dismissed or discharged within 60 days after filing.

7.1.4.1. Waiver of Automatic or Supplemental Stay. In the event of the filing of any voluntary or involuntary petition under the U.S. Bankruptcy Code (the “Bankruptcy Code”) by or against the Lessee (other than an involuntary petition filed by or joined in by the Government), the Lessee shall not assert, or request any other party to assert, that the automatic stay under the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of the Government to enforce any rights it has by virtue of any agreement between the parties, or any other rights that the Government has, whether now or hereafter acquired, against any party responsible for the debts or obligations of the Lessee under such agreements. Furthermore, the Lessee shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of the Government to enforce any rights it has by virtue of these agreements against any party responsible for the debts or obligations of

the Lessee under these agreements. The waivers contained in this paragraph are a material inducement to the Government's willingness to enter into these agreements and the Lessee acknowledges and agrees that no grounds exist for equitable relief which will bar, delay, or impede the exercise by the Government of the Government's rights and remedies against the Lessee or any party responsible for the debts or obligations of the Lessee under these agreements.

7.1.4.2. Bankruptcy Acknowledgment. If any or all the Project or any interest in the Project becomes the property of any bankruptcy estate or subject to any state or federal insolvency proceeding, then the Government shall immediately become entitled, in addition to all other relief to which the Government may be entitled under these agreements, to obtain (i) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to the Bankruptcy Code so as to permit the Government to pursue its rights and remedies at law and in equity under applicable state law, and (ii) an order from the Bankruptcy Court prohibiting the Lessee's use of all "cash collateral" as defined under the Bankruptcy Code. In connection with such Bankruptcy Court orders, the Lessee shall not contend or allege in any pleading or petition filed in any court proceeding that the Government does not have sufficient grounds for relief from the automatic stay. Any bankruptcy petition or other action taken by the Lessee to stay, condition, or inhibit the Government from exercising its remedies are hereby admitted by the Lessee to be in bad faith and the Lessee further admits that the Government will have just cause for relief from the automatic stay in order to take such actions authorized under state law.

7.2. No default or breach shall be deemed to have occurred for any period of time during which the Parties are attempting to resolve a dispute, pursuant to the procedures provided for in Condition 23 in relation to the actions or inactions are the subject of the alleged default or breach. If pursuant to dispute resolution, the default or breach is determined to have occurred, the Lessee's period for cure shall not begin until the day after the final decision on the dispute is issued.

7.3. This Lease may be terminated as provided below:

7.3.1. The Government may terminate this Lease, without any cost or liability to the Government, in the event the Parties shall fail to agree on the final design for the Leased Premises Improvements required to be constructed pursuant to Condition 17 below within the time specified in Condition 17.1 upon written notice of the termination ("Termination Notice for Failure to Agree on Final Design") to the Lessee. The Termination Notice for Failure to Agree on Final Design shall be effective as of a day to be specified therein, which shall be at least five (5) but not more than thirty (30) days after its receipt by the Lessee. The Lessee hereby waives any claims or suits against the Government arising out of any termination pursuant to this Condition.

7.3.2. The Government may terminate this Lease as to all or any part of the Leased Premises in the event of any default and breach of the Lease by the Lessee at any time after the expiration of the cure period provided for in Condition 7.1 upon written notice of the termination ("Termination Notice for Default and Breach") to the Lessee. The Termination Notice for Default and Breach shall be effective as of a day to be specified therein, which shall be at least five (5) but not more than thirty (30) days after its receipt by the Lessee.

7.3.3. The Lessee (subject to Conditions 9 and 21 below) or the Government may terminate this Lease in the event of Extensive Damage or Destruction of Improvements as that term is defined in Condition 15.6.2 below upon written notice of the termination ("Termination Notice for Extensive Damage or Destruction of Improvements") to the other Party. The Termination Notice for Extensive Damage or Destruction of Improvements shall be effective as of a day to be specified therein, which shall be at least thirty (30) but not more than forty-five (45) days after its receipt by the other Party.

7.4. The Government, upon a default and breach of this Lease by Lessee, shall have the following additional remedies:

7.4.1 The Government shall have the right to enforce specific performance by the Lessee of its obligations under this Lease in any state or federal court of competent jurisdiction (such specific performance remedy shall be in addition to all other remedies available to the Government at law or in equity).

7.4.2. The Government shall have the right to take possession of the Project and operate, maintain, manage and use the Project in accordance with the requirements of this Lease, including without limitation collecting and applying the Project Income until the Lessee demonstrates to the Government's satisfaction that the Lessee will comply with all of its obligations under this Lease.

7.4.3. The Government shall have the right to secure the appointment of a receiver to operate, maintain, manage and use the Project in a manner consistent with this Lease.

7.4.4. The Government shall have the right to terminate the Management Agreement, if any, without payment of any termination fee or other similar fee or premium.

7.4.5. If, in the reasonable opinion of the Government, the Lessee Defaults by failing to properly maintain and preserve the Property, the Government, after providing the Lessee with thirty (30) days prior notice to remedy the condition in question to the reasonable satisfaction of the Government, shall have the right, through its agents and employees, and a non-exclusive easement, to enter upon the Property in question and repair, maintain, repaint and restore any or all of the Project or Property, such improvements or such landscaping thereon, in such a manner as the Government shall deem sufficient.

7.4.6. The Lessee shall reimburse the Government for the cost of such repairs by the Government and the obligation to so reimburse the Government shall be a binding, personal obligation of the Lessee secured by a lien against the Property and all improvements located thereon, enforceable in accordance with the applicable provisions of New Mexico law to the fullest extent possible.

7.4.7. The Government shall have the right to proceed at law or in equity to compel compliance with its terms and conditions, to prevent the violation or breach of this Lease, to sue for and recover damages or other amounts due, or take all such courses of action at the same time, or such other legal remedy the Government may deem appropriate.

7.5. In addition to the Government, Referral Tenants, as hereinafter defined, shall also have the right to sue to compel compliance by the Lessee with this Lease's terms and conditions, to prevent the violation or breach of this Lease, to sue for and recover damages or other amounts due, or take all such courses of action at the same time, or such other legal or equitable remedy, such Referral Tenants may deem appropriate.

7.6 Lien for Sums Due.

7.6.1. All property of the Lessee shall be subject to a continuing lien for any sums due from the Lessee in accordance with the provisions of this Lease. Such sums, together with interest on such sums at the Prime Rate (as defined in Appendix A) plus five percent (5%) per annum, and the costs of collecting the same (including reasonable attorney's fees) as provided in this Lease, shall be a charge against and a continuing lien upon the Property.

7.6.2. Any lien or charge authorized in this Lease with respect to the Property, or any Parcel, is hereby made subordinate to the lien of the Direct Loan, but only with respect to sums which first become due on or after the date the lien of the Direct Loan is recorded. To the extent allowable by law, the sale or transfer of any Parcel pursuant to a mortgage foreclosure proceeding or the sale or transfer of such Parcel pursuant to a sale under power contained in a deed of trust on such Parcel, shall not extinguish the lien of any required payments which arise subsequent to the date of recordation of the mortgage or deed of trust, and any and all proceeds from such sale or transfer which exceed the debt and costs of

collection secured by such Parcel, shall be due and payable to the Government to the extent of any payments so due on such Parcel; provided, however, any purchaser of any such Parcel at a mortgage foreclosure shall become, on the date of such purchase, the owner of a Parcel subject to all the terms and conditions of this Lease.

CONDITION 8

TAXES AND MUNICIPAL SERVICES

8.1. Taxes. The Lessee shall pay to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time during the term of this Lease may be imposed on the Lessee with respect to the Leased Premises.

8.2. Municipal Services. The Lessee shall reimburse the Installation's service agency for the cost of fire, law enforcement services, and other emergency services to housing located within the Installation boundaries under proprietary or exclusive federal jurisdiction. The level of service will include emergency response, force protection, and preventative maintenance support. The obligation to so reimburse the Government shall be a binding, personal obligation of the Lessee secured by a lien against the Property and all improvements located thereon, enforceable in accordance with the applicable provisions of New Mexico law to the fullest extent possible.

8.2.1. The Lessee will reflect these costs in its operating budget and will reimburse the Installation's service agency for all actual costs incurred for this level of service.

8.2.2. The Government will provide 120 days prior to the start of the project fiscal year their annual estimate for the aforementioned services and will validate the actual charges versus the estimate.

8.2.3. Payment for fire and police protection services will be made on a monthly basis within 30 days after receiving billing from the Government.

8.3. Material Breach. The Lessee acknowledges its responsibility to comply with the requirements of this Condition. Any violation of the requirements of this Condition shall constitute a material breach of this Lease.

CONDITION 9

RESTORATION AND SURRENDER

9.1. Upon expiration of this Lease or any extended term thereof, or upon any termination of the Lease pursuant to Conditions 7.3.1, 7.3.2, or 7.3.3, the Lessee shall terminate its operations on the Leased Premises and vacate and surrender possession of them and all improvements located thereon to the Government as specified below.

9.1.1. In the event the Lease is terminated pursuant to Condition 7.3.1, the Lessee at its sole cost and expense shall, within sixty (60) days after the effective date of the Termination Notice for Failure to Agree on Final Design, remove all of its property from the Leased Premises and restore them to the reasonable satisfaction of the Government. If the Lessee shall fail, refuse, or neglect to remove its property, then at the option of the Government, the property shall either become the property of the Government without compensation therefore, or the Government may cause it to be removed and/or destroyed and the Leased Premises to be so restored at the expense of the Lessee, and no claim for damages against the Government, its officers, employees, agents or contractors shall be created by or made on account of such removal and/or destruction and restoration work.

9.1.2. In the event the Lease is terminated pursuant to Condition 7.3.2, the Lessee shall at its sole cost and expense, within one hundred eighty (180) days after the effective date of the Termination Notice for Default and Breach, remove all of the Leased Premises Improvements and its other property from the Leased Premises and restore them to the reasonable satisfaction of the Government. If the Lessee shall fail, refuse, or neglect to remove the Leased Premises Improvements

and its other property, then the Government may cause the Leased Premises Improvements and the Lessee's other property to be removed and/or destroyed and the Premises to be restored at the expense of the Lessee, and no claim for damages against the Government, its officers, employees agents or contractors shall be created by or made on account of such removal and/or destruction and restoration work.

9.1.3. In the event the Lease is terminated pursuant to Conditions 7.3.3, or upon the expiration of the Lease or any extended term thereof, the Lessee shall at its sole cost and expense, within one hundred eighty (180) days after the effective date of the Termination Notice for Extensive Damage or Destruction of Improvements, or the Termination Notice for Lessee's Convenience, or the date of expiration, as the case may be, the Lessee shall remove all of the Leased Premises Improvements and its other property from the Leased Premises and restore them to the reasonable satisfaction of the Government. The Government may, at its option and subject to Congressional authorization, if required, accept the Leased Premises Improvements in lieu of restoration. If the Lessee shall fail or refuse to remove the Leased Premises Improvements and its other property and restore the Leased Premises, then the Government may cause the Leased Premises Improvements and the Lessee's other property to be removed and/or destroyed and the Premises to be restored at the expense of the Lessee, and no claim for damages against the Government, its officers, employees, agents or contractors shall be created by or made on account of such removal and/or destruction and restoration work.

9.1.4. No earlier than eleven (11) years, and no later than ten (10) years prior to the expiration of the Term, Lessee shall deliver to the Government a report prepared by a construction and demolition expert approved by the Government, such approval not to be unreasonably withheld or delayed, which report details and estimates the cost of removing all improvements on the Premises at the expiration of the Term. The Government may give written notice (the "Government Removal Notice") at any time, no later than five (5) years prior to the expiration of the Term or concurrently upon any earlier termination, of the Government's election to require Lessee to remove, at the sole cost and expense of Lessee, no later than the expiration of the Term or earlier termination of this Lease, all or any portion of the at grade, above grade and below grade structures, buildings and improvements of any kind whatsoever placed or maintained on the Premises, whether placed thereon or maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings; and if such structures are required to be removed by Lessee, then Lessee shall, upon the expiration or termination of this Lease, immediately restore, and quit, and peacefully surrender possession of, the Premises to the Government in good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps. If the Government elects to require Lessee to remove improvements hereunder pursuant to the Government Removal Notice, Lessee shall, no later than the date which is thirty (30) days after Lessee's receipt of the Government Removal Notice, provide the Government with a written plan which sets forth Lessee's proposed method of securing the discharge of Lessee's removal and restoration obligations pursuant to this subsection. Such security plan shall detail (i) the form of security proposed by Lessee, which security shall be either a deposit of funds, or a letter of credit, bond or other form of security in form and amount, and from an issuer, satisfactory to the Government, and (ii) a schedule satisfactory to the Government for the delivery by Lessee of the security described in clause (i) above, which schedule shall in all events provide for a full funding of the security not later than two (2) years prior to the expiration of the Term. The amount of the deposit or letter of credit, bond or other security shall be no less than the estimated costs to remove the improvements set forth in the report described above, adjusted annually to reflect the increase or decrease, if any, in the Engineering News Record Construction Cost (ENR) Index over the ENR Index

as of the date of cost estimation set forth in such expert report; provided, however, that in no event shall such adjustment result in a deposit or letter of credit, bond or other security of an amount less than that set forth in the expert report. Any uncured failure by Lessee to deliver the removal and restoration security described in this subsection shall constitute an Event of Default. Funds to pay for this requirement shall be obtained from the Reinvestment Account.

9.2. During the period prior to surrender, all obligations assumed by the Lessee under this Lease shall remain in full force and effect.

9.3. Notwithstanding anything to the contrary in this Lease, in the event of termination of this Lease, Lessee shall, upon demand of the Government (or upon consent of the Government, if requested by Lessee), and subject to Congressional authorization if required, convey to the Government all of Lessee's right, title and interest in and to any Leased Premises Improvements, all free and clear of any and all liens or encumbrances, unless otherwise expressly agreed to in writing by the Government.

CONDITION 10

ENVIRONMENTAL PROTECTION

10.1. The Lessee shall comply with all Federal, State, and local laws, regulations, and standards that are or may become applicable to Lessee's activities on the Leased Premises.

10.2. The Lessee shall be responsible for obtaining at its cost and expense any environmental permits required for its operations under the Lease, independent of any existing permits.

