

# United States Department of the Army

## Installation Management Command-Europe



## US Army Garrison, Vicenza, Italy Housing Acquisition Solicitation

## REQUEST FOR PROPOSAL (RFP) IMCOM-E FY-2011-01 Appendix D Draft Agreement and Lease

**PROPOSALS ARE DUE NO LATER THAN 1500hrs,  
31 MAY 2011**

VICENZA REAL ESTATE FIELD OFFICE  
UFFICIO CONTRATTI IMMOBILIARI  
Via Delle Casermette 107/109, Int. 3  
36100 Vicenza  
Italy  
Fax: +39 0444 717727  
Email: [real.estate@eur.army.mil](mailto:real.estate@eur.army.mil)  
WEB: <http://www.usag.vicenza.army.mil/sites/local/refo.asp>

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DEPARTMENT OF THE ARMY  
UNITED STATES ARMY INSTALLATION MANAGEMENT COMMAND  
- EUROPE REGION

**AGREEMENT AND LEASE**

DA-RE-IT-Draft

BETWEEN

.....

AND

THE UNITED STATES OF AMERICA

THIS AGREEMENT AND LEASE, made this .... day of ..... between - .....  
....., a company incorporated under Fiscal Code No. ....,  
and having its Registered Office at .....  
....., hereinafter called the LESSOR, represented  
by ..... - and the UNITED STATES GOVERNMENT,  
Fiscal Code No. 80028250241, represented by .....  
Real Estate Contracting Officer, U.S. Army Installation Management Command - Europe Region,  
Caserma Carlo Ederle, Vicenza, Italy, hereinafter called the U.S. GOVERNMENT,

WITNESSETH :

WHEREAS, the U.S. Government is desirous of assuring the availability of family housing in Italy for members of the United States Armed Forces and such other persons who shall be and remain “qualifying personnel” for the purpose of and as defined by the Agreement and Lease herein referred to and has issued a formal Request for Proposal (RFP) from interested parties to build and lease such housing to the U.S. Government.

WHEREAS, the Lessor is desirous of supplying housing to the U.S. Government and has submitted a detailed proposal to the U.S. Government to provide to the U.S. Government the particular Residential Complex described in detail in its proposal.

WHEREAS, the Residential Complex described in the Lessor’s proposal was selected by the U.S. Government as one of the sites it desires to have developed and to lease pursuant to this agreement.

WHEREAS, the Lessor and U.S. Government reached a final understanding on price, terms and conditions for Lease of a Residential Complex, consisting of a total of ..... three-bedroom, ..... four-bedroom and ..... five-bedroom Dwelling Units, to the U.S. Government

WHEREAS, the Lessor has acquired or shall have acquired all right, title and interest in the proposed site at the time the units described herein are conveyed to the U.S. Government and has obtained outline planning approval to develop the same for residential purposes and has secured financing to construct or procure the construction of the proposed Residential Complex in accordance with the plans, specifications, and other details contained in its proposal.

NOW, THEREFORE, in consideration of the conditions, covenants, and provisions herein, and other good and sufficient consideration as set forth below, the parties hereto agree as follows:

**1. DEFINITIONS.**

As used throughout this Agreement and Lease, the following terms shall have the meanings set forth below:

- 1.01. "Site" means the property (land), described in paragraph 3 hereto, on which the units shall be constructed
- 1.02. "Units" means the family housing units to be constructed on the Site as agreed upon herein, the appurtenants to such houses, and any part or parts thereof. Also referred to as Dwelling Units.
- 1.03. "Lessor" means ..... or any of its subsidiary companies from time to time entitled to the reversion immediately expectant upon the termination (or expiration of the term) of this Agreement and Lease.
- 1.04. "Lessee" means The United States of America. Also referred to as the U.S. Government.
- 1.05. "U.S. Government" means The United States of America. Also referred to as the Lessee.
- 1.06. "Builder" means the Lessor or its nominee or the contractors employed by the Lessor or its nominee to develop the Site and construct the Units as agreed upon herein.
- 1.07. "Construction of the Residential Complex" means the development of the Site infrastructure and construction of the Units as agreed upon herein.
- 1.08. "Residential Complex" means the property described in paragraph 3 hereof (and attachments referenced therein) with the Units constructed and the Site developed as agreed upon herein.
- 1.09. "Qualifying Personnel" means any person so certified by a Real Estate Contracting Officer in accordance with prevailing U.S. Army Regulations.
- 1.10. "Premises" refers to the Residential Complex, or the property described in paragraph 3 hereof (and attachments referenced therein) as developed and constructed pursuant to the Lessor's proposal and the terms of this Agreement and Lease after commencement of the term of this Lease.
- 1.11. "Term" means the term/period of years granted by the Lease.

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1.12 “Prior Conditions” means the terms, conditions and other requirements contained within Annex A to this Agreement and Lease which must be fulfilled prior to issuance of the Notice to Proceed (pursuant to Annex A, paragraph 1.).

1.13. “Notice of Acceptance” is the method by which the U.S. Government accepts the completed Residential Complex. The Notice of Acceptance shall be by Supplemental Agreement to this Agreement and Lease.

**2. INTERPRETATION.**

2.01. The words Lessor and U.S. Government, wherever used in this Lease, always and in any case include heirs, devisees, legatees, executors, administrators, legal representatives, successors or assigns of the Lessor and the U.S. Government respectively as if each time fully expressed.

2.02. Any reference to a specific statute includes any statutory extension or modification amendment or re-enactment of such statute and any regulations or orders made under such statute and any general reference to “statute” or “statutes” includes any regulations or orders made under such statute or statutes.

2.03. Notwithstanding anything to the contrary contained or implied elsewhere in the Lease if for any reason (including any reason beyond the control of the either or both of the Lessor and U.S. Government) any of the prior conditions shall not have been completed by the times so specified within the prior conditions then this Agreement and Lease shall (subject to sub-paragraph 2.04) immediately terminate and cease to have effect.

2.04. The Lessor and the U.S. Government shall be at liberty to agree to variations to the times specified in the prior conditions provided that such variations are agreed prior to the expiration of any time limit that is to be varied and that the variations are evidenced in writing, signed by both the Lessor and the U.S. Government and annexed to this Agreement and Lease.

2.05. In the event that this Lease is terminated for any reason prior to the commencement of the Term, the rights and interests of the Lessor and U.S. Government shall be construed strictly in accordance with the provisions of United States Federal Law. After the commencement of the Term the rights and interests of the parties shall be construed in accordance with Italian Law. Inclusion of this choice of law clause is made for the purpose and in accordance with the Italian Civil Code.

**3. THE PREMISES.**

3.01. In consideration of the rent and the covenants stated in this Agreement and Lease, the Lessor AGREES TO HEREBY LEASE unto the U.S. Government, and the U.S. Government AGREES TO HEREBY LEASE from the Lessor, subject to satisfactory completion of the prior conditions stated herein, the following described premises: the Residential Complex consisting of ..... Dwelling Units located in the Town of ....., together with all improvements, rights, privileges, easements, appurtenances and accessories thereto specified in the Lessor’s final proposal, for a term of TEN YEARS from the Acceptance of the Residential Complex for a Rent as stated in paragraph 6 below . The site is identified at the Agenzia del Territorio, Catasto Terreni (cadastral office), Ufficio Provinciale di ..... as: Town of ....., Sheet ....., Plot .....

**4. CONSTRUCTION OF IMPROVEMENTS.**

4.01. The Lessor shall not be entitled to receive from the U.S. Government and the U.S. Government shall not be obligated to pay the Lessor any monetary consideration for the construction of the Improvements contemplated in this Agreement and Lease. It is understood by the parties hereto that such Improvements shall be and shall remain property of the Lessor for the duration of this Agreement and Lease and any renewals thereof. The Lessor further understands and agrees that the Lessor's construction and completion of the Improvements is a precedent and material condition of any and all obligations assumed by the U.S. Government hereunder this Agreement and Lease.

