

FINDING OF SUITABILITY TO LEASE

MODEL LEASE PROVISION

POSTED 03/21/97

ENVIRONMENTAL PROTECTION PROVISIONS

1. The sole purpose for which the leased premises and any improvements thereon may be used, in the absence of prior written approval of the Government for any other use, are [insert intended use of the leased premises].
2. 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. Such consent shall not be unreasonably withheld or delayed. Every sublease shall contain the Environmental Protection provisions herein.
3. The Lessee and any sublessee shall comply with the applicable Federal, state, and local laws, regulations, and standards that are or may become applicable to Lessee's activities on the Leased Premises.
4. The Lessee and any sublessee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under the Lease, independent of any existing permits.
5. The Government's rights under this Lease specifically include the right for Government officials to inspect upon reasonable notice the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, 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. The Government normally will give the Lessee or sublessee twenty-four (24) hours prior notice of its intention to enter the Leased Premises 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.

NOTE: USE THE FOLLOWING PROVISION 6 IF THE LEASED PROPERTY IS PART OF A NATIONAL PRIORITIES LIST (NPL) SITE: ADAPT TO CLEANUP AGREEMENTS TO SUIT CLEANUPS UNDER STATE AUTHORITIES (E.G., A NON-NPL SITE).

6. The Government acknowledges that [insert name of military installation] has been identified as a National Priority List (NPL) Site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The Lessee acknowledges that the Government has provided it with a copy of the [insert name of military installation] Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (EPA) Region [insert number], the State of [insert name of state], and the Department of the Army and effective on [insert date], and will provide the Lessee with a copy of any amendments thereto. The Lessee agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended ("FFA," "Interagency Agreement" or "IAG") and the provisions of this Lease, the terms of the FFA [or IAG] will take precedence. The Lessee further agrees that notwithstanding any other provisions of the Lease, the Government assumes no liability to the Lessee or its sublessees or licenses should implementation of the FFA interfere with the Lessee's or any sublessee's or licensee's

use of the Leased Premises. The Lessee shall have no claim on account of any such interference against the United States or any officer, agent, employee or contractor thereof, other than for abatement of rent.

NOTE: USE THE FOLLOWING PROVISION 7 IF A FEDERAL FACILITIES AGREEMENT (FFA) OR INTERAGENCY AGREEMENT (IAG) APPLIES TO THE PROPERTY BEING LEASED (E.G., AN NPL SITE)

7. The Government, EPA, and the [insert name of state agency] and their officers, agents, employees, contractors, subcontractors, have the right, upon reasonable notice to the Lessee and any sublessee, to enter upon the Leased Premises for the purposes enumerated in these subparagraph and for such other purposes consistent with any provision of the FFA:
 - (a) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the [insert name of military installation] Installation Restoration Program (IRP), FFA or IAG;
 - (b) to inspect field activities of the Government and its contractors and subcontractors in implementing the [insert name of military installation] IRP, FFA or IAG;
 - (c) to conduct any test or survey required by the EPA or [insert name of state agency] relating to the implementation of the FFA or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or [insert name of state agency] by the Government relating to such conditions;
 - (d) to construct, operate, maintain or undertake any other response or remedial action, as required or necessary under the [insert name of military installation] IRP or the FFA or IAG, including, but not limited to monitoring wells, pumping wells, and treatment facilities;
 - (e) to conduct Environmental Compliance Assessment System Surveys (ECAS).

NOTE: USE THE FOLLOWING ALTERNATIVE PROVISION 7 IF THE INSTALLATION RESTORATION PROGRAM (IRP) OR OTHER ENVIRONMENTAL INVESTIGATION APPLIES TO THE PROPERTY BEING LEASED (E.G., A NON-NPL SITE)

7. The Government and its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee and any sublessee, to enter upon the Leased Premises for the purposes enumerated in this subparagraph:
 - (a) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the [insert name of military installation] Installation Restoration Program (IRP);
 - (b) to inspect field activities of the Government and its contractors and subcontractors in implementing the [insert name of military installation] IRP;
 - (c) to conduct any test or survey relating to the implementation of the IRP or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or [insert name of state agency] by the Government relating to such conditions;
 - (d) to construct, operate, maintain or undertake any other response or remedial action, as required or necessary under the [insert name of military installation] IRP, including, but not limited to monitoring wells, pumping wells, and treatment facilities;