10.3. The Lessee shall indemnify, defend, save, and hold harmless the Government from any claims for damages, response, remediation or other costs, expenses, liabilities, fines, or penalties resulting in any way from releases, discharges, emissions, spills, storage, handling, transporting, disposal, or any other acts or omissions by the Lessee, its officers, agents, employees, contractors, subcontractors or any sublessees or licensees, or the invitees of any of them, giving rise to Government liability, civil or criminal, or responsibility under Federal, State or local environmental laws.

10.3.1. This Condition 10.3 shall survive the expiration or termination of the Lease, and the Lessee's obligations hereunder shall apply whenever the Government incurs costs or liabilities of the types described in this Condition 10.

10.4. The Government's rights under this Lease specifically include the right for Government officials to inspect the Leased Premises, upon reasonable notice as provided under Condition 13, for compliance with environmental rules, regulations, and standards, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections.

10.5. The Government shall not be responsible for any handling, removal or containment of asbestos or asbestos-containing material (collectively, "ACM"), or to the extent consistent with applicable law, for any liability related thereto. The Lessee shall be responsible for any removal and disposal of all ACM in the improvements on the Leased Premises and shall incorporate an asbestos disposal plan in the plans for demolition of the improvements to be submitted to the Commander in accordance with Condition 17 of the Lease. The asbestos disposal plan will identify the proposed disposal site for the asbestos. Removal and disposal of ACM must be carried out in strict compliance with all applicable Federal, State and local laws, rules, regulations, and standards.

10.6. The Lessee recognizes and acknowledges that lead-based paint materials ("LBP") are present on exterior and interior paintable surfaces of facilities within the Leased Premises, including, but not limited to fascias, trim work, window sills and framing, door framing and trim and decorative wood siding of the improvements on the Leased Premises.

10.6.1. The Lessee further acknowledges its responsibility to comply with the requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§ 4851 – 4856), which requires the Lessee to (i) disclose the presence of any known Lead Based Paint and/or Lead Based Paint hazards in the target housing (as defined in the statute) on the Leased Premises; and (ii) sign a Lead-Based Paint Disclosure Statement in the form attached at Exhibit G to this Lease, and deliver a copy of said statement to each of the tenants on the Leased Premises.

10.6.2. The Lessee shall be responsible at its sole cost and expense for any removal and disposal of all LBP in the improvements on the Leased Premises. Removal and disposal of LBP must be carried out in strict compliance with all applicable Federal, State and local laws, rules and regulations.

10.7. Notwithstanding any other provision of the Lease (other than Conditions 10.1, 10.3, 10.5, 10.6 and 14.2), the Lessee, as between the Parties, does not assume any liability or responsibility for environmental impacts and damage caused by the Government's use of toxic or hazardous wastes, substances or materials on any portion of Cannon AFB, including the Leased Premises. The Lessee has no obligation under this Lease to undertake the defense of any claim or action, whether in existence now or brought in the future, alleging environmental impacts and damage solely arising out of the use of or release of any toxic or hazardous wastes, substances, or materials on or from any part of Cannon AFB, including the Leased Premises, occurring prior to the Term Beginning Date. Further the Lessee shall have no obligation to undertake environmental response, remediation, or cleanup relating to such use or release.

10.7.1. For the purposes of this Condition, "defense" or "environmental response, remediation, or cleanup" include liability and responsibility for the costs of damage, penalties, legal, and investigative services relating to such use or release. "Occupancy" or "use" shall mean any activity or presence (including preparation and construction) in or upon the Leased Premises.

10.7.2. This Condition does not relieve the Lessee of any obligation or liability it might have or acquire with regard to third parties or regulatory authorities by operation of law.

10.7.3. This Condition shall survive the expiration or termination of the Lease.

10.8. The Lessee must comply with all applicable Federal, State, and local laws, regulations, and other requirements relating to occupational safety and health, the handling, transporting and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes.

10.9. The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act, as amended ("RCRA") or its State equivalent and any other applicable laws, rules, and regulations. The Lessee will not accomplish any treatment, storage or disposal of hazardous waste on the leased premises. The Lessee shall be liable for any violations of these requirements. The Lessee shall be liable for the cost of proper disposal of any hazardous waste generated by any tenants in the event of failure by the tenants to dispose properly of such wastes.

10.9.1. The Lessee must provide, at its own expense, such hazardous waste accumulation points, complying with all laws and regulations, as it may need for the temporary accumulation of hazardous wastes. The Lessee will not use Government accumulation points for hazardous and other wastes. Neither will the Lessee permit its hazardous waste to be commingled with hazardous wastes of the Government.

10.9.2. Any violation of the requirements of this Condition 10.9 shall constitute a material breach of this Lease.

10.10. The Lessee expressly acknowledges that it fully understands that some or all of the response actions to be undertaken with respect to the Cannon AFB Restoration Program ("IRP") may impact

Lessee's quiet use and enjoyment of the Leased Premises. The Lessee agrees that notwithstanding any other provision of the Lease, the Government assumes no liability to the Lessee or its tenants should implementation of the Cannon AFB IRP or other hazardous waste cleanup requirements, whether imposed by law, regulatory agencies, or the Government or the Department of Defense, interfere with the Lessee's or its tenants' use of the Leased Premises. The Lessee shall have no claim or cause of action against the United States or any officer, agent, employee or contractor thereof on account of any such interference, whether due to entry, performance of remedial or removal investigations, or exercise of any right with respect to the Cannon AFB IRP or under this Lease or otherwise. However, any monitoring wells, pumping wells and treatment facilities on any lands utilized for residential purposes shall be designed and installed on them by the Government to be as inconspicuous as practicable. The Government shall, subject to the availability of appropriations therefore, repair any damage caused by its exercise of the above rights.

10.11. The Lessee agrees to comply with the provisions of any health or safety plan in effect under the Cannon AFB IRP or any hazardous substance remediation or response agreement with environmental regulatory authorities during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee. The Lessee and any tenants, sublessees, assignees, licensees, or invitees shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof.

10.12. The Lessee must maintain and make available to the Government all records, inspection logs, and manifests that track the generation, handling, storage, treatment and disposal of hazardous waste, as well as all other records required by applicable laws and requirements. The Government reserves the right to inspect the facility and the Lessee's records for compliance with Federal, State, local laws, regulations, and other requirements relating to the generation, handling, storage, treatment and disposal of hazardous waste, as well as to the discharge or release of hazardous substances. Violations will be reported by the Government to appropriate regulatory agencies, as required by applicable law. The Lessee will be liable for the payment of any fines and penalties which may accrue as a result of the actions or omissions of Lessee.

10.13. The Lessee shall have a completed and approved plan prior to commencement of operations on the Leased Premises for responding to hazardous waste, fuel, and other chemical spills. Said plan shall comply with all applicable requirements and shall be updated from time to time as may be required to comply with changes in site conditions or applicable requirements and shall be approved by all agencies having regulatory jurisdiction over such plan. The plan shall be independent of Government spill prevention and response plans. Except for initial fire response and/or spill containment, the Lessee shall not rely on use of Cannon AFB personnel or equipment in execution of its plan. The Lessee shall file a copy of the approved plan and approved amendments thereto with the Commander within fifteen (15) days of approval. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment or otherwise on request of the Lessee or because the Lessee was not, in the opinion of the Government, conducting timely cleanup actions, the Lessee agrees to reimburse the Government for its costs in accordance with all applicable laws and regulations.

10.14. Prior to the storage, mixing, or application of any pesticide, as that term is defined under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Lessee shall prepare a plan for storage, mixing, and application of pesticides ("Pesticide Management Plan"). The Pesticide Management Plan shall be sufficient to meet all applicable Federal, State, and local pesticide requirements. The Lessee shall store, mix, and apply all pesticides within the Leased Premises only in

strict compliance with the Pesticide Management Plan. The pesticides will only be applied by a licensed applicator.

10.15. The Lessee shall comply with all requirements of the Federal Water Pollution Control Act (FWPCA), the National Pollutant Discharge Elimination System (NPDES), and any applicable State or local requirements. If the Lessee discharges wastewater to a publicly-owned treatment works, the Lessee must submit an application for its discharge (“Pretreatment Permit Application”) prior to the Term Beginning Date. The Lessee will be responsible for meeting all applicable wastewater discharge permit standards. The Lessee will not discharge wastewater under the authority of any NPDES permit, pretreatment permit or any other permit issued to Cannon AFB. The Lessee or its sublessees shall make no use of any septic tank installed on Cannon AFB.

10.16. The Lessee must notify the Commander of Lessee’s intent to possess, store, or use any licensed or licensable source or by-product materials, as those terms are defined under the Atomic Energy Act and its implementing regulations; of Lessee’s intent to possess, use, or store radium; and of Lessee’s intent to possess or use any equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulations, at least sixty (60) days prior to the entry of such materials or equipment upon Cannon AFB. Upon notification, the Commander may impose such requirements, including prohibition of possession, use, or storage, as deemed necessary to adequately protect health and the human environment. Thereafter, the Lessee must notify the Commander of the presence of all licensed or licensable source or by-product materials, of the presence of all radium, and of the presence of all equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation; provided, however, that the Lessee need not make either of the above notifications to the Commander with respect to source and by-product material which is exempt from regulation under the Atomic Energy Act. The Lessee shall not, under any circumstances, use, own, possess or allow the presence of special nuclear material on the Leased Premises.

10.17. The Government and its officers, agents, employees, contractors, and subcontractors shall have the right, upon reasonable notice to the Lessee, to enter upon the Leased Premises for the purposes enumerated below in this Condition. Any investigations and surveys, drilling, testpitting, test soil borings and other activities undertaken pursuant to Condition 10.17.1, on lands utilized for residential purposes, shall be conducted in a manner that is as inconspicuous as practicable. Any monitoring wells, pumping wells and treatment facilities required pursuant to Condition 10.17.4 on lands utilized for residential purposes shall be designed and installed to be as inconspicuous as practicable:

10.17.1. To conduct investigations and surveys, including, where necessary, drilling, soil and water samplings, testpitting, testing soil borings and other activities related to the Cannon AFB IRP;

10.17.2. To inspect field activities of the Government and its contractors and subcontractors in implementing the Cannon AFB IRP;

10.17.3. To conduct any test or survey related to the implementation of the Cannon AFB IRP or environmental conditions at the Leased Premises or to verify any data submitted to the United States Environmental Protection Agency (EPA) or the New Mexico Department of Natural Resources (“NMDNR”) by the Government relating to such conditions; and

10.17.4. To construct, operate, maintain or undertake any other response or remedial action as required or necessary under the Cannon AFB IRP, including, but not limited to, monitoring wells, pumping wells and treatment facilities.

10.18. The Lessee acknowledges receipt under separate cover of the Environmental Baseline Survey (“EBS”) for the Leased Premises, and attached hereto as Exhibit D.

10.19. The Lessee will comply with the installation Water Conservation Policy as amended annually, during the transition period. After the transition period, the Lessee shall comply with all Curry County water conservation policies.

10.20. The Lessee will use all reasonable means available to protect the environment and natural resources. Where damage nevertheless occurs, arising from Lessee's activities, the Lessee shall be fully liable for any such damage.

10.21. The Lessee shall not remove or disturb or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the Leased Premises, the Lessee shall immediately notify the Commander and protect the site and the material from further disturbance until the Commander gives clearance to proceed.

CONDITION 11

MAINTENANCE OF LEASED PREMISES

11.1. The Lessee, at no expense to the Government, shall at all times protect, preserve, maintain and repair the Leased Premises, and all improvements located thereon, and keep them in good order and condition. The Lessee shall at all times exercise due diligence in protecting the Leased Premises, and all improvements located thereon, against damage or destruction by fire and other causes, subject to the applicable provisions of Conditions 10, 15, and 17. The Leased Premises and all improvements thereon shall at all times be maintained in a decent, safe, and sanitary condition in accordance with this Lease and the Operating Agreement.

11.1.1. The Lessee shall be responsible for the operation and maintenance of the utility systems owned by it within the Leased Premises, including but not limited to water, gas, TV, electric, sanitary sewer, and storm systems. The Government assumes no responsibility under this Lease for maintenance and operation of utility systems not owned by the Government or for utility easements across Government property procured by the Lessee from either local sources or the Government.

11.1.2. The Lessee shall at all times maintain all roads, streets, curbing, sidewalks, parking areas, access drives and appurtenant drainage thereto within the Leased Premises in good condition and keep them free of debris and obstructions of any kind. The lessee shall keep roads, streets and common paved areas free of ice and snow.

11.1.3. The Lessee shall provide the necessary pest-control services to ensure that the Leased Premises and all structures are maintained essentially free of pests, including but not limited to cockroaches, flies, wasps, ants, ticks, fleas, silverfish, centipedes, spiders, and other crawling and flying pests, common rodent pests, such as rats and mice, and wood-destroying pests, such as termites, carpenter ants, and carpenter bees. The Lessee will comply with all applicable Federal, State and local laws, rules and regulations concerning the use of pesticides, fungicides, rodenticides, and insecticides. The Lessee will establish a preventative program against pests and rodents and will take immediate corrective steps upon discovery of insect or rodent infestation.

11.2. Any real or personal property of the Government damaged or destroyed by the Lessee incident to the Lessee's use and occupation of the Leased Premises shall be promptly repaired or replaced by the Lessee to the reasonable satisfaction of the Commander. In lieu of such repair or replacement, the Lessee shall, if so required by the Commander, pay to the Government money in an amount sufficient to compensate for the loss sustained by the Government by reason of damage or destruction of Government property, including natural resources. This clause excludes property specifically identified by the Government for demolition.

CONDITION 12
COMPLIANCE WITH APPLICABLE LAWS

12.1. The Lessee shall at all times during the existence of this Lease promptly observe and comply, at its sole cost and expense, with the provisions of all Federal, State, and local laws, rules, regulations, orders, ordinances, and other governmental standards and requirements which may be applicable to the Leased Premises, and the structures thereon, including the improvements to be constructed by the Lessee on them or any part of them, and particularly those provisions concerning the protection of the environment and pollution control and abatement and occupational safety and health, whether the same now are in force, or that may, at any time in the future, be enacted or directed and that are by law then applicable and enforceable against the Leased Premises.

12.2. The Lessee shall comply with all applicable State and local laws, ordinances, and regulations with regard to construction, sanitation, licenses or permits to do business, and all other matters. The Lessee shall be responsible for determining whether it is subject to local building codes or building permit requirements, and for compliance with them to the extent they are applicable.

12.3. The Lessee's use of the Leased Premises, including construction, demolition, and disposal, use, operation, maintenance, repair, and replacement of buildings and facilities shall at a minimum conform to the Final Plans and the Curry County, New Mexico building code.