**5. TERM.**

5.01. The present Agreement and Lease shall be effective on the date of signature hereof. The term of the Lease for the Residential Complex shall begin on the date of the U.S. Government's and Lessor's execution of a Supplemental Agreement as per Appendix "E" of the RFP for the Residential Complex as provided in paragraph 21 of this Agreement and Lease and Annex A hereinafter, and shall extend for an initial term of ten (10) years thereafter with the right of renewal as provided in paragraph 7 hereof.

**6. RENTAL CONSIDERATION.**

6.01. Rent: During the initial ten (10) year term of the Lease, the U.S. Government shall pay the Lessor a fixed annual Rental of €..... (consisting of €...../year for Basic Rent and €...../year for Reimbursements), subject to availability of funds, which amount corresponds to €....., per Dwelling Unit per year regardless of the number of bedrooms, paid in advance with semi-annual installments beginning on the date the Residential Complex is accepted by the U.S. Government. Rent payments shall be made by electronic bank transfer (bonifico bancario) payable to the Bank and International IBAN, BIC/SWIFT coordinates indicated on the Lessor's invoices.

6.02. Price Adjustment: The total annual Rent (Basic Rental and Reimbursements) will be negotiated for all renewal periods. The U.S. Government's initial lease renewal offer to the Lessor must be an amount that is equal to fair market rent at the time of the renewal.

6.03. Partial Termination: In the event of a partial termination per paragraph 8 and 16, the total annual Rent shall be reduced proportionally to the number of housing units terminated

6.04. Invoices: The Lessor shall furnish four copies of invoices for the Rental to the Vicenza Real Estate Field Office, Ufficio Contratti Immobiliari, UNIT 31401, Box 86, Caserma Carlo Ederle, Viale della Pace, Vicenza, Italy. Each invoice shall include the name and address of the Lessor, the name and address of the bank, and the International IBAN and BIC/SWIFT coordinates of the Lessor's bank account, and an itemized list of all charges. The original of each invoice shall be signed by the Lessor or his duly authorized representative and shall include the following certificate in English:

"I certify that this invoice is true and correct, that payment thereof has not yet been made and that the amount does not include the Added Value Tax (IVA) because this transaction is not subject to the IVA tax in accordance with Article 72 of Presidential Decree No. 633 of 26 October 1972. I also certify that the amount of this invoice is exclusive of all other taxes and duties from which

the U. S. Government is exempted by virtue of any tax agreement between the United States Government and the Italian Government.”

6.05. Rental Payment: With the exception of the first and final rental payments which may differ, all other rental payments shall be paid semi-annually (starting 1 October and 1 April), subject to availability of funds. The U.S. Government agrees to make Rental payments within 30 days from the start date of the period it refers to, and upon submission of an invoice to be presented prior to the beginning of the rental period which shall be described in the subsequent Supplemental Agreement accepting delivery of the site. In the event the invoice is presented after the beginning of the rental period, the 30 days for payment shall be calculated starting from the day following the presentation of the invoice. Rents shall be considered to be paid on the date an electronic transfer of funds is initiated by the U.S. Government’s designated paying agent. The Lessor is aware that the first rental payment made under this lease or the rental payment for the first quarter of the United States fiscal year (October, November, December) may be delayed due to administrative procedures or where United States appropriation proceedings are delayed and hereby agrees not to hold the United States liable for such delays. The United States reserves the right to adjust rental payments to coincide with the end of the United States fiscal year (30 September). When rental payments are in fact late, the Lessor agrees that no interest shall be payable, as authorized under Article 6:119 DCC, until the first work day of the next calendar year, that is 2, 3, or 4 January. In the event any other payment is late, the Lessor agrees that interest will not be demanded before the 30<sup>th</sup> day after such rental payment is due. The first rental payment under this lease will be adjusted to correspond to the appropriate quarter of the United States fiscal year and may constitute a portion of the payment due.

## **7. RENEWALS.**

7.01. At the end of the initial ten (10) year term of the Lease, the U.S. Government shall have the right, at its sole option, to renegotiate and renew this Lease for a maximum of four (4) additional periods of five (5) years each on the same terms and conditions as set forth herein, upon provision to the Lessor of at least ninety (90) days written notice thereof before this Lease or any renewal thereof would otherwise expire. The U.S. Government shall have the right to renew the Lease for these 5 year periods separately and shall not be required to renew the additional 20 years all at one time.

7.02. The U.S. Government shall have the right to renew the Lease, in whole or in part. In the event of a partial renewal of the Lease (to renew only a portion of the entire residential Complex), the total annual Rent shall be proportional to the number of housing units remaining in the renewal. For the portion of the residential complex that is not renewed the Lessor and U.S. Government shall follow the same procedure as indicated in sub-paragraph 8.03. regarding termination costs and settlements.

## **8. TERMINATION.**

8.01. If the U.S. Government terminates the Agreement and Lease before construction is complete, the Lessor shall be compensated for any allowable, reasonable, and allocable costs resulting from the termination of the Lease during the construction of the housing units that were to be occupied pursuant to the Lease. Offerors/Lessors should refer to Federal Acquisition Regulation, Subpart 30.4 "Cost Accounting Standards" for information on which costs are allowable, reasonable, and allocable in U.S. Government work. The obligation of the United States to make payments under the agreement in any fiscal year is subject to the availability of appropriations.

8.02. During the initial ten (10) year term of the Agreement and Lease the U.S. Government shall not be entitled to terminate the Agreement and Lease except in the cases expressly provided for in the Agreement and Lease. If the U.S. Government is forced to abandon the Premises in compliance with a demand by the Italian Government or by reason of commencement or threat of hostilities in the territory of the Republic of Italy, the U.S. Government may terminate this Agreement and Lease by giving at least ninety (90) days prior notice in writing by registered mail to the Lessor. Unless the U.S. Government allows for additional time in the notice, the ninety (90) days notice shall be computed commencing with the day after the date of mailing. No rental shall accrue after the effective date of termination. The Lessor shall refund any advance rentals paid but unearned.

8.03. After the initial ten (10) year term of the Lease and at any time during any renewal periods thereafter, the U.S. Government may unilaterally terminate this Lease, in whole or in part, by giving at least thirty (30) days advance written notice by registered mail. Unless the U.S. Government allows for additional time in the notice, the thirty (30) days notice shall be computed commencing with the day after the date of mailing. In the event of a partial termination, the total annual rental shall be reduced proportionally by the number of housing units terminated. In the case of such an early termination, in whole or in part, of the Lease, the Lessor shall refund the U.S. Government any portion of the rent and other charges paid in advance and not earned at the time of termination of the Lease. No restoration shall be required of the U.S. Government upon termination, in whole or in part, or expiration of the Lease except for the damage caused by either misconduct, negligence, or fault of the tenant. If the Lessor requires restoration of such damages for which the U.S. Government is responsible, it shall give written notice to the U.S. Government at least thirty days after receiving notification of the termination or sixty days prior to expiration of the Lease. Within 90 days following the termination, the Lessor shall furnish to the U.S. Government a claim with a detailed cost estimate that the U.S. Government shall evaluate and depreciate by applying an "average life" factor to each item. The parties shall then arrive at a mutually accepted solution, and enter into an Agreement stipulating a cash settlement in exchange for a full release and waiver of all claims. Under no circumstances shall the U.S. Government be obligated to repaint the premises upon termination, in whole or in part, or expiration of the Lease.

8.04. The Lessor agrees that it is bound to this Agreement and Lease and that it has no termination rights for the entire initial 10 year term and any subsequent renewal periods invoked by the U.S. Government in compliance with this Agreement and Lease.

## **9. REGISTRATION AND TAXATION.**

9.01. This Agreement and Lease is, and subsequent modifications and renewal thereof shall be, drawn on plain paper and shall be registered by the Lessor, if so required, with any taxes and duties to be paid by the Lessor as in the spirit of the Memorandum of Agreement between the Italian Government and the United States Government dated 5 March 1952 and subsequent provisions. If, for any reason, the "Ufficio del Registro" requests the payment of the registration tax and/or the payment of a monetary burden and/or surtax due to the non-registration or to a late registration of the Agreement and Lease, or of subsequent modifications and renewal, or non-payment, the Lessor shall be held solely responsible for the above mentioned payments and/or any other related payment. If for any reason similar requests for payment are presented to the U.S. Government, the U.S. Government shall have the right to deduct the paid amount from the rent due under the terms of the Lease. This Agreement and Lease, and subsequent modifications and renewal thereof, is exempt from payment of Value Added Tax (Imposta sul Valore Aggiunto

I.V.A.) and stamp tax for either execution or registration in accordance with Article 72 of D.P.R. No. 633 of 26 October 1972 for the United States of America, or on its behalf for any tax, duty or other public charge.

9.02. The Lessor accepts full and sole responsibility for the payment of all taxes and other charges of a public nature which may arise in connection with this Agreement and Lease and subsequent modifications and renewal or which may be assessed against the demised premises. This includes registration of the Agreement and Lease and subsequent modifications and renewal, payment of relative charges, road access tax, refuses collection fees, etc.

9.03. The Lessor warrants that the rental charges do not include any tax, duty, patent royalty or similar charge which the U.S. Government and the Lessor's Government have agreed shall not be applicable to expenditures in the Lessor's Country by the United States or any tax, duty, or similar charge from which the Lessor is exempt under the laws of the Lessor's Country. If any such tax, duty, or similar charge has been included in the Lease through error or otherwise, the Lease rates shall be correspondingly reduced.

9.04. If for any reason after the execution of the Agreement and Lease the Lessor is relieved in whole or in part from the payment or the burden of any tax, duty, patent royalty or similar charge included in the Agreement and Lease rates, the Rental shall be correspondingly reduced.

#### **10. WARRANTY OF RIGHT TO LEASE THE PREMISES.**

10.01. The Lessor warrants that it has the right to lease the premises. If the title of the Lessor shall fail, or should it be discovered that he could not lease the Residential Complex, the U.S. Government may void the Agreement and Lease. In the event that the title of the Lessor shall fail and the U.S. Government shall be obliged to vacate the premises, the Lessor, his heirs or assigns agree to indemnify the U.S. Government for all loss, damage, liability or expenses incurred by reason of such failure

#### **11. EXCLUSIVE USE.**

11.01. The premises are to be used by members of the U.S. Government. The Lessor shall not interfere with nor restrict the U.S. Government in the peaceful use and enjoyment of the leased premises, nor shall the Lessor erect any fence, wall, partition, or any construction upon the leased premises, except as otherwise agreed to by the U.S. Government.

#### **12. LIENS OR SALE.**

12.01. In the event the Lessor contemplates executing a mortgage on the premises covered by this Agreement and Lease, or any renewal thereof, it is agreed that the Lessor shall obtain an agreement from the Mortgagee that the mortgage shall be subject to the terms of this Agreement and Lease, or any renewal thereof; and the Lessor further agrees that if any other liens are placed against the Premises, agreements shall be obtained from the lien holders that the liens shall be subject to this Agreement and Lease, or any renewals thereof.

12.02. The Lessor shall not convey, transfer, assign, sell, or otherwise dispose of its interests in the premises to another party without the prior written approval of the U.S. Government, which approval shall not be unreasonably withheld.



### **13. ASSIGNMENT OF CLAIMS.**

13.01. No claims for moneys due or to become due shall be assigned by the Lessor unless assigned to a financial institution participating in financing related to this Agreement and Lease and approved in writing by the U.S. Government, such approval not to be unreasonably withheld.

13.02. Any assignment of moneys due under this Agreement and Lease shall be limited to the annual Rent reserved under paragraph 6 herein and shall cover all such amounts payable and not already paid. An assignment shall not be made to more than one party except that any such assignment may be made to one party as agent or trustee for two or more parties participating in financing related to this Agreement and Lease. Notice in writing of any assignment shall be given by the Lessor to the U.S. Government and shall specify the name and address of the assignee which shall furnish a true copy of the instrument of the assignment to the U.S. Government, at least thirty days prior to the date of presentation of any document against which payment would be then due. The Lessor hereby acknowledges that having made such Assignment, for so long as such Assignment continues, shall have no claim for moneys so assigned and payment to the Assignee shall fully discharge the U.S. Government's obligation to pay such moneys and any Assignment shall continue in full force and effect until such time as the Assignee notifies the U.S. Government that the Assignment is at an end.

### **14. MAINTENANCE AND REPAIRS.**

14.01. The Lessor shall at all times maintain the housing units and the Residential Complex in good repair and tenantable condition during the term of the Lease and any option period contained herein, to include the structural maintenance and repair of the housing units and infrastructure of the Residential Complex, including but not limited to, electrical, heating, mechanical and plumbing systems, as well as walls, roofs, and floors of the units, at no additional cost to the U.S. Government. The Lessor covenants and agrees to begin any necessary structural maintenance or repair within (5) five working days after notification of any defect by the U.S. Government. With provision of notice to the Lessor, the U.S. Government may elect to perform any required work upon the failure of the Lessor to initiate work within (5) days or accomplish the work within a reasonable time. All costs, to include a 20% fee for administrative costs, incurred by the U.S. Government in performing structural repair or maintenance upon the Lessor's failure to do so shall be reimbursed to the U.S. Government within (30) days after completion of the work or be set off from rents due under this Lease. The U.S. Government and Lessor shall accomplish a joint annual inspection of the property and vacant units on a date agreeable to both parties. The purpose of the joint inspection shall be to ascertain the condition of the units, the level and appropriateness of maintenance and repair, and any technical issues related to the safety, security, and structural soundness of the Lessor's property.

14.02. Notwithstanding any other provisions of this Agreement and Lease, the Lessor shall be responsible during the initial term of the Lease and any renewal thereof for all ordinary and extraordinary maintenance and repairs to the leased Premises at no additional cost to the U.S. Government unless the need for maintenance or repair is due to fault or negligence of the U.S. Government. The Lessor must complete all non-emergency maintenance and repairs within 10 days from the date notice is given by the U.S. Government. Examples of extraordinary maintenance include, but are not limited to, the following items:

- (1) In general all repairs necessary to insure the stability of walls and vaults.

- (2) Replacement of beams, replacement or repairs to roofs, ceilings, stairs, floors, enclosure walls or structural walls (including but not limited to earthquake damage).
- (3) Replacement of loose or falling roof or wall tiles.
- (4) Replacement of leaking water pipes in walls or pavement.
- (5) Repair of leaking roofs or walls.
- (6) Replacement of hot water heaters, when beyond repair.
- (7) Repair and/or replacement of major defects in heating, air-conditioning, and electrical equipment such as but not limited to deteriorated boilers, burned motors, transformers, or burners.
- (8) Landscaping of gardens (planting of trees, bushes, and seeding of lawns) at the beginning of tenancy.
- (9) Exterior painting of housing units. Complete painting when required as determined by the U.S. Government, approximately every five (5) years.
- (10) Repair of sanitary and storm drainage systems, and repair of potable water distribution systems.
- (11) Repair of roads, sidewalks and gates.