In the event of conflict between any of the requirements above, the most stringent shall govern. Except as specifically listed above, the Lessee shall not be responsible for compliance with federal military housing code requirements.

12.4. The Lessee will be responsible for and obtain, at its sole expense, prior to the commencement of construction and demolition, and upon completion of the building of the Lessee Improvement, any approvals, permits, or licenses which may be necessary to construct, occupy and operate the improvements as a rental housing development in compliance with laws, codes, and regulations applicable to a private project constructed on Cannon AFB.

12.5. Nothing in this Lease shall be construed to constitute a waiver of Federal Supremacy or Federal Sovereign Immunity. Only laws and regulations applicable to the Leased Premises under the Constitution and statutes of the United States are covered by this Condition. The United States presently exercises either proprietary, exclusive federal, or concurrent jurisdiction over the Leased Premises.

12.6. Responsibility for compliance as specified in this Condition 12 rests exclusively with the Lessee. The Government assumes no enforcement or supervisory responsibility except with respect to matters committed to its jurisdiction and authority. The Lessee shall be liable for all costs associated with compliance, defense of enforcement actions or suits, payment of fines, penalties, or other sanctions and remedial costs related to Lessee's use and occupation of the Leased Premises.

12.7. The Lessee shall have the right to contest by appropriate proceedings diligently conducted in good faith, without cost or expense to the Government, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in this Condition. The Government shall not be required to join in or assist the Lessee in any such proceedings.

CONDITION 13
ACCESS AND INSPECTION

13.1. Any agency of the United States, its officers, agents, employees, and contractors, may enter upon the Leased Premises, at all times for any purposes not inconsistent with Lessee's quiet use and

enjoyment of the leased premises under this Lease, including but not limited to the purpose of inspection. The Government normally will enter the Leased Premises during regular business hours and give the Lessee at least twenty-four (24) hours prior notice of its intention to do so, unless it determines the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, or contractor thereof.

CONDITION 14

GENERAL INDEMNIFICATION BY LESSEE

14.1. The Government shall not be responsible for damages to property or injuries or death to persons which may arise from or be attributable or incident to the condition or state or repair of the Leased Premises and any improvements located thereon, or the use and occupation of them, or for damages to the property of the Lessee, or for damages to the property or injuries or death to the person of the Lessee's officers, agents, servants, employees, or tenants, or others who may be on the Leased Premises at their invitation or the invitation of any one of them.

14.2. The Lessee agrees to assume all risks of loss or damage to property and injury or death to persons by reason of or incident to the possession and/or use of the Leased Premises and any improvements located thereon, or the activities conducted by the Lessee under this Lease. The Lessee expressly waives all claims against the Government for any such loss, damage, bodily injury or death caused by or occurring as a consequence of such possession and/or use of the Leased Premises or the conduct of activities or the performance of responsibilities under this Lease. The Lessee further agrees to the extent permitted by applicable law to indemnify, save, and hold harmless the Government, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon bodily injury, death, personal injury or property damage resulting from, related to, caused by or arising out of the possession and/or use of the Leased Premises and any improvements thereon or any activities conducted or services furnished in connection with or pursuant to this Lease, and all claims for damages by Lessee's tenants against the Government arising out of or related to their tenancy. The agreements contained in the preceding sentence do not extend to claims for damages caused by the gross negligence or willful misconduct of officers, agents or employees of the United States, where the Federal Torts Claims Act would apply without contributory fault on the part of any person, firm or corporation. The Government will give the Lessee notice of any claim against it covered by this indemnity as soon after learning of it as practicable.

CONDITION 15

INSURANCE

15.1. The Lessee shall in any event and without prejudice to any other rights of the Air Force bear all risk of loss or damage or destruction to the Leased Premises, and any building(s), improvements, fixtures or other property thereon, arising from any causes whatsoever, with or without fault by the Government.

15.2. During the entire Term of this Lease, the Lessee, at no expense to the Government, shall carry and maintain the following insurance listed in this condition.

15.2.1. All Risk property insurance, including loss of rents for actual loss sustained with an extended period of indemnity of 180 days, on a replacement cost basis, with no coinsurance, for full

replacement value of the buildings, building improvements, improvements to the land and personal property belonging to the Property. Such insurance shall have a deductible no greater than \$5,000 (or amount to be determined). Earthquake, flood, sewer backup, boiler and machinery coverage in limits and with deductibles as commercially available. Terrorism insurance if commercially available at reasonable rates. Such replacement value shall be determined from time to time by the Government, and upon the request of the Project Owner, but not more frequently than once in any twenty-four (24) consecutive calendar month period (except in the event of substantial changes or alterations to the Property undertaken by the Project Owner as permitted under the provisions of this Use Agreement).

15.2.2. Commercial general liability insurance, on an occurrence basis, insuring against claims for bodily injury (including death), personal and advertising injury and property damage, occurring upon, in or about the Property including any buildings thereon and adjoining sidewalks, streets, and passageways. Such insurance to be effective at the execution of the Lease Agreement and at all times throughout the Term, with limits not less than \$20,000,000 each occurrence, general aggregate and products and completed operations aggregate and include coverage for fire legal liability and medical payments. Any general aggregate shall apply on a per location or per project basis. The Government and any mortgagee shall be named as additional insureds. This coverage may be provided under primary liability and umbrella excess liability policies. Business auto liability insurance which insures against claims for bodily injury and property damage arising from the use of "any auto" with a combined single limit of \$1,000,000 each accident. Environmental Liability or Pollution Legal Liability insurance to the extent available which includes coverage for mold. Underground Storage Tank Environmental Insurance for any UST's located on the property. Limits of Environmental policies, if available, to be determined and approved by the Government. All liability policies shall be primary and non-contributory to any insurance maintained by the Government or any mortgagee.

The insurance carried and maintained by the Lessee pursuant to this Condition shall provide coverage to protect the Government from any damage and liability for which the Lessee is liable or responsible or agrees to hold harmless and indemnify the Government under the Lease. Proceeds under all policies of insurance carried and maintained to provide the coverage required by Condition 15.2.2 shall be available only for that purpose.

15.2.3. Lessee shall maintain Workers' compensation insurance in statutory limits for its employees and employer's liability or similar insurance in form and with limits not less than \$1,000,000 each coverage and policy limit.

15.3. During the entire term of this Lease, the Lessee shall either carry and maintain the insurance required below at its expense, or require any contractor performing work on the Leased Premises to carry and maintain at no expense to the Government:

15.3.1. Commercial general liability and Business Auto liability insurance provided for in Condition 15.2.1 above shall be maintained for the limits specified thereunder and shall provide coverage for the mutual benefit of the Government and the Lessee as additional insureds in connection with any construction or work permitted pursuant to this Lease.

15.3.2. Fire and any other applicable insurance provided for in Condition 15 which, if not then covered under the provisions of existing policies, shall be covered by special endorsement thereto in respect to any improvements, structures, alterations, or additions to or installations, including all materials and equipment therefore, incorporated in, on or about the Leased Premises (including excavations, foundations, and footings) under a broad form all risks builder's risk completed value form or equivalent thereof; and

15.3.3. Workers' compensation or similar insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted

against the Government, the Lessee or the Leased Premises and any improvements thereon, in form and amounts required by law (statutory limits) and employers liability with limits of \$1,000,000 each coverage and policy limit.

15.4. All policies of insurance which this Lease requires the Lessee to carry and maintain or cause to be carried or maintained pursuant to this Condition 15 shall be affected under valid and enforceable policies, in such forms and amounts as may, from time to time, be required under this Lease, issued by Qualified Insurers (as defined below). “Qualified Insurer” is an insurer authorized to do business in New Mexico and possessing a rating of A/VIII or better in A.M. Best’s Insurance Reports. All policies issued by the respective insurers for commercial general liability insurance and for the all risk property insurance provided for above in this Condition shall be for the mutual benefit of the Government and the Lessee and will name the Government as an additional insured or loss payee as respects the Government’s interest. Each such policy shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Lessee or the Government or any other person; provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least sixty (60) days after receipt by the Government of written notice thereof; provide that the insurer shall have no right of subrogation against the Government; and be reasonably satisfactory to the Government in all other respects. All property insurance coverage as required by 15.2.1 hereof shall be payable solely to the Government, except as may be required by a holder of a mortgage upon the Leased Premises in compliance with Condition 22 hereof. In no circumstances will the Lessee be entitled to assign to any third party rights of action which the Lessee may have against the Government. Notwithstanding the foregoing, any cancellation of insurance coverage based on nonpayment of the premium shall be effective upon ten (10) days’ written notice to the Government. The Lessee understands and agrees that cancellation of any insurance coverage required to be carried and maintained by the Lessee under this Condition 15 will constitute a failure to comply with the terms of the Lease, and the Government shall have the right to terminate the Lease for default and breach pursuant to Condition 7 upon receipt of any such cancellation notice, but only if the Lessee fails to cure such noncompliance to the extent allowed under Condition 7.

15.5. The Lessee shall deliver or cause to be delivered upon execution of this Lease (and thereafter not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Condition 15), at the Government’s option, a certified copy of each policy of insurance required by the Lease as soon as each such policy is made available by the insurer, or a certificate of insurance evidencing the insurance required by the Lease, in a form acceptable to the Government and including such endorsements necessary to afford additional insured or loss payee status or evidence other conditions as required per provisions above, or both.

15.6. In the event that any item or part of the Property, shall be damaged (except *de minimis* damage) or destroyed, the risk of which is assumed by the Lessee under Condition 15.1 above (“Damaged or Destroyed Property”), the Lessee shall promptly give notice thereof to the Government.

15.6.1. The Lessee shall as soon as practicable after the casualty restore the Damaged or Destroyed Property as nearly as possible to the condition which existed immediately prior to such loss or damage, subject to Condition 15.6.2 below.

15.6.2. In the event that the Government determines the magnitude of Damaged or Destroyed Property is so extensive as to render the Leased Premises, and any improvements thereon, incapable of use by the Lessee for its operations and the repairs, rebuilding, or replacement of the Damaged or Destroyed Property cannot reasonably be expected to be substantially completed within nine (9) months of the occurrence of the casualty (“Extensive Damage or Destruction of Improvements”), either Party may terminate this Lease as provided in Condition 7.3.3 above.

15.6.3. In the event the Lease is terminated pursuant to Condition 7.3.3, all applicable insurance proceeds relative to the Damaged or Destroyed Property shall be applied first to removing debris from and restoring the damaged area to a reasonably clean and safe condition. The Lessee, subject to Conditions 11 and 21 of the Lease, may retain any remaining balance of the proceeds.

15.7. At the time of the execution of the Tenant Lease, the Lessee shall advise the Tenant in writing and the Tenant shall acknowledge that neither the Government nor the Lessee insures the personal property and leasehold improvements of the Tenant and that it is the sole responsibility of the Tenant to apply for and maintain at all times renter's insurance. At the same time the Lessee shall at its sole cost and expense make available to the Tenant, upon application of the Tenant and acceptance by an insurer, at the time of the execution of its Lease application, a non-deductible all-risks property and casualty insurance policy in an amount of not less than coverage afforded residents of Military Family Housing under the Military Personnel and Civilian Employees Claims Act, 31 U.S.C. §3721, including theft coverage, written at replacement cost value and with replacement cost endorsement, covering the Tenant's personal property in the Premises including, without limitation, any property removable by Tenant under the provisions of this Lease and all leasehold improvements installed in the Premises by or on behalf of Tenant.

CONDITION 16

SELECTED PROPOSAL

16.1. The Selected Proposal (as defined below) is incorporated herein and made a part of this Lease. "Selected Proposal" means, collectively, Volumes III, IV and V of the proposal submitted by or on behalf of the Lessee in response to the Solicitation of Offers and selected by the Government. The Lessee shall demolish, design, construct, renovate/rehabilitate, replace, own, operate and maintain the Leased Premises and all improvements located thereon in accordance with the terms and conditions of the Selected Proposal which shall be binding upon any and all successors and assigns of the Lessee, including without limitation, any Guaranteed Lender or other mortgagee who assumes the operation and/or ownership of the Leased Premises whether by mortgagee-in-possession, foreclosure, deed-in-lieu of foreclosure or otherwise.

16.2 In the event of any inconsistency or conflict between any provision of the Selected Proposal, as defined in Condition 16.1 above, and any provisions of this Lease, the provisions of this Lease will control.

CONDITION 17

CONSTRUCTION OF LEASED PREMISES IMPROVEMENTS AND ALTERATIONS

17.1. This Lease is subject to and conditioned on the Lessee's obligation to demolish, design, construct, and renovate certain buildings, structures, and other improvements on the Leased Premises and operate and maintain them as a rental housing development containing at all times a minimum of 1225 units primarily for use by military personnel assigned to Cannon AFB and their dependents. It is specifically understood that the demolition, design, construction, renovation, operation and maintenance of the Leased Premises Improvements is a private undertaking; title to the Leased Premises Improvements shall be vested in the Lessee subject to the terms of this Lease; and the Government's sole and exclusive interest and liability in this Lease is limited to that of lessor of the land. The Lessee shall not be entitled under this Lease to receive from the Government and the

Government shall not be obligated to pay to the Lessee any monetary consideration for the demolition, design, construction, renovation, operation and maintenance of the Leased Premises Improvements contemplated by this Condition 17.

17.1.1. The Lessee shall, within one hundred twenty (120) days of the Term Beginning Date, or such additional time as the Government determines reasonable, submit final development plans and specifications (“Final Plans”) for the Leased Premises Improvements to be demolished, designed, constructed, renovated, operated and maintained on the Leased Premises, including, but not limited to the utilities systems and landscaping, to the Government for its written approval prior to the commencement of any demolition, design, construction, renovation, operation and maintenance on the Leased Premises.

17.1.1.1. The Final Plans must be in accordance with the requirements of the Selected Proposal identified in Condition 16 of this Lease, and the terms and conditions of this Lease.

17.1.1.2. The Final Plans shall be prepared and certified by a duly qualified architect registered in the State of New Mexico and shall include a construction schedule for completion of the Leased Premises Improvements and foundation, framing and structural component drawings signed and sealed by a licensed structural engineer. The Lessee shall employ both the architect and the structural engineer.

17.1.1.3. If at any time during the development of the Final Plans, the Lessee determines it necessary to make any change(s) to the design concept of the Leased Premises agreed to in the negotiation process, the Lessee shall request approval of the proposed design concept revision(s) from the Government. Requests will be made by submitting the proposed design concept revisions to the Base Civil Engineer, Cannon AFB, New Mexico. The Government shall notify the Lessee of the Government’s written approval or rejection of the proposed design concept revisions within twenty-one (21) calendar days from its receipt of the submittal.

17.1.1.4. The Lessee shall conduct design sessions and review conferences as set forth in the transactional documents. The Lessee shall give a presentation of the Final Plans to the Government at the Design Conferences, which shall include the proposed construction schedule for completion of the Leased Premises Improvements.

17.1.1.5. The Government shall have the right to approve or reject the Final Plans, but must be reasonable in doing so. The Government shall notify the Lessee of the Government’s written approval or rejection of the Final Plans within twenty-one (21) calendar days from its receipt of them at the Design Conference. If the Government rejects the Final Design, it shall specify the reasons for rejection.

17.1.1.6. If by ninety (90) calendar days after submittal of the Final Plans at the Design Conference with respect to the 100% design stage, the Lessee and the Government shall fail to agree on the final design for the Leased Premises Improvements, the Government shall have the right to terminate this Lease as provided in Condition 7 above without any cost or liability to the Government.

17.1.1.7. If at any time following the approval of the Construction Management Plan or Final Plans, the Lessee desires to make any “material revision” (as defined below) to either document, the Lessee shall request approval of the proposed material revisions from the Government. No proposed material revisions to the Construction Management Plan or the Final Plans shall be effective unless and until approved in writing in advance by the Government. Requests for approval will be made by submitting the proposed material changes to the Base Civil Engineer. Any such proposed material revisions to the Construction Management Plan or Final Plans shall be

prepared by a duly qualified architect or engineer, as appropriate, who is licensed to practice in the State of New Mexico and shall include, if required, a revised construction schedule or completion of the Leased Premises Improvements, and any revised foundation, framing and structural component drawings signed and sealed by a licensed structural engineer. The Government shall have the right to approve or reject proposed material revisions in the Construction Management Plan or Final Plans, in its reasonable discretion. The Government shall notify the Lessee of the Government's approval or rejection of any proposed material revisions to the Construction Management Plan or Final Plans within thirty (30) calendar days from their receipt. If the Government rejects any proposed material revisions to the Construction Management Plan or Final Plans, it shall specify the reasons for rejection. For purposes of this Lease, with respect to the Construction Management Plan or Final Plans, "material revisions" shall be deemed to mean changes that affect the layout, structure, appearance, quality of materials or equipment, so that they vary from the original approved proposal or standard practice.

17.1.2. At such time as the Government approves the Final Plans, the Government will, subject to Conditions 17.1.3 and 17.1.4.1, issue written authorization for the Lessee to proceed with the construction of the Leased Premises Improvements ("Notice to Proceed").

17.1.2.1. Within ninety (90) calendar days after issuance of the Notice to Proceed, as provided in Condition 17.1.2 above, the Lessee shall begin construction of the Leased Premises Improvements as described in the Selected Proposal. The Leased Premises Improvements shall be constructed in good and workmanlike manner and in accordance with the Final Plans ("Final Design") and with the rules, regulations and requirements of all departments, boards, bureaus, officials, and authorities which may be applicable to the Leased Premises.

17.1.2.2. The Lessee shall maintain in effect throughout the period of construction an effective quality control program that will assure that all materials and workmanship by any contractor, subcontractor, or vendor are in accordance with the Final Design. The quality control program shall be administered by an independent certified professional(s) employed by the Lessee and approved by the Government to perform inspections and provide certification of code compliance for all trades at each phase of the work. Alternatively, subject to Government approval, which shall not be unreasonably withheld or delayed, the quality control program may be administered by "in-house" project management staff regularly performing such quality control inspection functions for Lessee.

17.1.2.3. The Lessee shall prosecute the construction of the Leased Premises Improvements to completion with diligence in accordance with the construction schedule in the Final Design. The Leased Premises Improvements shall be completed in accordance with the Construction Management Plan and approved construction schedule, subject, however, to excusable delays, i.e., unavoidable delays due to strikes, acts of nature, inability to obtain labor or materials, governmental restrictions, enemy action, civil commotion, fire, or similar causes or any other causes beyond the reasonable control and without the fault or negligence of the Lessee and/or those engaged in the construction of the Leased Premises Improvements. The Lessee agrees that in the event the Lessee does not perform in accordance with the construction schedule in the Final Design as extended by such excusable delays, the failure shall constitute a default by the Lessee under this Lease.

17.1.3. No construction shall be commenced or shall be continued with respect to the Leased Premises Improvements until the Lessee shall provide the Government with a performance and payment bond issued by a corporate surety and satisfactory to the Government in all respects. Such performance and payment bond shall run to the Government and to the lender that is a financial institution which has issued a commitment to the Lessee for a construction loan to finance the cost of construction of the Leased Premises Improvements, which commitment requires that such a performance and payment

bond be delivered to the lender before it will make any advances. The loan with such lender must actually close in accordance with its said commitment. Such performance and payment bond must be acceptable to the lender, be in the amount of the entire cost of construction of the Leased Premises Improvements in accordance with the Final Design as such cost of construction is stipulated in the construction contract between the Lessee and its general contractor, and guarantee the performance of the contract for the construction of the Leased Premises Improvements in accordance with the Final Design.

17.1.4. The Lessee agrees to permit the Government's representatives, agents, and employees access to and right of entry onto the Leased Premises before, during, and after construction of the Leased Premises Improvements for purposes of monitoring, observing, making inquiries, and taking samples of materials for testing as may be necessary in order for the Government to evaluate the physical characteristics of the Leased Premises Improvements, as well as such other matters as may be deemed by the Government to be reasonably necessary for the Government to determine its compliance with the Selected Proposal and the Final Plans. The Parties expressly understand and agree that (i) any inspection activity by the Government does not relieve the Lessee of its responsibility for constructing, operating, maintaining and managing the Leased Premises Improvements pursuant to and in accordance with the terms of this Lease and the Selected Proposal; (ii) failure of the Government to make any such on-site inspection or conduct such testing shall not limit or be construed to limit any of the Government's rights under this Lease; and (iii) no action by the Government shall be deemed to be approval of any plans and specifications or the Leased Premises Improvements as to their adequacy, safety, fitness or compliance with any zoning approval, building permits issued in connection with the Leased Premises or other applicable law. Failure to construct the Leased Premises Improvements in accordance with the Final Plans and the terms of this Lease shall constitute a default and breach of this Lease by the Lessee, and the Government, at its option, may terminate the Lease as provided in Condition 7 above.

17.1.4.1. Within thirty (30) days after approval of the Final Plans by the Government and prior to issuance of the Notice to Proceed by the Government as provided in Condition 17.1.2 above, the Lessee shall attend a conference to acquaint the Lessee, its construction lender and other participants with the general plan of lease administration, inspection and requirements under which the construction operations will proceed ("Pre-construction Conference"). At the Pre-construction Conference, the Lessee shall submit the final construction schedule, the payment and performance bond required under Condition 17.1.3 above and such other documents and information as the Government may require.

17.1.4.2. The Lessee shall maintain an effective quality control program throughout the construction period. The Property shall be inspected for compliance with applicable residential building codes and supplemental codes and applicable provisions of the regulatory controls and requirements in a manner consistent with appropriate county agencies. The Lessee shall be responsible to perform all actions required to obtain a Certificate of Compliance.

17.1.5. The Lessee, at the time of the execution of the Lease, has obtained and delivered to the Government a written commitment acceptable to the Government from a bank or other recognized financial institution or other entity acceptable to the Government by which the construction and the permanent "takeout" financing of the Leased Premises Improvements will be provided, including, if applicable, a loan to be guaranteed by the Government ("Guaranteed Loan") and to be provided by a lender approved by the Government ("Guaranteed Lender") and/or a loan ("Direct Loan") to be provided by the Government.

17.1.6. Failure of the Lessee to construct the Leased Premises Improvements on the Leased Premises in accordance with the Final Plans and with the rules, regulations, and the

requirements of all departments, boards, bureaus, officials, and authorities which may be applicable to the leased premises shall constitute a default and breach of this Lease by the Lessee, and the Government, at its option, may terminate the Lease as provided in Condition 7 above.

17.1.7. The Lessee shall warrant that the construction of the Leased Premises Improvements conforms to the Final Design and is free of any defect in equipment, material, design, or workmanship performed by the Lessee or any contractor or subcontractor. This warranty shall continue with respect to each unit for a period of two (2) years from the date of delivery of an applicable Certificate of Compliance. Performance of the warranty shall be secured by a corporate surety acceptable to the Government or by insurance in an amount not less than TWO MILLION DOLLARS (\$2,000,000.00); provided, however, that the Lessee's warranty obligations shall not, in any way, be limited or otherwise affected by the amount of such corporate surety bond or insurance policy. A Qualified Surety or Qualified Insurer must issue the warranty. The surety bond or insurance coverage must be in such form as is acceptable to the Government in all respects. The Lessee shall begin work to remedy any defect in equipment, material, design or workmanship within ten (10) days after receiving written notice of the defect from the Government. If the Lessee fails to remedy the defect within a reasonable time after its receipt of notice, the Government shall have the right to require the corporate surety or insurer to replace, repair or otherwise remedy the defect at no expense to the Government. The warranty shall not limit any rights of the Government under the Lease with respect to latent defects, gross negligence, willful misconduct or fraud.

17.2. Any structures or portions of structures on the Leased Premises at the time of delivery of possession that are required to be demolished by the Lessee under the Selected Proposal shall be demolished in accordance with a demolition plan prepared by the Lessee and approved by the Government. The Lessee will submit the demolition plan to the Government at the Design Conference.

17.2.1. The demolition plan shall clearly set out a schedule of demolition activities.

17.2.2. The demolition plan shall include an asbestos disposal plan and lead-based paint removal plan that identifies the proposed disposal site for the asbestos and lead-based paint as required by Condition 10.5 above and shall otherwise be in accordance with applicable laws.

17.3. All matters of ingress, egress, contractor haul routes, construction activity and disposition of excavated material in connection with the Lease shall be coordinated with the Commander.

17.4. During the term of this Lease, the Lessee shall have the right at its expense to install such of its own machinery and equipment, to make improvements and to attach such removable fixtures in or upon the Leased Premises as may be necessary for its use of the Premises pursuant to this Lease; and to remove such machinery, equipment, minor improvements and removable fixtures at any time prior to the expiration or earlier termination of this Lease by the Lessee. In the event of termination of the Lease by the Government, the Lessee shall have a reasonable period of time as determined by the Government from the effective date of the Termination Notice within which to remove such property.

17.5. The Lessee shall not construct any permanent structure on the Leased Premises except as set forth in Condition 17.1 above and shall not construct any temporary structure or advertising sign on them or make structural modifications, alterations, or additions to them without the prior written consent of the Government, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing sentence, however, the Lessee shall not make any "material revision" (as defined below) to the Leased Premises Improvements without the prior written consent of the Government; provided, however, that prior written consent of the Government shall not be required in the case of emergency repairs made for safety, environmental or security purposes.

17.5.1 All plans and specifications for any proposed material revision by the Lessee require the consent of the Government prior to its commencement. Notwithstanding the provisions of this

Condition, the Government shall not be liable for damages in any way related to the Government's consent to, or rejection of, any proposed material revision and/or the plans and specifications prepared in connection with such proposed material revision. For purposes of this Lease, with respect to modifications, alterations, or additions to the Leased Premises, "material revision" shall mean any change that affects the layout, structure, appearance, quality of materials or equipment of the Leased Premises so that they vary from the Selected Proposal; provided, however, that maintenance and replacement in kind of the Leased Premises Improvements shall not constitute material revisions.

17.5.2. All construction shall be in accordance with the approved plans and specifications and without cost or expense to the Government.

17.5.3. If any Leased Premises Improvements are altered, erected, placed or maintained upon any Parcel, otherwise than in accordance with the Final Plans or such other plans and specifications as are accepted by the Government pursuant to the provisions of this Lease, such alteration, erection, placement or maintenance shall be deemed to have been undertaken in violation of this Condition, and without the consent required herein, and, upon notice from the Government, any such Lessee Improvement so altered in violation of this Condition shall be removed or re-altered, and any such use shall be terminated, all at the Lessee's expense, so as to extinguish such violation. If within fifteen (15) days after the notice of such a violation the Lessee shall not have taken reasonable steps and be diligently proceeding toward the removal or termination of the same, the Government, shall have the right, through its agents and employees, to enter upon the Property and to take such steps as may be necessary to rectify such violation(s). The cost of such actions taken by the Government shall be a binding obligation of the Lessee secured by a lien against the Property, enforceable in accordance with the provisions of New Mexico law to the fullest extent possible.

17.6 Subject to Condition 9 (*Restoration and Surrender*), title to all improvements made by the Lessee under this Condition 17 shall, be and will remain the property of the Lessee.

CONDITION 18

UTILITIES AND SERVICES

18.1. The Lessee will be responsible for the construction, maintenance and repair of all utility distribution systems conveyed to the Lessee, all connections to the units, conduits, and the connections to existing Cannon utility mains and purchase, installation, maintenance, and repair of all meters. All new utilities shall be underground, unless otherwise approved by the Government as part of the Final Plans.

18.1.1. The Parties understand and agree that all construction, maintenance and repair of all utility distribution systems conveyed to the Lessee, all connections to the units, conduits, and the connections to existing Cannon utility mains and purchase, installation, maintenance, and repair of all meters shall be without cost to the Government.

18.1.2. The Lessee shall be responsible for the expenses of all utilities used for common areas; operations facilities, including rental offices and maintenance shops; maintenance activities, including janitorial services; and vacant units. All newly constructed units shall be individually metered. or at least have provisions for future meters (meter sockets, gas loops, etc.). Existing units shall be metered in accordance with the timetable and other provisions set forth in the Selected Proposal.

18.1.3. The Lessee shall be responsible at its expense for all janitorial services, curbside refuse collection, building maintenance, and grounds maintenance for the Leased Premises, as set forth in the Selected Proposal.

18.1.4. The Lessee will pay the charges for any utilities and services furnished by the Government that the Lessee may require in connection with its use of the Leased Premises (including vacant units and units occupied by Other Tenants). The charges and the method of payment for each utility or service will be determined by the appropriate supplier of the utility or service in accordance with applicable laws and regulations, on such basis as the appropriate supplier of the utility or service may establish.