14.03. The Lessor shall be responsible for and perform, all U.S. Government-related ordinary (manutenzione ordinaria) maintenance, repairs, replacements and redecorations to the leased Premises as defined and in accordance with the terms, conditions, criteria and procedures contained in the Offeror's/Lessor's maintenance proposal as required by Appendix B of the RFP.

14.04. During the initial 2 years of the initial 10 year term the Lessor shall be responsible to perform all minor maintenance and repairs (piccola manutenzione), irrespective of the provisions of Article 1609 of the Italian Civil Code. After the initial 2 years of the 10 year term of the Lease, during which the Lessor is responsible to perform all maintenance and repairs, the U.S. Government shall assume the responsibility for the minor maintenance (piccola manutenzione), per Art. 1609 of the Italian Civil Code)

14.05 In the event of emergency maintenance or repairs the U.S. Government may, at its election, either perform the emergency maintenance and repairs and recoup the costs from the Lessor or notify the Lessor of the emergency and require the Lessor to perform the necessary work. All emergency maintenance or repairs performed by the Lessor will be completed within 72 hours from the time of notification. Emergency maintenance or repairs consists of correcting failures or deficiencies, which constitute an immediate safety issue, health hazard, risk of property damage, or threat to the environment, including but are not limited to:

- (1) Failure of heating system to maintain specified temperature.
  - (2) Failure of hot water system.
  - (3) Inadequate or no water pressure.
  - (4) Leaking water pipes.
  - (5) Blocked or leaking drains.
  - (6) Electrical failure on the premises.
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14.06. Should the Lessor fail to provide the necessary maintenance, repairs, replacements, rehabilitation and restoration as set forth herein, the U.S. Government, at its own option, may avail itself of the remedies or other means of redress specified in this Agreement and Lease, including but not limited to, performing such services or making such repairs, replacements, rehabilitation, maintenance and/or redecoration at its own cost, and deducting the full amount plus a 20% fee for administration thereof out of any rents that may then or thereafter become due with respect to the Premises or any portion thereof.

14.07. Repairs resulting from U.S. Government damage and not covered by the insurance required under paragraph 17 hereafter shall be performed by Lessor if requested by the U.S. Government and reimbursed by the U.S. Government. Should the U.S. Government request the Lessor to repair the damage, the Lessor must first provide an estimated cost for the work, which must be approved in advance by the Real Estate Contracting Officer, or a duly appointed representative, prior to starting the repair. Upon completion of such works the Lessor shall submit a written request for reimbursement (in original and three copies) to the address specified in sub-paragraph 6.04 hereof. The Lessor shall not be required to furnish or replace clothes washers, clothes dryers, dishwashers, stoves and refrigerators, such furnishing and replacement to be effected by the U.S. Government at its own option, and title to such clothes washers, clothes dryers, dishwashers, stoves and refrigerators shall remain with the U.S. Government.

## **15. EQUIPMENT, UTILITIES, RATES, CHARGES, ASSESSMENTS.**

15.01. The Lessor shall provide all work and equipment required to connect each individual Dwelling unit to Lessor's plant or public utility in accordance with the Offeror's/Lessor's proposed and approved Final Drawing and Specifications as provided for in Annex A. The Lessor shall pay and discharge all local taxes and assessments incidental to utilities connection. The Lessor shall be responsible for the operation, maintenance and repair of all potable and non-potable water supply treatment and distribution systems and sewage collection and treatment systems and shall bear all costs related thereto. Electrical energy and water required for operation of sewage and water systems shall be metered separately from the Dwelling Units and Lessor shall at all times bear all consumption costs thereof. The Lessor shall meet the requirements of Italian Law 319 of 10 May 1976 and following modifications for sewage treatment. Also, the Lessor shall meet the requirements of Italian Public Health Standards for potable water.

15.02. At all times, sewage collection, treatment and disposal service shall be provided by the Lessor at no cost to the U.S. Government. A suitable garbage and recycling collection point for each individual dwelling unit shall be designated for pickup per Annex A and B. Refuse/garbage and recycling collection and disposal service shall be provided by the Lessor. Garbage and recycling disposal shall be performed by the Lessor away from the Premises and in compliance with local laws, at no additional cost for the U.S. Government. The U.S. Government shall pay directly to the supplier all consumption charges for the supply of potable water, telephone service, heat, gas, electricity, oil or other forms of power or fuel to the family housing units. If water is provided by the Lessor from his own treatment plant on site, the price of such water shall not exceed the price of water provided by local public utilities in the area.

15.03. The Lessor shall provide at its own expense in coordination with and through the telephone and broadband service provider(s) for the connection of each dwelling unit to the Italian Telephone

and broadband network(s). The payment of connection charges and of individual unit telephone and broadband connection and utilization charges shall be paid by the dwelling unit occupants.

15.04. The Lessor, at its own cost and expense, is totally responsible for providing, operating and maintaining an electrical and natural gas distribution systems to serve the individual Dwelling Units in accordance with Annex A and B, through coordination with the appropriate utility company and/or its consultants, including the complete systems, in accordance with the utility company and other standards as established by local authorities. Connection charges as defined and required by the utility company in accordance with applicable CIP provisions for a medium voltage and natural gas master metered service to the Leased Premises shall be paid by the Lessor. Specifically, the utility charges shall be determined consistent with the utility demands estimated for the project. Electricity, water, and Natural Gas consumption charges for the Dwelling Units shall be paid by the U.S. Government directly to the utility company under a contractual agreement with the U.S. Government. Water consumption for irrigating and cleaning of the common areas shall be paid for by the Lessor.

15.05. Prior to the acceptance, by the U.S. Government, of the Residential Complex/premises the Lessor shall ensure that all the required gas meters of the firm (selected by the U.S. Government) supplying the gas are installed and opened, in the Lessor's name, and shall ensure all the tests and certificates of compliance have been executed and deposited. The U.S. Government shall ensure the gas supply contracts are transferred to the U.S. Governments name prior to utilizing the premises.

15.06. Prior to the acceptance, by the U.S. Government, of the Residential Complex/premises the Lessor shall ensure all utility connections (water, gas, sewer and electricity) are completed and connected to the distribution system of the firms providing the service. In the event the U.S. Government is unable to obtain all the utilities contracts by the start date of the Lease contract, the start date of the 10 year term shall be shifted to reflect the date the U.S. Government has obtained the utilities contracts.

15.07. The Lessor warrants that the mechanical equipment and utilities shall be maintained in good serviceable and operating conditions. In particular the Lessor warrants that the heating system of the leased premises shall be, at the moment of delivery, adequate and sufficient to maintain a 25 degrees C. temperature. If the heating, air-conditioning, domestic hot water, electric, water or gas systems prove to be inadequate during the term of the Lease and subsequent renewals, the Lessor agrees to correct the deficiencies at his expense. Furthermore, the Lessor warrants the mechanical equipment, utilities and their respective systems comply with present Italian safety norms. Should these norms be changed or modified the Lessor shall, at its expense, do whatever is necessary to comply with the new norms.

## **16. DAMAGES.**

16.01. The U.S. Government shall be liable only for damage to the premises resulting from negligence or misconduct of U.S. Government personnel, dependents, or guests. It is agreed and understood that the U.S. Government shall not be liable for any loss, destruction, or damages to the premises due to any defect beyond the control and without the fault or negligence of the U.S. Government, including, but not restricted to, fire, wind, lightning, storm, acts of God, tempest, explosion, aircraft impact, riot, civil commotion, bursting or overflowing of water tanks,

apparatus or pipes, flood, unusually severe weather, labor disturbances, theft, vandalism and other malicious damage.