18.1.5. The Parties understand and agree that the Government in no way warrants the continued provision, maintenance or adequacy of any utilities or services it may furnish to the Lessee. The Parties also understand and agree that the Government, where economically feasible, intends to divest itself of its currently owned electric and natural gas distribution systems during the Lease Term.

18.2. Any purchase of utility services from the Government is subject to Conditions 18.2.1 and 18.2.2 below.

18.2.1. The sale of any utility service by the Government will be in accordance with 10 U.S.C. §2686 and Air Force Instruction (AFI) 32-1061, *Providing Utilities to US Air Force Installations*, as it may be amended from time to time or any successor instruction or regulation.

18.2.2. The Lessee agrees to enter into a separate contract for each utility service procured under this Condition 18 at rates to be specified in each contract.

CONDITION 19

OPERATION AND MANAGEMENT OF THE PROPERTY

19.1. The Lessee agrees to have a rental housing development fully ready for occupancy on the Leased Premises in accordance with the Selected Proposal, the Final Plans and the Construction Management Plan. The Lessee will be required to operate and maintain all units in habitable condition that are occupied as of the Term Beginning Date until such time as then existing tenants shall vacate such units; provided that the Lessee may as part of the transition section of the Construction Management Plan require that tenants vacate existing units to accommodate its demolition and construction schedule so long as the Lessee makes available for occupancy at all times under this Lease the minimum number of units specified in the Construction Management Plan. Failure to do so will constitute a default and breach of this Lease by the Lessee, and the Government, at its option, may terminate the Lease as provided in Condition 7 above.

19.2. The Lessee agrees to name all of the rental housing development areas constructed on Parcels A and B, subject to approval by Cannon AFB.

19.3. The Lessee, at its sole cost and expense, shall operate and maintain the Leased Premises and all improvements located thereon as a rental housing development in accordance with applicable building, fire, health, and other applicable laws, ordinances, rules, and regulations; the Selected Proposal; the Operating Agreement identified in Condition 5 above; and all of the terms and conditions of this Lease. The Lessee shall have a fully operational maintenance function, as agreed upon in the Selected Proposal, upon commencement of occupancy of the units in the Leased Premises.

19.4. The Government shall refer eligible military personnel assigned to Cannon AFB and their dependents (as defined in 37 U.S.C. §401) for rental of the units in the Property. The Lessee understands and agrees that any such referral by the Cannon AFB Housing Management Office does not constitute an agreement by the Government to occupy the Housing Units on the Leased Premises, an order by the Government to such Referral Tenants to occupy the vacant Housing Units, or a guaranty of the occupancy of the Housing Units by the Government. The Government does not intend, and shall under no circumstances be obligated to, require military personnel and dependents stationed at Cannon AFB or

elsewhere to rent Housing Units on the Leased Premises. Military personnel are free to go elsewhere if they choose to do so. The Lessee hereby agrees to first offer to rent the units to any and all such referrals (“Referral Tenants”) at the rates specified for those Referral Tenants pursuant to Condition 19.5 (Referral Rent) or less. The Lessee acknowledges and agrees that the Referral Tenants (as defined below) are the intended tenants of the rental housing development on the Leased Premises. In furtherance of the foregoing, the Lessee shall not rent to any Other Eligible Tenants (as defined below) without prior written notice to the Cannon AFB Housing Management Office. Lessee shall rent to Other Eligible Tenants only in strict accordance with Condition 19.11.

19.5. Definitions. The terms defined in this Condition (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Lease shall have the respective meanings specified in this Condition 19.

“Basic Allowance for Housing” (BAH) means the sum allotted to each service member to cover the cost of housing, including utilities and personal property insurance. The respective amount corresponds with the service member’s rank and dependent status. Refer to Internet web site <http://www.dtic.mil/perdiem/bah.html> for additional information.

“Housing Referral List” is as defined in Condition 19.8.

“Leased Premises” means the real estate located on the Installation which the Project Owner is developing as part of the Project.

“Other Eligible Tenants” means any tenant other than a Referral Tenant.

“Pay Grade” means the pay grade assigned to a member of the armed services.

“Referral Tenants” means tenants who have been referred to the Leased Premises by the Cannon AFB Housing Management Office (HMO).

“Rental Rate Management Plan” is as defined in Condition 19.10, as the same may from time to time be supplemented or amended with the Government’s consent.

“Referral Rent” means, with respect to a Referral Tenant who receives Basic Allowance for Housing at the with dependent rate, the amount of the tenant’s monthly Basic Allowance for Housing less an amount sufficient to cover average utility usage and renters insurance.

“Tenant Lease” means the residential lease required to be executed by each tenant prior to occupancy of a Housing Unit, which lease shall be approved by the Government.

“Unit Occupancy Plan” is as defined in Condition 19.0 and shown in Exhibit E, as the same, may from time to time be supplemented or amended with the Government’s consent. It is a Housing Unit placement schedule that designates, by Pay Grade and entitlement, those Referral Tenants and Other Eligible Tenants who are eligible to reside on the Leased Premises.

“Unrestricted Rent” means, with respect to each Housing Unit, the monthly rent that the Project Owner charges Other Eligible Tenants (other than active duty military members); but in no event shall the Unrestricted Rent be less than the highest Referral Rent applicable to such Housing Unit.

“Utility Costs” means, with respect to each Housing Unit, the costs for providing electricity (and natural gas, as applicable) to such Housing Unit.

19.6. Each tenant of the Leased Premises shall be required to sign a Tenant Lease, which lease shall include clauses attached to this Lease as shown in Exhibit E, prior to occupancy of a Housing Unit. The Lessee will not make any “material revision” to any Tenant Lease without the prior written consent of the Government. Proposed revisions which shall be deemed to be “material revisions” include specifically, but without limitation, changes to the Military Clause, changes to required security deposits from Referral Tenants, changes to the policy on pet admission, deposits or fees, changes to increase the lease term for Other Eligible Tenants, and changes that impose any additional costs, obligations or requirements on Referral Tenants. Changes (other than the foregoing) made to the form Tenant Lease that

are required under applicable law or to conform with the then existing Realtors Association of New Mexico Residential Lease (or a similar local form) shall generally be deemed to be non-material; provided that the Lessee shall notify the Government prior to making any such changes and provide the Government with a copy of the new form Tenant Lease reflecting such proposed changes for its review and consent prior to making such changes effective.

19.7. In the event that Government referrals for units in the Property are not sufficient and the occupancy rate of the Property (exclusive of any units not available due to repair and maintenance) falls below ninety-five (95%) for any consecutive three (3) month period, the Lessee shall have the right to offer vacant units for occupancy to others (“Other Eligible Tenants”) at rates that are no lower or more favorable than the Referral Rent charged to Referral Tenants in accordance with Condition 19.8 below. (Vacancy rates shall be determined by dividing the total number of vacant available units by the total number of units in the required inventory. A unit shall not be considered available when: (a) it is undergoing change of occupancy maintenance or repairs that prohibit occupancy; (b) a new unit does not meet the construction standards as determined by the Government, (c) a renovated unit does not meet the construction standards, (d) it is within 30 days after the issuance of a Certificate of Compliance or equivalent, (e) it is under signed lease, or (f) it is an unoccupied Key and Essential Unit) Each vacant unit eligible for occupancy by Other Eligible Tenants shall be offered for rent by the Lessee based in the priority set forth in the Operating Agreement.

19.8. Referral of Referral Tenants.

19.8.1. Within ten (10) days following the end of each month, the Lessee will provide notice to the Cannon AFB Housing Management Office of all actual and projected vacancies in the Housing Units on the Leased Premises by category of the Unit (e.g., 2 bedroom Housing Unit, 3 bedroom Housing Unit), which notice may be in the form of a monthly rent roll, certified as true and correct by the Lessee (the “Vacancy Notice”). The Vacancy Notice shall be provided a minimum of thirty (30) days in advance of the anticipated vacancy date of such Housing Unit. The Lessee will require tenants moving out to give a minimum of thirty (30) days prior notice, subject to the Military Clause.

19.8.2. The Cannon AFB Housing Management Office shall provide a monthly report to the Lessee identifying any Referral Tenants that were referred to the rental housing development on the Leased Premises (the “Housing Referral List”). The Housing Referral List shall identify: (i) the Referral Tenant’s name and Pay Grade, and (ii) the number of dependents of the Referral Tenant.

19.8.3. Within ten (10) days following the end of each month, the Lessee shall provide the Cannon AFB Housing Management Office with a list identifying all Referral Tenants, if any, who are on the Lessee’s waiting list for Housing Units (the “Waiting List”). The Waiting List shall identify: (i) the Referral Tenant’s name and Pay Grade, (ii) the number of dependents of the Referral Tenant; and (iii) the date on which the names of Referral Tenants were placed on the Waiting List.

19.9. All units shall be designated by Pay Grade and entitlement and shall be made available to Referral Tenants and Other Eligible Tenants in accordance with the Unit Occupancy Plan (Exhibit E).

19.10. All units occupied by Referral Tenants shall have their rents established at an amount not to exceed the Referral Rent. From and after their designation by Pay Grade, rents for all new and renovated units shall be calculated in accordance with the Rental Rate Management Plan (Exhibit E).

19.11. Tenant Leases with Other Eligible Tenants shall not have a term in excess of one (1) year. The Lessee acknowledges and agrees that the Government is agreeing to permit the occupancy of Housing Units by Other Eligible Tenants (in the priority set forth in the Operating Agreement) during the term solely as an accommodation to the Lessee and that Referral Tenants shall re-acquire priority placement rights (as provided in the Unit Occupancy Plan) to each Housing Unit occupied by any Other Eligible Tenants following the expiration of the initial one-year term of such Other Eligible Tenant’s lease. Upon

expiration of the initial one-year term of the Other Eligible Tenant's lease, such lease may be renewed for one or more periods not to exceed 12 months each, so long as there are no Referral Tenants available for that unit. The Lessee shall make all Housing Units occupied by Other Eligible Tenants, which are renewed for such periods available to Referral Tenants in accordance with the Unit Occupancy Plan. Upon the expiration of any such renewal term, the Lessee shall, consistent with the terms of the applicable Tenant Lease, take all action necessary in order to accommodate Referral Tenants who desire to rent such Housing Units.

19.12. Unless modified by an agreement executed by the Government and the Lessee, the Lessee shall undertake all reasonable efforts to ensure that the mix of Housing Units and their designation by Pay Grade(s) is as set forth in Exhibit E. In the event there is a material change in military rank and/or pay structure for military members assigned to Cannon AFB during the Term, then upon the request of either party, the Government and the Lessee may enter into good faith negotiations concerning possible changes in the Pay Grade designation(s) of the Housing Units, and the rental structure for the Leased Premises as initially set forth in this Lease. Upon any agreement of the Parties to modify the rental structure and/or the designation of Housing Units, this Lease shall be amended by substituting a new Exhibit E for the then existing Exhibit E.

19.13. All tenant lists, applications, and waiting lists relating to the Property, including without limitation the status of and rents charged to all tenants, shall at all times be kept separate and apart from any other business of the Lessee, and shall be maintained, as required by the Government from time to time, in a reasonable condition for proper audit and subject to examination during business hours by the Cannon AFB Housing Management Office or any other duly authorized representative of the Government. Failure to keep such lists and applications or to promptly make them available to the Government shall be a Default under this Lease.

CONDITION 20

NOTICES

20.1 Whenever the Government or the Lessee shall desire to give or serve upon the other any notice, demand, order, direction, determination, requirement, consent or approval, request or other communication with respect to this Lease or with respect to the Leased Premises and any improvements located thereon, each such notice, demand, order, direction, determination, requirement, consent or approval, request or other communication shall be in writing and shall not be effective for any purpose unless same shall be given or served by personal delivery to the party or parties to whom such notice, demand, order, direction, determination, requirement, consent or approval, request or other communication is directed or by mailing the same, in duplicate, to such party or parties by certified mail, postage prepaid, return receipt requested, addressed as follows:

If intended for the Lessee:

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
**(all notices, requests and other communications to
any party except for financial records and reports)**

with copies to:

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

and

HQ AFCEE/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, New Mexico

or at such other address or addresses as the Government or the Lessee may from time to time designate by notice given by certified mail.

20.2. Every notice, demand, order, direction, determination, requirement, consent or approval, request or communication hereunder sent by mail shall be deemed to have been given or served as of the second business day following the date of such mailing. Any notice or other communication given by personal delivery or overnight courier shall be deemed to have been delivered on the date of the receipt of such delivery or transmission at the address set forth above (or such other address designated pursuant hereto).

CONDITION 21
ASSIGNMENT, SUBLEASES AND LICENSES

21.1. The Lessee shall neither transfer nor assign this Lease or any interest therein or any property on the Leased Premises, nor sublet the Leased Premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this Lease without the prior written consent of the Government except as provided at Condition 22 of this Lease. Such consent shall not be unreasonably withheld or delayed, subject to Conditions 21.1.1, 21.1.2, 21.1.3, and 21.1.4 below.

21.1.1. Any assignment or sublease granted by the Lessee shall be consistent with all of the terms and conditions of this Lease and shall terminate immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of the Government to the Lessee or any assignee or sublessee. Under any assignment made, with or without consent, the assignee shall be deemed to have assumed all of the obligations of the Lessee under this Lease. No assignment or sublease shall relieve the Lessee of any of its obligations hereunder. Any and all amounts in the Reinvestment Account shall remain with the Project as a condition to the Government's consent to the assignment or sublease of this Lease.

21.1.2. The Lessee shall furnish the Government, for its prior written consent, a copy of each agreement of sublease or assignment it proposes to execute. Such consent may include the requirement to delete, add or change provisions in the sublease or assignment instrument as the Government shall deem necessary to protect its interests. Consent to any sublease or assignment shall not be taken or construed to diminish or enlarge any of the rights or obligations of either of the Parties under the Lease. Consent or rejection of any required changes shall be provided within ten (10) business days of receipt of the proposed agreement.

21.1.3. Any agreement of sublease or assignment must include the provisions set forth in Condition 10 of this Lease and expressly provide that: the sublease or assignment, as the case may be, is subject to all of the terms and conditions of the Lease; the sublease shall terminate on the expiration or earlier termination of the Lease; the sublessee or assignee, as the case may be, shall assume all of the Lessee's obligations and responsibilities under the Operating Agreement (Exhibit E); and in case of any conflict between any provisions of the Lease and any provisions of the agreement of sublease or assignment, the Lease will control. A copy of the Lease and the current Operating Agreement must be attached to the agreement of sublease or assignment.

21.1.4. Failure to comply with this Condition 21.1 shall constitute a breach of this Lease by the Lessee. The Government shall not be obligated to recognize any right of any person or entity to an interest in this Lease or to own or operate any facilities and/or improvements or conduct any other activity or activities on the Leased Premises authorized under the Lease acquired in violation of this Condition 21.

CONDITION 22
LIENS AND MORTGAGES

22.1. Except as provided in this Condition 22, the Lessee shall not engage in any financing or other transaction creating any mortgage upon the Leased Premises or any improvements located thereon; place or suffer to be placed upon the Leased Premises or any improvements located thereon any lien or other encumbrance; or suffer any levy or attachment to be made on the Lessee's interest in the Leased Premises or any improvements located thereon, other than such levy or attachment as may

result from a foreclosure of a mortgage that is consistent with this Condition 22. Any inconsistent mortgage, encumbrance, or lien shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced, and is void in its inception. Lessee shall not, without the prior written consent of the Government, pledge, mortgage, assign, encumber or otherwise grant a security interest in the Leased Premises or any improvements located thereon or the rents, issues, profits or other income of the Leased Premises or any improvements located thereon, for the benefit of, to secure repayment of, or otherwise in connection with, any loan or indebtedness related to or secured by any property other than the Leased Premises or any improvements located thereon.

22.2. During the term of this Lease, the Lessee may encumber its interest in the Leased Premise or any improvements located thereon by way of one or more loans secured by a mortgage, subject to Condition 22.3 below. The proposed holder of any mortgage must be approved in writing by the Government prior to the execution of such loan, which approval shall not be unreasonably withheld or delayed. Any loan may be further secured by a conditional assignment of this Lease (including the Operating Agreement attached as Exhibit E) by the Lessee to the mortgagee. The Government agrees to execute an Estoppel Certificate and any other similar documentation as may reasonably be required by the mortgagee so as to give its consent to the conditional assignment of this Lease and to certify as to the status of this Lease and to the performance of the Lessee hereunder as of the date of such certification. Notwithstanding any foreclosure, the Lessee shall remain liable for the performance of all the terms, covenants, and conditions of this Lease, which by the terms hereof are to be carried out and performed by the Lessee.

22.3. No mortgage shall extend to or affect the fee, the reversionary interest or the estate of the Government in the Leased Premises. No mortgage shall be binding upon the Government in the enforcement of its rights and remedies under the Lease and by law provided, unless, and until a copy thereof shall have been delivered to the Government and such mortgage is authorized in accordance with the provisions of this Condition 22.

22.4. Promptly after assigning or encumbering the Leased Premises or any improvements located thereon, the Lessee shall furnish the Government with a written notice setting forth the name and address of such mortgagee. Further, the Lessee shall notify the Government promptly of any lien or encumbrance which has been created or attached to the Leased Premises or any improvements located thereon or to the Lessee's interest in the Leased Premises or any improvements thereon, whether by act of the Lessee or otherwise, of which the Lessee itself has notice.

22.5. If a mortgagee or purchaser at foreclosure of the mortgage shall acquire the Lessee's interest in the Leased Premises or any improvements located thereon, by virtue of the default by the Lessee under the mortgage or otherwise, this Lease shall continue in full force and effect so long as the mortgagee or purchaser at foreclosure is not in default under the Lease. The mortgagee or purchaser at foreclosure may not appoint an agent or nominee to operate and manage any portion of the Leased Premises or any improvements located thereon on its behalf without obtaining the prior written approval of the Government. Such approval shall not be withheld or delayed so long as the proposed agent or nominee has demonstrated experience or expertise in the development, management, and operation of rental housing development facilities similar to the Leased Premises and the improvements located thereon, as determined by the Government. For the period of time during which the mortgagee or any purchaser at foreclosure of a mortgage holds the Lessee's interest in the Leased Premises or any improvements thereon, the mortgagee or such purchaser shall become liable and fully bound by the provisions of this Lease.

22.6. With respect to the mortgagees, the Government agrees that the following shall apply:

22.6.1. If requested by a mortgagee which shall have duly registered in writing with the Government its name and address, any notice with respect to a default or a termination of this Lease from the Government to the Lessee shall be delivered simultaneously to such mortgagee at its registered address, and in the event of any such registration, no notice of default or termination of this Lease given by the Government to the Lessee shall be deemed legally effective until and unless like notice shall have been given by the Government to such mortgagee.

22.6.2. Such mortgagee entitled to such notice shall have any and all rights of the Lessee with respect to the curing of any default hereunder by the Lessee.

22.6.3. The Government will not accept any cancellation by the Lessee or enter into any material modification of this Lease without the prior written consent thereto of each mortgagee who shall become entitled to notice as provided in this Condition 22. The foregoing shall not apply or be construed to apply to any right the Government may have to terminate this Lease pursuant to its terms. It is also agreed that the Lessee shall provide any such mortgagee with notice of any proposed modification.

22.6.4. It is agreed that in the event that this Lease is terminated for any default of the Lessee which cannot be cured by the payment of money or performance of demolition, design, construction, renovation, operation and maintenance work, such default (a "personal default") shall not be required to be cured by the leasehold mortgagee, and such personal default shall be waived by the Government as to such leasehold mortgagee on the same terms and conditions. In the event this Lease is terminated as to the Lessee for such a personal default, the Government shall be obligated to execute a new lease to such leasehold mortgagee on the same terms and conditions as this Lease, except rent shall be in accordance with Condition 4.4, provided that the mortgagee shall have cured or provided for the payment of the cost of all defaults (other than personal defaults) within the time and the manner set forth in this Condition 22. In the event that federal law shall prohibit the execution of a new lease, the Government shall take such other appropriate action as shall be legally permissible under federal law, such as recognizing such mortgagee as a substitute lessee or otherwise suspending termination of the Lease, to prevent the loss of such mortgagee's rights in this Lease by virtue of a personal default. Examples of personal defaults include, without limitation, defaults in Conditions 24.1 through 24.4 of this Lease.

22.7. If the Government shall elect to terminate this Lease by reason of any default described herein with respect to this Lease, each mortgagee that shall have become entitled to notice as provided in this Condition 22 shall not only have any and all rights of the Lessee with respect to curing of any default, but also shall have the right to postpone and extend the specified date for the termination of this Lease ("Mortgagee's Right to Postpone") in any notice of termination by the Government to the Lessee ("Termination Notice"), subject to the following conditions:

22.7.1. Such mortgagee shall give the Government written notice of the exercise of the Mortgagee's Right to Postpone prior to the date of termination specified by the Government in the Termination Notice and simultaneously pay to the Government all amounts required to cure all defaults then existing (as of date of the exercise of Mortgagee's Right to Postpone) which may be cured by the payment of a sum of money.

22.7.2. Such mortgagee shall pay any sums and charges which may be due and owing by the Lessee and promptly undertake to cure, diligently prosecute and, as soon as reasonably possible, complete the curing all defaults of the Lessee which is susceptible of being cured by such mortgagee.

22.7.3. The Mortgagee's Right to Postpone shall extend the date for the termination of this Lease specified in the Termination Notice for a period of not more than six (6) months.

22.7.4. If, before the date specified for the termination of this Lease as extended by such mortgagee's exercise of Mortgagee's Right to Postpone, the assumption of performance and observance of the covenants and conditions herein contained on the Lessee's part to be performed under the Lease shall be delivered to the Government by the mortgagee, or its nominee and the mortgagee shall have complied with all obligations on the Lessee's part to be performed under the Lease and no further defaults shall have occurred which shall not have been cured within the periods of time after notice above provided for; then and in such event, all defaults under this Lease shall be deemed to have been cured, and the Government's Termination Notice shall be deemed to have been withdrawn.

22.8. Nothing herein contained shall be deemed to impose any obligation on the part of the Government to deliver physical possession of the Leased Premises or any improvements located thereon to such holder of a mortgage.

22.9. If more than one mortgagee shall seek to exercise any of the rights provided for in this Condition 22, the holder of the mortgage having priority of lien over the other mortgagees shall be entitled, as against the others, to exercise such rights. Should a dispute arise among mortgagees regarding the priority of lien, the mortgagees must prove to the satisfaction of the Government that they have settled that dispute.

22.10. Without limiting the rights of a court-appointed receiver, the mortgagee may not appoint an agent or nominee to operate and manage the Leased Premises on its behalf without obtaining the prior written approval of the Government. Such approval shall not be withheld or delayed so long as the proposed agent or nominee has demonstrated experience or expertise in the development, management, and operation of rental housing development facilities similar to the Leased Premises, as determined acceptable to the Government.

CONDITION 23

DISPUTES

23.1. Disputes Valued at Less than \$10,000 (Exclusive of Interest). Except as otherwise provided in this Lease, any dispute between the Government and the Lessee arising under or related to this Lease which the Parties are unable to resolve by negotiation and in which Ten Thousand Dollars (\$10,000.00) (exclusive of interest) or less is at issue shall be decided by the Commander. The Commander shall reduce his or her decision to writing and mail or otherwise furnish a copy to the Lessee. With respect to any such dispute, the Lessee agrees that the decision of the Commander shall be final and conclusive and shall not be appealable or otherwise subject to challenge.

23.2. Disputes Valued at More than \$10,000 (Exclusive of Interest). The Lessee and the Government hereby agree that the following procedures constitute the administrative procedures that must be exhausted before the Lessee or Government may pursue any remedy which is available to it under the law.

23.2.1. Any dispute between the Government and the Lessee arising under or related to this Lease which the Parties are unable to resolve by negotiation and in which more than Ten Thousand Dollars (\$10,000.00) (exclusive of interest) is at issue shall be decided by the Commander. The Commander shall reduce his or her decision to writing and mail or otherwise furnish a copy to the Lessee. The decision of the Commander ("Decision") shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt of the Decision, the Lessee furnishes the Commander, by certified mail, a written appeal of the Decision addressed to the Secretary of the Air Force ("Secretary").

23.2.2. The Secretary shall render a decision by a date mutually agreed upon the Parties. The decision of the Government or its authorized representative shall be final unless appealed to a court of competent jurisdiction in a timely manner, consistent with Condition 23.3 below. In connection with any appeal to the Government, the Lessee and the Government shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

23.3. Judicial Review. The Lessee or the Government, after exhausting the administrative remedies specified in Condition 23.2 above, may:

23.3.1. Pursue any remedy available to it under the law; or

23.3.2. Before or in conjunction with pursuing any remedy which is available to it under law, by mutual agreement, submit the dispute to an alternative dispute resolution procedure, other than binding arbitration, authorized by the Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571, et. seq.).

23.4. The Parties understand and agree that the Government's obligation to make any payment pursuant to this Lease is contingent upon the availability of appropriated funds proper for such payment.

CONDITION 24

GENERAL PROVISIONS

24.1. Covenant Against Contingent Fees. The Lessee warrants that no person or agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Lease without liability or in its discretion to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

24.2. Officials Not to Benefit. No Member of or Delegate to the Congress of the United States of America or Resident Commissioner of the United States of America, shall be admitted to any share or part of this Lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Lease if made with a corporation for its general benefit.

24.3. Facilities Nondiscrimination. As used in this Condition, the term "facility" means lodgings, stores, shops, restaurants, cafeterias, restrooms, and any other facility of a public nature in any building covered by, or built on land covered by, this Lease.

24.3.1. The Lessee agrees that it will not discriminate against any person because of race, color, religion, sex, or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any facility, including any and all services, privileges, accommodations, and activities provided on the Leased Premises. This does not require the furnishing to the general public the use of any facility customarily furnished by the Lessee solely to tenants or to Government military and civilian personnel, and the guests and invitees of any of them.

24.3.2. The Parties agree that in the event of the Lessee's noncompliance, the Government may take appropriate action to enforce compliance, may terminate this Lease for default and breach as provided in Condition 7 above, or may pursue such other remedies as may be provided by law.

24.4. Gratuities.

24.4.1. The Government may, by written notice to the Lessee, terminate this Lease if, after notice and hearing, the Secretary of the Government or a designee determines that the Lessee, or

any agent or representative of the Lessee, offered or gave a gratuity (e.g., an entertainment or gift) to any officer, official, or employee of the Government and intended, by the gratuity, to obtain a lease or other agreement or favorable treatment under a lease or other agreement.

24.4.2. The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

24.4.3. If this Lease is terminated under Condition 24.4.1 above, the Government shall be entitled to pursue the same remedies against the Lessee as in a breach of the Lease by the Lessee, and in addition to any other damages provided by law, to exemplary damages of not less than three (3) nor more than ten (10) times the cost incurred by the Lessee in giving gratuities to the person concerned, as determined by the Secretary of the Air Force or a designee.

24.4.4. The rights and remedies of the Government provided in this Condition shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Lease.

24.5. No Joint Venture. Nothing contained in this Lease will make, nor will be construed to make, the Parties hereto partners or joint venturers with each other, it being understood and agreed that the only relationship between the Government and the Lessee under this Lease is that of landlord and tenant. Neither will anything in this Lease render, nor be construed to render, either of the Parties hereto liable to any third party for the debts or obligations of the other Party hereto.

24.6. Records and Books of Account. The Lessee agrees that the Secretary of the Air Force, the Comptroller General of the United States or the Auditor General of the United States Air Force or any of their duly authorized representatives shall, until the expiration of three (3) years after the expiration or earlier termination of this Lease, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Lessee involving transactions related to this Lease.

24.7. Equal Opportunity Clause. The following clause is applicable unless the Lease is exempt under the rules, regulations and relevant orders of the Department of Labor (41 C.F.R. ch 60).

24.7.1. During the performance of the Lease, the Lessee agrees to comply with Conditions 24.6.1.1 through 24.6.1.8 below.

24.7.1.1. The Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

24.7.1.2. The Lessee shall take proactive steps to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

24.7.1.3. The Lessee shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Government for the Lease ("Lease Officer") that explain this clause.

24.7.1.4. The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

24.7.1.5. The Lessee shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Lease Officer advising the labor union or workers' representative of the Lessee's commitments under this equal opportunity clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

24.7.1.6. The Lessee shall comply with all provisions of Executive Order No. 11246, as amended, and of the rules, regulations, and relevant orders of the Department of Labor.