16.02. If, during the term of the Lease, the premises be destroyed by fire, become unfit for occupancy for any reason whatsoever, or any other casualty, the Lease shall immediately be terminated. In that event, the Lessor shall refund the U.S. Government any portion of the rent and other charges paid in advance and not earned at the time of termination due to destruction. If, however, the premises be partially destroyed or damaged by fire, become unfit for occupancy, or any other casualty, this Lease may be terminated at the option of the U.S. Government upon written notice. If not terminated, the rent shall be reduced proportionally by supplemental agreement effective from the date of such partial destruction or damage and the Lessor shall at his expense repair the premises as soon as possible.

## **17. INSURANCE.**

17.01. During the term of this Agreement and Lease, and all renewals thereof, Lessor shall carry on the leased premises insurance coverage, with a reputable insurer, against the risks enumerated above and also covering liability in case of personal injury or death, in an amount and variety as sufficient and customary for the purposes insured and shall ensure that the interests of the U.S. Government are endorsed on the policy of insurance. In respect to insurance carried by Lessor on the leased Premises, each policy of insurance so carried by Lessor shall contain an endorsement providing that there shall be no subrogation against the U.S. Government, U.S. Government's officers, employees, families and dependents, agents or others occupying said leased Premises or acting on U.S. Government's behalf. In no circumstances shall the Lessor be entitled to assign to any third party any rights of action which Lessor may have against the U.S. Government or U.S. Government's officers and employees, families and dependents, agents or others occupying said leased Premises or acting on U.S. Government's behalf, and any such assignment or purported assignment is hereby declared to be null and void ab initio. As for common areas, recreation areas and playgrounds the Lessor shall define in advance if these areas shall be private for the exclusive use of the U.S. Government, or the general public. If common areas shall be for public use, the Offeror shall define in advance who shall be responsible to maintain such areas, liability to the U.S. Government, liability insurance to be provided by the Offeror.

## **18. HOLD HARMLESS.**

18.01. The Lessor agrees to indemnify and hold harmless the United States Government against all claims and suits of whatsoever nature arising under or incident to performance of this Agreement and Lease by any third persons against the United States Government, unless the claims or suits arise from negligence of the U.S. Government or one of its employees or agents. The Lessor further agrees to waive his right to bring suit or other legal action against the United States Government with the single and sole recourse being that specified in paragraphs 31. and 32. hereto.

## **19. ADDITIONS AND ALTERATIONS.**

19.01. Upon written approval of the U.S. Government, the Lessor may make additions and alterations of the leased premises. This shall be accomplished by supplemental agreement.

19.02. Upon written approval of the Lessor, which shall not be reasonably withheld, the U.S. Government may make additions, alterations, or improvements and attach fixtures or signs in or upon the leased premises. These additions, alterations, improvements, fixtures, or signs shall be considered as personal property and shall remain the property of the U.S. Government and may be

removed or otherwise disposed of by the U.S. Government upon expiration or termination of the Lease. In this case, Art. 1592 of the Italian Civil Code shall also apply. The U.S. Government shall have the right to request the Lessor to perform the above mentioned works. Methods, timing and estimated costs to perform such works shall be agreed upon in advance by the Lessor and the U.S. Government or their representatives. Upon completion of such works the Lessor shall submit a written request for reimbursement (in original and three copies) to the address specified in subparagraph 6.04. hereof.

**20. ACCESS TO PROJECT SITE.**

20.01. The Lessor agrees to permit the U.S. Government's representatives, agents and employees access to and right of entry onto the site before, during and after construction of the Improvements for purposes of monitoring, observing, making inquiries and taking samples of materials for testing as may be necessary in order for the U.S. Government to evaluate the physical characteristics of the Improvements, as well as such other matters as may be deemed by the U.S. Government to be reasonably necessary for the U.S. Government to determine compliance with the Construction Drawings and Technical Specifications contained in Annex A. It is understood by the parties hereto that such activity does not relieve the Lessor of its responsibility for managing the construction and completing the Improvements pursuant to the terms and provisions of the Agreement and Lease and that the U.S. Government's failure to make such on-site inspections or testing shall not limit the U.S. Government's rights in or the terms and provisions of this Agreement and Lease.

**21. CONSTRUCTION SCHEDULE, DELAYS AND DEFAULT.**

21.01. The Lessor shall start the construction of the Residential Site no later than ..... and shall complete it within .....

21.02. The Lessor agrees that in the event the Residential Site is not completed on the scheduled date indicated above, and in accordance with Annex A and B hereto, said failure to complete shall constitute a default of this Agreement and Lease and the U.S. Government may at its option exercise the following remedies: (1) establish a new schedule for completion of all or part of the Improvements and assess liquidated damages of €150.00 per Dwelling Unit for each day of delay of each unit past the completion date as provided herein, such sum to be deducted from any rental payments due under the Agreement and Lease; or, after a delay of no less than ninety (90) days, (2) cancel or terminate this Agreement and Lease without any cost, liability or damages, or legal action of any kind against the U.S. Government or its assignees.

21.03. If for reasons determined by the U.S. Government to be beyond the control and without the fault or negligence of the Lessor, the Residential Site is not completed in accordance with Annex A and B hereto, the U.S. Government may provide for an extension of time for the completion of the Improvements.

**22. COVENANT AGAINST CONTINGENT FEES.**

22.01. The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement and Lease upon an agreement or understanding for a commission, percentage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty the U.S. Government shall have the right to annul this Lease without liability or, in its discretion, to deduct from the rental price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

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**23. UNITED STATES OFFICIALS NOT TO BENEFIT.**

23.01. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement and Lease or to any benefit that may arise there from, but this provision shall not be construed to extend to this Agreement and Lease if made with a corporation for its general benefit.

**24. GRATUITIES.**

24.01. The U.S. Government may, by written notice to the Lessor, terminate the right of the Lessor to proceed under this Agreement and Lease if it is found, after notice and hearing, by the Secretary of the Army of the United States or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or representative of the Lessor, to any officer or employee of the U.S. Government with a view toward securing an Agreement and Lease or securing favorable treatment with respect to the performance of such Agreement and Lease; provided that the existence of facts upon which the Secretary of the Army of the United States or his duly authorized representative make such findings shall be in issue and may be reviewed in any competent court.

24.02. In the event this Agreement and Lease is terminated as provided in sub-paragraph 24.01. above, the U.S. Government shall be entitled (1) to pursue the same remedies against the Lessor as it could pursue in the event of a breach of the Agreement and Lease by the Lessor, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army of the United States or his duly authorized representative) which shall not be less than three nor more than ten times the costs incurred by the Lessor in providing any such gratuities to any such officer or employee.

24.03. The rights and remedies of the U.S. Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement and Lease.

**25. CONDITION REPORT.**

25.01. A joint physical inventory and inspection report of the demised premises shall be made prior to acceptance and the effective date of the Lease, reflecting the then existing condition, and shall be signed on behalf of the parties hereto. The same procedure shall apply at the time the U.S. Government surrenders possession of the premises to the Lessor.

**26. NOTICE.**

26.01. Any notice under the terms of this agreement shall be in writing signed by a duly authorized representative of the party giving such notice. If notice is given by the U.S. Government, it shall be addressed to:

Name of Lessor: .....  
Address: .....  
.....  
Telephone No.: .....  
Fax. ....  
E-mail: .....

and if given by Lessor, it shall be addressed to:

Vicenza Real Estate Field Office,  
Ufficio Contratti Immobiliari  
Unit 31401 Box 86,  
Caserma Carlo Ederle,  
Viale della Pace, 36100 Vicenza, Italy,  
Fax No.: +39-0444-717727  
E-mail: real.estate@eur.army.mil

**27. PERMITS AND RESPONSIBILITIES.**

27.01. The Lessor shall, at its own cost, comply with all applicable laws and regulations. The Lessor shall obtain all necessary licenses and permits required for and shall comply fully with laws related to Construction of the Residential Complex and performance of its other obligations under this Agreement and Lease. The U.S. Government shall have no responsibility for any failure of the Lessor to comply in the future with applicable laws, regulations, licenses, or permits.