24.7.1.7. The Lessee shall furnish all information required by Executive Order No. 11246, as amended, and by the rules, regulations, and orders of the Department of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the leasing agency and the Department of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

24.7.1.8. In the event of the Lessee's noncompliance with the equal opportunity clause of this Lease or with any of the said rules, regulations, or orders, this Lease may be terminated for default and breach as provided in Condition 7 above, and the Lessee may be declared ineligible for further Government leases and other contracts in accordance with procedures authorized in Executive Order No. 11246, as amended, or by rule, regulation, or order of the Department of Labor, or as otherwise provided by law.

24.7.2. Notwithstanding any other provision in this Lease, disputes relative to this equal opportunity clause will be governed by the procedures in 41 C.F.R. § 60-1.1.

24.8. Remedies Cumulative; Failure of Government to Insist on Compliance. The specified remedies to which the Government may resort under the terms of the Lease are distinct, separate, and cumulative, and are not intended to be exclusive of any other remedies or means of redress to which the Government may be lawfully entitled in case of any breach or threatened breach by the Lessee of any provisions of this Lease. The failure of the Government to insist in any one or more instances, upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or a relinquishment of the Government's right to the future performance of any such terms, covenants, or conditions, but the obligations of the Lessee with respect to such future performance shall continue in full force and effect. No waiver by the Government of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by an authorized representative of the Government.

24.9. Headings or Titles. The brief headings or titles preceding each Condition are merely for purposes of identification, convenience, and ease of reference, and will be completely disregarded in the construction of this Lease.

24.10. Counterparts. This Lease is executed in three (3) counterparts each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

24.11. Personal Pronouns. All personal pronouns used in this Lease, whether used in the masculine, feminine or neuter gender, will include all other genders.

24.12. Entire Agreement. It is expressly agreed that this written instrument, together with the provisions of other documents that are expressly incorporated by reference by the terms of this Lease, embodies the entire agreement between the parties regarding the use of the Leased Premises by the Lessee. In the event of any inconsistency between the terms of this Lease and of any provision that has been incorporated by reference, the terms of this Lease shall govern. There are no understandings or agreements, verbal or otherwise, between the parties except as expressly set forth herein. This instrument may only be modified or amended by mutual agreement of the parties in writing and signed each of the parties hereto.

24.13. Partial Invalidity. If any term or provision of this Lease, or the application of the term or provision to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of the term or provision to persons or circumstances other than those as to which the term or provision is held invalid or unenforceable, will not be affected by the application, and each remaining term or provision of this Lease will be valid and will be enforced to the fullest extent permitted by law.

24.14. Interpretation of Lease. All parties and their legal counsel have participated fully in the negotiation and drafting of this Lease. The Lease has been prepared by all parties equally and is to be interpreted according to its terms. No inference shall be drawn that the Lease was prepared by or is the product of any particular party or parties.

24.15. Recording. A Memorandum of this Lease substantially in the form attached hereto as Exhibit I may be filed for record in the real estate records of the County of Curry, New Mexico, on or after the Term Beginning Date.

24.16. Identification of Government Agencies, Statutes, Programs and Forms. Any reference in this Lease, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor or similar department, agency, statute, regulation, program or form.

24.17. Approvals. Any approval or consent of the parties required for any matter under this Lease shall be in writing and shall not be unreasonably withheld or delayed unless otherwise indicated in this Lease.

24.18. Third Party Beneficiaries. There shall be no third party beneficiaries of this Lease. Specifically, but without limitation, none of the provisions of this Lease shall be for the benefit of, or enforceable by, any creditors of the Lessee.

24.19. No Individual Liability of Government Officials. No covenant or agreement contained in this Lease shall be deemed to be the covenant or agreement of any individual officer, agent, employee or representative of the Government, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Lease, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

CONDITION 25

SPECIAL PROVISIONS

25.1. Housing Requirement. The Government represents that, for the limited purpose of determining the Government's future housing requirements for Cannon AFB, it shall consider the Property as part of the adequate housing available to the Government provided the Property has been and is being operated and maintained in accordance with the provisions of this Lease and the Operating Agreement (Exhibit E).

25.1.1. Right to Offer. From time to time the Government may perform future housing requirements studies to determine its future requirements. In the event that the Government identifies requirements for additional military housing, and it intends to satisfy those requirements, and upon the express condition that the SO is not in default in the performance of any of its obligations, covenants or conditions and remains fully qualified to perform the requirements of its proposal, the Government agrees to first offer the opportunity to satisfy those additional housing requirements ("New Requirements") to the SO by giving written notice (the "Government Offer") of the terms and conditions on which the Government is willing to satisfy the New Requirements. The SO will have thirty (30) days after the date of receipt of the Government Offer within which to notify the Government that the SO accepts the Government Offer on the terms and conditions therein contained. If the SO accepts the Government's Offer, the closing of such transaction with the SO will take place within sixty (60) days thereafter, pursuant to the terms of the Government's Offer. If the SO does not accept the Government Offer in writing within thirty (30) days after the date of the SO's receipt thereof, this right shall automatically and without further action terminate forever, and the Government may enter into agreements with any other person or entity free and clear of and from any obligations

under this right. The right hereby granted will expire simultaneously with the expiration or termination of the Ground Lease, unless sooner terminated by the exercise of or failure to exercise the option set forth herein.

25.2. Required Escrow and Reserve Accounts. During the term of this Lease, the Lessee shall be required to establish and maintain escrow accounts and/or subaccounts and reserves in accordance with a Lockbox Agreement, which the Lessee shall be required to enter into for purposes of this Condition, and which is incorporated herein by reference as fully as if restated herein. "Lockbox Agent" means _____, a federally insured financial institution, or other similar depository institution acceptable to the Government, which is serving as Lockbox Agent under the Lockbox Agreement.

CONDITION 26

REPORTING PROVISIONS

26.1. At all times during the term of this Lease, the Lessee shall maintain at its principal place of business a complete and accurate set of files, books and records of all business activities and operations conducted in connection with performance under this Lease. The Lessee's records and accounts shall reflect, with respect to each asset subject to this Lease, all items of revenue and expense allocable to the management and disposition of such asset, as well as information regarding the status of each such asset including appraisal, title to improvements, marketing and other information as required. At all times during the term of this Lease, the Government may, at such reasonable times, inspect and request copies of any of the Lessee's records, files, reports, and related material pertaining to the assets and to the performance under this Lease.

26.1.1. Financial Reports. Within thirty (30) days of the end of each quarter, the Lessee shall prepare and deliver to the Government a quarterly financial report setting forth with respect to the performance of this Lease: (i) income statement, (ii) balance sheet, (iii) statements of activity within the Lockbox, and reserve/escrow accounts, (iv) proposed modifications to the approved annual project budgets for the operations account, Lockbox and each escrow/reserve accounts, (v) and a reconciliation of actual activity compared to budgeted activity within the operations, Lockbox and each escrow/reserve accounts. An officer of the lessee shall certify each of these statements as true and accurate. In lieu of these financial reports, the Government, at its sole discretion, may accept financial reports that are required by a third party lender.

26.1.2. Annual Financial Information. Annual financial information shall include the auditor's report, financial statements with notes thereto, financial statement supplementary information, the auditor's management letter, the auditor's engagement letter, the client's letter to the auditor concerning related parties and related party transactions, the local property tax return for the project, and the federal income tax return for the project. The auditor's management letter, the auditor's report or the financial statements must disclose any illegal act noted by the auditor regardless of materiality. Financial statements shall be prepared on the basis of generally accepted accounting principles (GAAP) or on the basis used for the project's federal income tax return. If the financial statements are prepared on the tax basis, then the footnotes must include all disclosures required by GAAP. The supplemental schedules must include the beginning and ending balances and activity within each cash and reserve account, and the amount of local property taxes paid or due or a statement that the project is not subject to such taxes. The supplemental schedule which includes property taxes must disclose the amount of property taxes which the Lessee budgeted in its final pro forma submittal to the Government, the amount of actual property taxes. A supplemental schedule shall identify all owners of any interest in the Lessee and the interest held by each. If the Lessee or any owner of the

Lessee is a corporation, all officers and directors of the corporations, and if the Lessee or any owner is a limited liability company or partnership, all members and partners. A supplemental schedule shall list the number of Referral Tenants and the number of Other Eligible Tenants by month, the number of vacant Housing Units by month, the percentage of Housing Units rented to Referral Tenants by month, the percentage of Housing Units rented to Other Eligible Tenants by month, and the percentage vacant by month. The income tax return must be the federal income tax return of the project, or the tax return of the owner of the project if the project does not file a federal income tax return. The auditor must be a certified public accounting (CPA) firm which participates in the peer review program of the American Institute of CPAs. The annual financial information and the auditor's latest peer review report must be furnished directly by the CPA to the Government no later than four (4) months after the end of the project's fiscal year. Compiled or reviewed financial statements shall not meet the requirements of this paragraph.

26.1.3. Project Budget. The Lessee shall furnish to the Government, for the Government's consent, the project's annual budgets for the operations account, the Lockbox and for each reserve/escrow account no later than ninety (90) days prior to the start of each fiscal year for the project. The project's fiscal year will be the calendar year unless the lessee has received permission from the Internal Revenue Service to use a fiscal year other than a calendar year. The Lessee shall also furnish to the Government all amendments to each annual budget, all monthly and quarterly budgets and all comparisons of actual results to budgeted projections within 30 days after the end of each reporting period. The lessee shall submit annually with the annual budget an update of the following documents submitted with the final proposal: the 50-year pro forma, the Capital Repair and Replacement Plan, and the development budget. The update to the development budget is required only until the completion of the construction.

26.2. Additional Record Keeping and Delivery. The Lessee agrees that the Government, the Comptroller General of the United States or the Auditor General of the United States Air Force, or any of its duly authorized representatives, shall, until the expiration of three (3) years after the expiration or earlier termination of this Lease, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Lessee involving transactions related to the Leased Premises. The Lessee shall keep and maintain accurate, true and complete books and records (hereinafter collectively referred to as "books and records"), which shall fully reflect the financial condition, occupancy, physical condition, maintenance and operational status of the Project, together with all business licenses and permits required to be kept and maintained pursuant to the provisions of any applicable state or local law, regulation or rule now or hereafter in effect. All books and records shall be kept at the Lessee's principal office, or at the Project, or at such other place as the Government and the Lessee both agree upon in writing. The Government is herewith granted the right to photocopies of same, at the sole expense of the Successful Offeror. The Lessee shall deliver to the Government, 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 the Lessee has maintained, or which the Government needs in order for the Government to file any report to the Department of the Air Force, the Department of Defense, including but not limited to Program Evaluation Plan (PEP) reports (Executive Summary, Fact Sheet including Authorities Matrix, Risks and Protections Matrix, and Project Matrix), or required to be submitted by the Government to any governmental or nongovernmental agency, or which the Government needs to assess the financial condition, performance, occupancy, physical condition, maintenance and operational status of the Project. Such items shall: (a) be in a form satisfactory to the Government, (b) be certified to the Government as true, complete and accurate by the Lessee, and (c) be taken from the books and records

maintained by the Lessee as aforesaid. The Lessee shall furnish to the Government all of the following documents, statements, reports and other information in the manner provided below:

26.2.2. At any time upon the request of the Government:

26.2.2.1. a rent roll for the Leased Premises showing the name of each tenant, the Housing Unit 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;

26.2.2.2. a monthly property management report for the Leased Premises, 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 Leased Premises, and any other information requested by the Government; and

26.2.2.3. a monthly maintenance report for the Leased Premises, 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 Government;

26.2.3. within fifteen (15) days after the end of each month in which the Lessee has received notice that a default under this Lease has occurred and/or is continuing, monthly income statements for the Leased Premises, including calculations of Net Cash Flow;

26.2.4 within thirty (30) days of its 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 the Lessee and/or the Leased Premises;

26.2.5 within fifteen (15) days following Lessee's receipt of same, copies of any and all default or deficiency notices provided to the Lessee by any mortgagee on an approved loan, any government agency, insurance company or other party; and

26.2.6 within ten (10) days after receipt of a request by the Government, such additional information, as reasonably requested by the Government

CONDITION 27

COMMANDER'S RIGHTS NOT IMPAIRED

27.1. Nothing contained in this Lease shall be construed to diminish, limit, or restrict any right, prerogative, or authority of the Commander as established in law, regulation, military custom, or elsewhere.

27.2. Anything contained in this Lease to the contrary notwithstanding, the Commander has the right at all times to order the permanent removal and barment of anyone from the Installation, including but not limited to tenants, if he or she believes, in his or her sole discretion, that the continued presence on the Installation of that person represents a threat to the security or mission of the Installation, poses a threat to the health, welfare, safety or security of persons occupying the Installation or compromises good order and/or discipline on the Installation.

CONDITION 28

RENEWAL OF THE LEASE

28.1. The Parties hereto agree that at any time during the period beginning ten (10) years before expiration of the term of this Lease and ending fifteen (15) months before the expiration of the Lease, a renewal of the Lease may be negotiated and entered into by the Parties provided that the Leased Premises have been and are being properly maintained; the Lessee is not in default of any of its

obligations under the Lease or Operating Agreement; the units in the Leased Premises continue to be occupied primarily by Referral Tenants; and renewal is in the best interest of the Parties.

**CONDITION 29
GOVERNMENT REPRESENTATIVES AND THEIR SUCCESSORS**

29.1. The Commander, Cannon AFB, has been duly authorized to enter into and amend the Operating Agreement (Exhibit E) and to administer this Lease.

29.2. Except as otherwise specifically provided, any reference herein to “Commander” shall include the Commander’s duly appointed successors and authorized representatives.

**CONDITION 30
AMENDMENTS**

30.1. This Lease may be amended at any time by mutual agreement of the Parties in writing and signed by a duly authorized representative of each of the respective Parties hereto. Amendments to the Lease executed on behalf of the Government must be signed at the level of Deputy Assistant Secretary of the Air Force (Installations) or higher.