**28. ARCHEOLOGICAL FINDINGS**

28.01. The Lessor shall verify with the competent local Authorities that the land parcels proposed for the Residential Complex does not present any known archeological interest and shall provide certification thereto. In the event that, contrary to current knowledge and expectation, archeological findings should occur during excavation, the Lessor shall promptly notify the competent Authorities and shall take action in accordance with Italian Law requirements. All archeological findings shall be dealt with by Lessor in accordance with the directions of Italian Authorities and the relevant costs shall be paid by the Lessor in full, including those associated to possible construction work delays. The schedule from paragraph 21 shall be maintained unless the Lessor receives directives from Italian authorities to stop working in the affected area.

**29. UNEXPLODED ORDNANCE**

29.01. The Lessor shall verify with the competent experts and competent local Authorities that the land parcels proposed for the Residential Complex does not present any known risk of unexploded ordnance and shall provide certification thereto. In the event that, contrary to current knowledge and expectation, unexploded ordnance findings should occur during excavation, the Lessor shall promptly notify the competent Authorities and shall take action in accordance with Italian Law requirements. All unexploded ordnance findings shall be dealt with by Lessor in accordance with the directions of Italian Authorities and the relevant costs shall be paid by the Lessor in full, including those associated to possible construction work delays.

**30. LAND CONTAMINATION**

30.01. The Lessor shall provide a certification that there is no evidence of environmental contamination in the land parcels proposed for the Residential Complex. This certification shall document the investigations performed and shall provide a detailed description of the criteria followed and of the methods utilized to determine the absence of contamination, together with all the analyses, data and test results that contributed to this determination.

30.02. The documentation shall: 1) describe in detail the area(s) proposed and all the activities that have been and/or are performed on the site(s); 2) identify the correlations between these activities and the type, location, and extension of the potential contamination; 3) describe the characteristics of the environmental media influencing the site(s) and the surrounding areas; 4) indicate those



provisions that may be necessary for the protection of the environment and of public health in the area(s) proposed; 5) provide the results of the investigation plan executed to determine that there is no evidence of any past contamination or suspected past contamination in the area(s) proposed, including a detailed description of the criteria and methods utilized to develop and execute this investigation plan.

30.03. This certification shall be prepared, signed, and stamped by an independent qualified professional, and shall include a sworn statement that there is no evidence of any past contamination or suspected past contamination in the area(s) proposed for the Residential Complex.

30.04. In the event that instances of past contamination should be found during excavation/construction works, the Lessor shall be fully responsible for the complete cleaning of the areas involved and shall bear all relevant costs in full, including those associated to possible construction work delays.

### **31. DISPUTES CLAUSE.**

31.01. All claims or controversies arising under or related to this Agreement and Lease, and subsequent modifications and renewals, shall be resolved under Federal Acquisition Regulation (FAR) Clause 52.233-1 effective as of May 1, 1997. The Lessor shall proceed diligently with performance of the Agreement and Lease pending final resolution of any request for relief or claim or appeal or action arising under or relating to the Agreement and Lease and comply with any decision of the U.S. Government's Contracting Officer. The Chief of the Vicenza Real Estate Field Office is the U.S. Government's Contracting Officer for purposes of the Agreement and Lease.

31.02. After commencement of the 10 year term, Italian law shall apply to resolve all claims or controversies arising under or related to the Lease, except those arising under or related to any provision or provisions specified in paragraph 2.05, 7, 8, 13, 24, and 33 which shall be governed by US law.

### **32. ARBITRATION CLAUSE.**

32.01. Until the U.S. Government obtains and notifies the Lessor in writing that the U.S. Government has authority under US law under the Administrative Dispute Resolution Act of 1996 (to be codified at Title 5 United States Code, Sections 571 et. seq. and Title 41 United States Code Sections 605 and 607) (the "ADRA"), to submit claim or controversy to binding arbitration, all claims or controversies shall be resolved pursuant to paragraph 31. Upon written notification by the U.S. Government of its authority to submit to binding arbitration, the Lessor and U.S. Government agree to submit consistent with the U.S. Government's authority to arbitrate all controversies or claims arising out of or relating to the Agreement and Lease to arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) (Arbitration Rules). The U.S. Government shall use its best endeavors to take such actions as are necessary to obtain the authority to engage in binding arbitration.

32.02. The Lessor and U.S. Government agree and shall instruct the Arbitrator that:

- (1) The place of arbitration shall be at Permanent Court of Arbitration at The Hague, The Netherlands, or Casema Carlo Ederle, Vicenza, Italy, as determined by the Arbitrator;
- (2) The Arbitrator shall conduct the arbitration proceeding according to the Arbitration Rules;

- (3) The Arbitrator shall use the law that would apply under operations of paragraph 32 to resolve the claim or controversy; and
- (4) The Arbitrator's written decision shall provide an explanation of the applicable laws and relevant facts used in reaching his or her decision and shall provide the document to the Lessor and U.S. Government within thirty (30) calendar days after the arbitration hearing.

32.03. Commencement of an Arbitration shall be accomplished in accordance with the Arbitration Rules and shall be initiated by written notice served on the other (the "Arbitration Notice") that states the controversy(ies) or claim(s) to be submitted to the decision of the Arbitrator (the "Arbitrator") except that the Lessor and U.S. Government shall be provided twenty (20) calendar days to mutually agree upon an arbitrator from a list of between three (3) and five (5) Arbitrators to be selected by the Secretary-General of the Permanent Court of Arbitration at The Hague, The Netherlands.

32.04. In the event the Lessor and U.S. Government are unable to agree upon an Arbitrator within twenty (20) calendar days after the service of an Arbitration Notice then the Arbitrator shall be appointed on the application of either the Lessor or U.S. Government by the Secretary-General of the Permanent Court of Arbitration at The Hague, The Netherlands, or his duly appointed deputy or any other person authorized by him to make appointments on his behalf.

32.05. During the pendency of a decision by the Arbitrator, the Lessor and U.S. Government shall proceed diligently with performance or obligations under this Agreement and Lease unless the requirement for such performance is stayed by a court of competent jurisdiction.

32.06. The Lessor and U.S. Government also agree to share the costs of the Arbitrator equally subject to the availability to the U.S. Government of appropriated funds to pay such costs.

32.07. The Lessor and U.S. Government understand and agree that the U.S. Government's obligation to pay a settlement and any interest thereon, pursuant to the Agreement and Lease is contingent upon the availability of appropriated funds proper for such payment. Interest on any amounts found due from the U.S. Government or Lessor shall be paid at a rate computed in accordance with the methodology specified under FAR 33.208.

32.08. If no binding and enforceable arbitral award is made within the time specified, or if it is reasonably foreseeable that such an award cannot be made, then the controversy or claim shall be resolved pursuant to sub-paragraph 31.01. if the Prior Conditions are not satisfied by the Lessor or sub-paragraph 31.02. if the Prior Conditions have been satisfied by the Lessor.

### **33. UNITED STATES CODE.**

33.01. This Agreement and Lease is entered into pursuant to the authority of Title 10 United States Code, Section 2828. The requirements of that statute were met and complied with in relation to this Agreement and Lease prior to its execution. The maximum annual expenditure by the U.S. Government for rental of the Residential Complex/premises including all costs for utilities, maintenance and operation shall not exceed the statutory annual ceiling established by United States law pursuant to Title 10 United States Code, Section 2828 (e)(2) or successor statute as amended from time to time. The Lessor acknowledges that this Agreement and Lease shall not become an effective legal instrument until executed and signed by the authorized representative of the United

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States of America empowered to execute this Agreement and Lease in accordance with appropriate delegations of the above statutory authority.