**CONDITION 31
EXHIBITS**

31.1. Ten (10) exhibits are attached to and made a part of this Lease, as follows:

- Exhibit A Description of Leased Premises**
- Exhibit B Map of Leased Premises**
- Exhibit C Physical Condition Report**
- Exhibit D Environmental Baseline Survey**
- Exhibit E Operating Agreement**
- Exhibit F Tenant Lease**
- Exhibit G Title X Lead-Based Paint Disclosure Statement**
- Exhibit H – Quitclaim Deed or Bill of Sale**
- Exhibit I Memorandum of Lease**
- Exhibit J Lockbox Agreement**

**CONDITION 32
REPORTING TO CONGRESS**

32.1. This Lease is not subject to Title 10, United States Code, Section 2662.

[Remainder of Page Intentionally Left Blank]

EXHIBIT A
DESCRIPTION OF LEASED PREMISES

EXHIBIT B
MAP OF LEASED PREMISES

EXHIBIT C
PHYSICAL CONDITION REPORT

EXHIBIT D
ENVIRONMENTAL BASELINE SURVEY (EBS)

EXHIBIT E
OPERATING AGREEMENT

OPERATING AGREEMENT
BETWEEN
THE UNITED STATES AIR FORCE
AND
[Lessee]

**OPERATING AGREEMENT
BETWEEN
THE UNITED STATES AIR FORCE
AND**

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ATTACHMENTS

- A. Construction Management Plan
- B. Rental Rate Management Plan
- C. Unit Occupancy Plan
- D. Property Operations and Management Plan
- E. Facilities Maintenance Plan
- F. Capital Repair and Replacement Plan
- G. Reinvestment Plan
- H. Final Plans (to be attached upon approval by the Government)

THIS OPERATING AGREEMENT, (“Operating Agreement”) is made as of_____, 20__ between the Secretary of the Air Force and the_____ **[NAME OF LESSEE]**, a_____ created under the laws of the State of_____, with its principal offices located at_____ (“Lessee”). The Government and the Lessee may sometimes be referred to jointly as the “Parties,” and each separately may be referred to as a “Party.”

1. **PURPOSE:** This Operating Agreement implements the terms and conditions of Lease No. - _____ (“Lease”), entered into_____, 20___, between the Secretary of the Air Force and the Lessee, for the design, construction, operation and maintenance of a rental housing development on Cannon Air Force Base, New Mexico.

2. **GENERAL:**

a. The Lessee shall, at all times, operate and manage the Leased Premises (as defined in the Lease) and all improvements located thereon, according to good management practices common to the local rental housing industry and consistent with the requirements of this Operating Agreement its attachments, and the Lease. The following plans, agreements, and documents are attached to this Operating Agreement:

- (1) Construction Management Plan
- (2) Rental Rate Management Plan
- (3) Unit Occupancy Plan
- (4) Property Operations and Management Plan
- (5) Facilities Maintenance Plan
- (6) Capital Repair and Replacement Plan
- (7) Reinvestment Plan
- (8) Final Plans (to be attached upon approval by the Government)

b. The Lessee shall operate and maintain the Leased Premises and all improvements located thereon, at no expense to the Government. The Lessee shall collect directly from tenants the rents, damage deposits, and other fees that are stated in the Lease, Selected Proposal (as defined in the Lease) or otherwise approved by the Government in accordance with the terms and conditions of the Lease, provided, however, that the Lessee shall collect rents for Referral Tenants through allotments paid one month in arrears. The Government shall in no case be responsible for or pay or reimburse the Lessee for costs associated with the operation and maintenance of the Leased Premises and all improvements located thereon, or for any tenant defaults.

c. The Lease incorporates this Operating Agreement by reference. In the event of any inconsistency between the provisions of the Lease and those of this Operating Agreement, the provisions of the Lease will govern.

d. The authorized representative for executing and amending this Operating Agreement on behalf of the Government is the Commander, 27th Fighter Wing, Cannon AFB, New Mexico (“Commander”), or his or her designee. The authorized representative for executing and amending this Operating Agreement on behalf of the Lessee is its_____.

3. LEGAL REQUIREMENTS: The Lessee will comply with all applicable Federal, state and local laws, codes, license and permit requirements, including the payment of all applicable taxes and fees and any other requirement whatsoever applicable to a rental housing development (apartments, townhouses, single family homes) operation within Curry County, New Mexico. This paragraph is not to be construed to make applicable an otherwise inapplicable law, code, license, or permit requirement. By way of example and not limitation, the Project (as defined in the Lease) will, at all times, be in compliance with the laws, regulations, codes and publications enumerated in Condition 12 of the Lease.

4. MANAGEMENT AGREEMENT:

a. The Government shall approve the Management Agreement, as defined in the Lockbox Agreement, if any, and the Management Company, as defined in the Lockbox Agreement. The Lessee hereby acknowledges and agrees that any Management Agreement expressly provide that throughout its term, the Management Company shall be required to, among other things, manage the Project in accordance with the Selected Proposal and the Lease. The Lessee shall not make or permit any “material revision”, as defined herein, to the Management Agreement, except with the prior written consent of the Government. No proposed material revision to the Management Agreement shall be effective unless and until consented to by the Government.

(1) The Government shall have the right, in its reasonable discretion, to grant or deny its consent to any proposed material revision to the Management Agreement. The Government shall notify the Lessee whether the Government grants or denies its consent to any proposed material revision to the Management Agreement within thirty (30) calendar days from its receipt thereof. If the Government denies consent to any proposed material revision to the Management Agreement, it shall specify the reasons for denial. Notwithstanding the provisions of this Condition, the Government shall not be liable for damages in any way related to the Government’s grant or denial of consent nor the failure to act within 30 days of the submission to the Government of any proposed material revision to the Management Agreement.

(2) For purposes of this Operating Agreement, with respect to any Management Agreement, a “material revision” shall mean any change in the Management Company, the Management Company’s fee or other compensation, the Government’s right to terminate the Management Agreement upon a Default by the Lessee (without payment of any termination fee or premium), or the rights and responsibilities of the Management Company or the Lessee under the Management Agreement.

5. MANAGEMENT REVIEW COMMITTEE (MRC)

a. The Government and the Lessee will establish a Management Review Committee (“Committee”) to discuss any issues relating to the provisions of this Operating Agreement and its attachments. The minimum membership of the Committee shall consist of a Commander or his or her designee as the Chairman, the Lessee’s senior local manager, the Cannon AFB Housing representative, and two representatives of the military tenants occupying the Leased Premises.

b. The Committee shall meet at least quarterly unless waived by all of the members and from time to time at the call of the Chairman or the Lessee throughout the term of the Lease. The agenda for each meeting shall be set by the Chairman at least seven (7) days prior to the meeting, except for unscheduled emergency meetings called on less than ten (10) days’ notice. Members will submit agenda items to the Chairman at least fourteen (14) days in advance of any scheduled meeting.

c. Members will serve on the Committee without additional compensation, and any and all expenses incident to travel and resolution of issues will be borne by the representative member's agency.

d. Minutes of each meeting will be prepared by the Chairman and distributed to the Committee members.

6. SECURITY:

a. The Lessee shall provide security for the Leased Premises and all improvements located thereon,, as a prudent landlord, according to local community standards.

b. The Leased Premises and all improvements located thereon, are subject to periodic inspection by security police personnel in conjunction with their official duties. The Lessee will cooperate in these inspections to the extent required to ensure that law enforcement activities are not hindered and that security requirements are met. Security police will provide law enforcement and security assistance at the Leased Premises and all improvements located thereon, and will investigate, along with the Office of Special Investigation and cognizant civil authorities, any crimes on the Leased Premises and all improvements located thereon.

c. The Lessee, its officers, agents, employees, independent contractors, and subcontractors must obtain identification passes from base security police before being admitted to the base. Vehicles of the aforementioned personnel must be registered with security police and issued temporary passes before they may be driven on base. Such vehicles are subject to inspection by security police, and, before passes will be issued, drivers must comply with the minimum insurance requirements of the state in which the vehicle is registered.

d. The Government retains the right to refuse access to the base or to the Leased Premises to the Lessee, its officers, agents, employees, independent contractors, and subcontractors during a national emergency or for other compelling reasons as determined by the Commander in his or her sole discretion.

e. The Air Force reserves the right to refuse occupancy to other eligible tenants based on results of criminal background checks from the New Mexico Law Enforcement Telecommunications System (NMLETS), the National Criminal Information System (NCIC), local criminal files, evidence of sex offense conviction as described in New Mexico or Federal criminal codes, probation or parole for serious offenses or other credible evidence of current or past criminal misconduct. The Air Force also reserves the right to revoke occupancy privileges in the event occupants and/or their guests become involved in activities which are criminal or are detrimental to the welfare of the Cannon AFB mission or community.

7. OCCUPANCY AND EVICTION:

a. The Lessee shall develop a management plan and tenant rules that provide for the orderly administration and operation of the Project ("Management Plan and Tenant Rules").

(1) The Management Plan and Tenant Rules shall include (by way of example and not limitation) procedures and rules regarding control of family pets, reporting service calls, use of common areas, guests, noise control, fencing requirements or restrictions, and number of persons living in each size unit.

(2) The initial Management Plan and Tenant Rules shall require prior coordination with the Commander.

(3) The Management Plan and Tenant Rules shall be submitted to the Commander at its request.

b. The Management Plan and Tenant Rules shall provide that rentals to Other Eligible Tenants (as defined in the Lease) shall be made strictly in accordance with the terms and provisions of the Project Documents.

c. All Tenant Leases (as defined in the Lease) shall provide that the tenant is subject to eviction for violation of the Management Plan and Tenant Rules and prohibit subleasing by the tenant. Tenant Leases for Referral Tenants (as defined in the Lease) must include a Military Clause allowing termination of occupancy by the Referral Tenant due to military orders and a provision for termination of occupancy on thirty (30) days' written notice if the Referral Tenant is separated from the military for any reason and shall include a clause requiring the Referral Tenant to make rent payments by allotment directly to the Lessee.

d. For Other Eligible Tenants, the Lessee may require a deposit for damage and cleaning and an additional deposit or fee for pets, provided, however, that the maximum allowable total of the deposits shall not exceed the monthly rental charge in effect at the time the Tenant Lease is signed. Any fees and other deposits must be disclosed to the Government. Retention of tenant deposits and notices relating to them must comport with local and state laws regarding such deposits.

e. The Lessee shall notify the Family Housing Manager, Cannon AFB, of any contemplated eviction action by the Lessee.

f. The Lessee shall provide an annual accounting to the Commander of sources and uses of funds in the Replacement Reserve account established pursuant to Condition 25.3 of the Lease.

g. Neither the Lessee nor any affiliated party of the Lessee shall occupy any of the Housing Units in the Project; provided, however, that the Lessee or an affiliated party of the Lessee may occupy a residential unit in the Project, excluding Housing Units designated for Senior Officers Quarters, if any, if the Lessee or the affiliated party of the Lessee is a resident manager or other necessary employee approved by the Government (e.g., maintenance and security personnel).

h. The Installation Commander shall have the authority to restrict non-severable units and designated historical units to Referral Tenants and Other Eligible Tenants other than members of the general public. In the event of vacancies in such units, the Installation Commander may require that Referral Tenants residing in severable units be relocated to the non-severable or designated historical units. The Installation Commander will ensure that the Tenant Lease includes a Tenant Consent To Relocate Referral Tenants. The Government shall pay all costs of such relocation.

8. DISPUTES: Disputes under this Operating Agreement shall be governed by the Lease provisions.

9. NOTICES: All notices required under this Operating Agreement shall be governed by the Lease provisions.

10. TERMINATION AND MODIFICATION:

a. This Operating Agreement shall continue in force and effect until the Lease expires or is sooner terminated. If the Lease is extended or renewed, then this Operating Agreement shall likewise be extended or renewed and continue in force and effect throughout the life of the renewed or extended lease.

b. This Operating Agreement may be amended or modified only by mutual agreement of the USAF and Lessee in writing and signed by each of the parties hereto.

c. Notwithstanding Paragraph 9 above, any amendment or modification to this Operating Agreement which materially affects the Lease shall not be effective unless and until approved by an official of the USAF authorized to execute an amendment to the Lease.

Agreed to this _____
day of _____, 20__

DEPARTMENT OF THE AIR FORCE

By _____

Title _____

Agreed to this _____
day of _____, 20__

LESSEE

By _____

Title _____

EXHIBIT F
TENANT LEASE

EXHIBIT G
TITLE X LEAD-BASED PAINT DISCLOSURE STATEMENT

EXHIBIT H
MEMORANDUM OF LEASE

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (hereinafter referred to as this "Memorandum") is entered into this ____ day of _____, 200_, by and between SECRETARY OF THE AIR FORCE (hereinafter referred to as "Lessor"); and _____, a _____ (hereinafter referred to as "Lessee").

BACKGROUND

Lessor has demised to Lessee, and Lessee has leased from Lessor, a tract of land situated in Curry County, New Mexico as more particularly described on Exhibits A-1 through A-7 and shown on Exhibits B-1 through B-7 attached hereto and by this reference incorporated herein and made a part hereof (hereinafter referred to as the "Premises"), upon and in accordance with the terms set forth in certain Department of the Air Force Lease of Property on Cannon Air Force Base, Curry County, New Mexico (herein called the "Lease") dated of even date herewith between Lessor and Lessee, which Lease is expressly incorporated herein by reference and made a part hereof as though fully set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

All members of the general public are hereby placed on notice of inquiry as to the specific provisions of the Lease, all of which are incorporated herein by reference with the same force and effect as if herein set forth in full. This Memorandum shall be recorded in the real estate records of Curry County, New Mexico, in lieu of recording the entire Lease, which Lease contains, without limitation, the following provisions:

- A.** Description of Premises. See Exhibits A and B attached hereto. Individually, the land and improvements thereon are sometimes referred to as follows, Parcel A, Chavez Manor and Chavez Manor West, and Parcel B, Joe Cannon Estates.
- B.** Copy of Lease. A true and correct copy of the Lease without exhibits, which includes term of the Lease, renewal terms, the addresses of the Lessor and Lessee, and other pertinent information, is attached hereto as Exhibit C.
- C.** Captions and Capitalized Terms. Caption headings are inserted herein only as a matter of convenience and reference and in no way serve to define, limit, or describe the scope or intent of, or in any way affect, the Lease or this Memorandum. Capitalized terms not defined in this Memorandum shall have the meanings ascribed to them in the Lease.

Signed:

LESSOR:
SECRETARY OF THE AIR FORCE
By: _____,
Deputy Assistant Secretary of the Air Force (Installations)

STATE OF New Mexico
COUNTY OF Curry

This instrument was acknowledged before me on _____, 2004 by _____,
Deputy Assistant Secretary of the Air Force (Installations), on behalf of the Secretary of the Air Force.

NOTARY PUBLIC

My Commission Expires: _____ [NOTARIAL SEAL]

LESSEE:

By: _____
Name: _____
Title: _____

STATE OF New Mexico
COUNTY OF Curry

This instrument was acknowledged before me on _____, 2004 by _____,
_____ of _____, a _____.

NOTARY PUBLIC

My Commission Expires: _____ [NOTARIAL SEAL]