**34. AVAILABILITY OF APPROPRIATIONS.**

34.01. All payments by the U.S. Government due under this Agreement and Lease cannot exceed the amount of appropriations available at the time such payments are due hereto. Additionally, nothing contained in this Agreement and Lease shall be considered as implying that the Congress of the United States of America shall, at any later date, appropriate sufficient funds to meet any deficiencies hereto. In the event the amount of appropriations is not sufficient to cover all payments due under this Agreement and Lease, the U.S. Government shall notify the Lessor of the amount of appropriations available for this Agreement and Lease and, at the option of the Lessor, either pay the amount of appropriations available as payment in full or vacate the Premises within ninety (90) days. If the U.S. Government is obligated to vacate the Premises, all payments shall be prorated based on the daily rate of the current annual payment amounts.

**35. MODIFICATION.**

35.01. No change or modification of this Agreement and Lease shall be effective unless it is in writing and signed by both parties to the Agreement and Lease.

**36. INTERPRETATION.**

36.01. This Agreement and Lease is executed only in the English language, which shall prevail.

**37. ANNEXES.**

37.01. The following annexes are an integral part of this Lease:

- (1) ANNEX "A" - Prior Conditions to be Satisfied by the Lessor
- (2) ANNEX "B" - Maintenance Specifications
- (3) ANNEX "C" - Cadastral Drawing.
- (4) ANNEX "D" - Location/General Site Plan.
- (5) ANNEX "E" - Joint Inventory and Condition Report

**38. EXECUTION.**

38.01. IN WITNESS WHEREOF, the parties hereunto subscribed their names on the date above written.

IN THE PRESENCE OF:

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LESSOR

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THE U.S. GOVERNMENT

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WITNESS

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WITNESS

## **ANNEX A**

### **PRIOR CONDITIONS TO BE SATISFIED BY THE LESSOR**

1. The Lessor shall satisfy the following conditions within 90 days of execution of the Agreement and Lease by both parties. The conditions listed below shall be considered prior conditions for the purposes of this Agreement and Lease notwithstanding that the Lessor may have satisfied all or some of the conditions prior to the above referenced execution of the Agreement and Lease. The Lessor shall within 10 days of the date of the execution of the Agreement and Lease provide a letter to the U.S. Government stating the conditions deemed by the Lessor to have already been satisfied prior to the date hereof. The U.S. Government shall respond within 10 days of receipt of such letter either acknowledging that the condition has been satisfied, or informing the Lessor of the deficiency remaining before the condition may be considered satisfied. The Lessor agrees that in the event it doesn't satisfy the following conditions within the 90 days of execution of the Agreement and Lease by both parties, said failure shall constitute a default of this Agreement and Lease and the U.S. Government may at its option exercise the following remedies: (1) establish a new schedule for the Lessor to satisfy the prior conditions, or (2) cancel or terminate this Agreement and Lease without any cost, liability or damages, or legal action of any kind against the U.S. Government or its assignees.

1.1. Provide evidence [satisfactory to the U.S. Government], that the Lessor has obtained an irrevocable offer or commitment from a bank or other financial institution of recognized responsibility for the financing necessary to enable the Lessor to fulfill its obligation under this Agreement and Lease, and that such financing plan complies with all terms of this Agreement and Lease.

1.2. Provide evidence [satisfactory to the U.S. Government], that the Lessor owns or has an enforceable contract valid for the entire initial ten (10) year term and any renewal periods thereafter, providing it shall have sufficient right, title and interest in the Site [or such other property as the parties may subsequently agree upon in writing], free from encumbrances or restrictions which would materially interfere with the Residential Complex agreed upon herein or the use of the Units as family housing by the U.S. Government, and the Lessor shall not convey, transfer, assign, sell, or otherwise dispose of its interests in the premises to another party without the prior written approval of the U.S. Government, which approval shall not be unreasonably withheld.

1.3. Provide evidence [satisfactory to the U.S. Government], that the appropriate governmental agencies and commercial organizations shall make water, storm drainage, sewage drainage, telephone service, electricity and, natural gas available to permit the development and use of the site as family housing by the U.S. Government.

1.4. Provide evidence [satisfactory to the U.S. Government], that the Lessor has obtained all final planning permissions, building regulations and other approvals and consents necessary for the Construction of the Residential Complex.

1.5. Develop [from the concepts, designs, and other representations in its proposal] and provide to the U.S. Government [for review and approval in accordance with the following submission and review procedure in this clause] detailed drawings and specifications from which the Construction of the Residential Complex shall be built.

1.5.1. Within forty-five (45) days (or such longer period or periods as the parties both acting reasonably may subsequently from time to time agree upon in writing) from the date of execution of the Agreement and Lease the Lessor shall submit to the U.S. Government Pre-final Drawings and Specifications for Construction of the Residential Complex, to include unit plans and specifications that have developed further than their state at proposal, site layouts for roads, drives, footpaths, sidewalks, playgrounds, parking and recreation areas.

1.5.2. The U.S. Government shall within fifteen (15) days after receipt of the Pre-final Drawings and Specifications, or such longer period or periods as the parties both acting reasonably may subsequently from time to time agree upon in writing, either signify the U.S. Government's approval to the Pre-final Drawings and Specifications submitted in accordance with sub-paragraph 1.5.1 of this Annex A or submit to the Lessor its comments on and suggested changes to the Pre-final Drawings and Specifications. The Lessor shall incorporate such comments and suggested changes into the Final Drawings and Specifications, provided the net result of all suggested changes do not exceed more than 1% of the total (10 year) Rent from the cost associated with construction of the site in accordance with the Pre-final Drawings and Specifications, nor cause an unreasonable delay in the Lessor being able to satisfy all or any of the Prior Conditions set forth in this Annex A, nor prevent compliance by the Lessor with the various consents referred to in this Annex A. In the event that the U.S. Government does not submit comments or suggested changes within the period or periods specified above the Pre-final Drawings and Specifications shall be deemed to have been approved.

1.5.3. The Final Drawings and Specifications shall be sent to the U.S. Government upon completion for review and final approval by the U.S. Government. Provided the Final Drawings and Specifications adequately and appropriately incorporate all agreed changes and comments to the Pre-final Drawings and Specifications, the U.S. Government shall approve the Lessor's submission and Approved Final Drawings and Specifications shall be returned to the Lessor within ten (10) days after receipt by the U.S. Government duly signed by the Real Estate Contracting Officer, or his duly authorized representative.

1.5.4. In the event that the Lessor and the U.S. Government, acting reasonably, are unable to reach agreement on the comments on [and suggested changes to] the Pre-final Drawings and Specifications within forty-five (45) days, or in the event the Lessor and the U.S. Government, acting reasonably, are unable to agree to the final form of the Approved Final Drawings and Specifications within forty-five (45) days after the Final Drawings and Specifications shall have been submitted to the Lessor pursuant to sub-paragraph 1.5.3 of this Annex A, or such longer period or periods as the parties, both acting reasonably, may subsequently from time to time agree upon in writing, then either party may terminate this Agreement and Lease by giving written notice to the other party and neither party shall be liable to the other for any costs incurred under this Agreement and Lease.

1.5.5. The Lessor shall not commence Construction of the Residential Complex prior to receipt of Notice to Proceed from the U.S. Government which Notice to Proceed shall be issued within ten (10) days of all the conditions specified in paragraph 1 of this Annex A having been satisfied.

1.5.6. The Lessor shall complete the Construction of the Residential Complex in accordance with the requirements and specifications contained in the Approved Final Drawings and Specifications,

the requirements of this Annex A and the representations made in its final proposal submitted in response to the Lessor's REQUEST FOR PROPOSAL.

1.5.7. The U.S. Government undertakes that where any confirmation of satisfaction or approval is required from the U.S. Government under this Annex A, the same shall not be unreasonably withheld or delayed.

1.5.8. In the event that the Lessor does not satisfy the above conditions [within the period stated, or such longer period or periods as the parties, both acting reasonably, may subsequently, from time to time, agree upon in writing] the U.S. Government shall have the right to terminate this Agreement and Lease without liability by giving written notice to the Lessor.

2. The Lessor shall strictly comply with all floor areas stated in the Approved Final Drawings and Specifications in constructing the Units. Upon completion of construction and prior to acceptance of the Residential Complex by the U.S. Government, the Lessor shall demonstrate by actual measurement that the floor areas have been satisfied in respect of each Unit.

3. After receipt of the Notice to Proceed the Lessor shall, without unreasonable delay, commence the Construction of the Residential Complex and shall complete the construction of the site ready for occupancy within the time period specified in its proposal.

3.1. The Lessor shall submit to the U.S. Government within 15 days after receipt by the Lessor of the Notice to Proceed a projected construction schedule to complete Construction of the Residential Complex within the time period specified in its proposal and reiterated in paragraph 21. of the Agreement and Lease.

3.2 If the Lessor or the Builder fails to complete the Construction of the Residential Complex within the period specified in its proposal, or any extensions agreed or settled under sub-paragraph 3.3 of this Annex A, the Lessor shall pay to the U.S. Government as fixed and agreed liquidated damages for each Dwelling Unit not completed, the sum of €150.00 per Dwelling Unit for each day of delay, as also stated in paragraph 21 of the Agreement and Lease. Alternatively, the U.S. Government without liability and without prejudice to any other rights or remedies may if any of the following events shall occur terminate this Agreement and Lease (in whole or in part) by notice to the Lessor by registered or recorded delivery post:

3.2.1 Without reasonable cause the Lessor wholly suspends the Construction of the Residential Complex [or in any way unequivocally repudiates its obligation to complete the Construction of the Residential Complex] before completion thereof; or

3.2.2. There is a material breach by the Lessor of any of the provisions of this Agreement and Lease and such breach is not remedied within 10 days (or such longer period as may be appropriate in the relevant circumstances as agreed between the parties acting reasonably) of the receipt by the Lessor of notice in writing from the U.S. Government specifying the breach; or

3.2.3. The Lessor shall file for bankruptcy; or

3.2.4. A receiver or manager of the Lessor's business or undertaking is appointed and who does not adopt this Agreement and Lease in terms satisfactory to the U.S. Government.

3.3. If a delay in completing the Residential Complex ready for occupation arises from unforeseeable causes beyond the control and without the fault or negligence of the Lessor or the Builder, the completion periods specified above may be extended. Examples of such causes include

acts of God or of the public enemy, acts of the U.S. Government in either its sovereign or contractual capacity, acts of the Government of Italy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of the Lessor, the Builder and the subcontractors or suppliers. The Lessor shall within 10 days from the beginning of any delay (unless extended by the U.S. Government) notify the U.S. Government in writing of the causes of delay. The U.S. Government shall ascertain the facts and the extent of the delay. If, in the judgment of the U.S. Government, acting reasonably and without delay, the finding of facts warrant such action, the time for completing the work shall be extended to accommodate the agreed period of delay. The findings of the U.S. Government shall be final and conclusive on the parties, but subject to appeal under the disputes clause. The rights and remedies of the parties in this clause are in addition to any other rights and remedies provided by law or under this Agreement and Lease.

4. The Lessor shall maintain an adequate quality assurance and inspection system and perform such surveys and inspections as shall ensure Construction of the Residential Complex in accordance with the Approved Final Drawings and Specifications and the terms and conditions of this Agreement and Lease. The U.S. Government may also perform quality assurance surveys of the Lessor's progress in constructing the Dwelling Units and developing the site. The Lessor shall cooperate fully with the U.S. Government's quality assurance evaluators, who from time to time, may visit and assess the progress and quality of the work for the sole benefit of the U.S. Government and without prejudice to any of the rights of the U.S. Government set forth in this Agreement and Lease.

4.1. Promptly upon completion of construction of the Dwelling Units, and on prior arrangement with the Lessor, the U.S. Government shall inspect and test the Dwelling Units and related areas, spaces, improvements and appurtenances for conformance with the Approved Final Drawings and Specifications and terms and conditions of this Agreement and Lease. Inspections and tests by the U.S. Government are for the sole benefit of the U.S. Government and do not:

4.1.1. Relieve the Lessor of responsibility for providing adequate quality control measures during Construction of the Residential Complex;

4.1.2. Relieve the Lessor of responsibility for any damage to the Residential Complex before acceptance;

4.1.3. Constitute or imply acceptance of the Residential Complex, or any part thereof;

4.1.4. Affect the continuing rights of the U.S. Government after acceptance of the completed Residential Complex under sub-paragraph 4.7 of this Annex A;

4.2. The presence or absence of U.S. Government's inspector does not relieve the Lessor from any requirement of this Agreement and Lease nor is the inspector authorized to change any term or condition of the Approved Final Drawings and Specifications of this Agreement and Lease.

4.3. The Lessor shall promptly furnish without additional charge all facilities, labor and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the U.S. Government. The U.S. Government may charge to the Lessor any reasonable additional cost of inspection or test when work is not ready at the time specified by the Lessor for inspection or

test. The U.S. Government shall perform all inspections and tests in a manner that shall not unnecessarily delay the work.

4.4. The Lessor shall, without charge, replace or correct work found by the U.S. Government, acting reasonably and properly, not to conform to the Approved Final Drawings and Specifications.

4.5. If the Lessor does not promptly replace or correct work reasonably and properly rejected under sub-paragraph 4.4 of this Annex A then the U.S. Government may (without prejudice to any other right or remedy available to it) by contract or otherwise, replace or correct the work and charge the cost to the Lessor unless either the U.S. Government consents to accept the work with an appropriate adjustment in the rent or the deviations have been approved in writing by the U.S. Government.

4.6. If, before acceptance of the Residential Complex, the U.S. Government decides to examine already completed work by removing it or tearing it out, the Lessor on request shall promptly furnish all necessary facilities, labor and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Lessor or Builder, the Lessor shall bear the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet the requirement of this Agreement and Lease, the U.S. Government shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

4.7. The U.S. Government shall accept the Residential Complex within ten (10) working days of completion and successful inspection of all work required by this Agreement and Lease, which inspection shall be completed within five (5) working days of notification of practical completion. Deficiencies noted on final inspection shall be noted on a punch-list and corrected by the Lessor prior to acceptance by the U.S. Government. Acceptance shall not occur until the entire Residential Complex is complete and shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud or the U.S. Government's rights under any warranty or guarantee. The U.S. Government and the Lessor agree that the 10 year Lease term stated herein shall commence on the day following the day upon which the U.S. Government accepts the entire Residential Complex. This shall be executed by a Supplemental Agreement to this Agreement and Lease and subsequent modifications.

5. The Lessor and the U.S. Government agree that on completion of the Residential Complex, and prior to the U.S. Government's acceptance of the residential Complex, a Joint Inventory and Condition Report shall be prepared reflecting the then existing condition, and shall be signed on behalf of the parties hereto. Such report shall be attached to the Lease.

6. The U.S. Government and the Lessor agree that the Lease term stated herein shall commence on the day following the day upon which the U.S. Government accepts the entire Residential Complex under paragraph 4.7 of this Attachment.



**ANNEX B**  
**MAINTENANCE SPECIFICATIONS**

**ANNEX C**  
**CADASTRAL DRAWING**

**ANNEX D**  
**LOCATION/GENERAL SITE PLAN**

**ANNEX E**  
**JOINT INVENTORY AND CONDITION REPORT**