- (e) to conduct Environmental Compliance Assessment System Surveys (ECAS)
8. The Lessee and any sublessee shall comply with the provisions of any health and safety plan in effect under the IRP or the FFA 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 representative designated by the Lessee and any sublessee. The Lessee and any sublessee shall have no claim on account of such entries against the United States or any office, agent, employee, contractor, or subcontractor thereof. In addition, the Lessee and any sublessee shall comply with all applicable Federal, state, and local occupational safety and health regulations.
 9. The Lessee further agrees that in the event of any assignment or sublease of the Leased Premises, it shall provide to the EPA and [insert name of state agency] by certified mail a copy of the agreement or sublease of the Leased Premises within fourteen (14) days after the effective date of such transaction. The Lessee may delete the financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this condition.
 10. The Lessee shall strictly comply with the hazardous waste permit requirements under Resource Conservation and Recovery Act (RCRA), or its [insert state name] equivalent. Except as specifically authorized by the Government in writing, the Lessee must provide at its own expense hazardous waste management facilities, complying with all laws and regulations. Government hazardous waste management facilities will not be available to the Lessee. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.
 11. Department of Defense (DoD) Component accumulation points for hazardous and other wastes will not be used by the Lessee or any sublessee. Neither will the Lessee or sublessee permit its hazardous wastes to be commingled with hazardous waste of the DoD Component.
 12. The Lessee shall prepare and maintain a Government-approved plan for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the leased premises. Such a plan shall be independent of the [insert name of the installation] and, except for initial fire response and/or spill containment, shall not rely on installation personnel or equipment. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on request of the said officer conducting timely cleanup actions, the Lessee agrees to reimburse the Government for its costs.
 13. The Lessee shall not construct or make or permit its sublessees or assigns to construct or make any alterations, additions, or improvements to, or installations upon or otherwise modify or alter the leased premises in any way which may adversely affect the environmental program, environmental cleanup, human health, the environment, cultural and historic resources, and endangered or threatened species without the prior written consent of the Government. Such consent may include a requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the Government. For construction or alterations, additions, modifications, improvements or installations (collectively "work") in the proximity of operable units that are a part of a National Priority List (NPL) site, [NOTE: Alter appropriately for operable units or solid waste management units (SWMUs) under Federal or State RCRA Corrective Action Programs, state Consent Orders, or the Army IRP at non-NPL sites] such consent may include a requirement for written approval by the Government's Remedial Project Manager. Except as such written approval shall expressly provide otherwise, all such approved alterations, additions, modifications, improvements, and installations shall become Government property when annexed to the Leased Premises.

14. The Lessee shall not conduct or permit its sublessees to conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Government.
15. The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or its state equivalent and any other applicable laws, rules or regulations. the Lessee must provide at its own expense such hazardous waste storage facilities which comply with all laws and regulations as it may need for such storage. Any violation of the requirements of this provision shall be deemed a material breach of this Lease.

NOTE: INSERT APPLICABLE LEAD-BASED PAINT PROVISION, AS APPROPRIATE

(1) WHERE LEASED PREMISES INCLUDE NO RESIDENTIAL HOUSING

16. LEAD-BASED PAINT WARNING AND COVENANT:

- (1) The Leased Premises do not contain residential dwellings and are not being leased for residential purposes. The Lessee is notified that the Leased Premises contains buildings built prior to 1978 that contain lead-based paint. Such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired memory. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to lease.
- (2) Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Baseline Survey, which has been provided to the Lessee. Additionally, the following reports pertaining to lead-based paint and/or lead-based paint hazards have been provided to the Lessee: _____.
Additionally, the Lessee has been provided with a copy of the federally-approved pamphlet on lead poisoning prevention. The Lessee hereby acknowledges receipt of all of the information described in this subparagraph.
- (3) The Lessee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this lease.
- (4) The Lessee shall not permit use of any buildings or structures on the Leased Premises for residential habitation without first obtaining the written consent of the Army. As a condition of its consent, the Army may require the Lessee to: (I) inspect for presence of lead-based paint and/or lead-based paint hazards; (ii) abate and eliminate lead-based hazards by treating any defective lead-based paint surface in accordance with all applicable laws and regulations; and (iii) comply with the notice and disclosure requirements under applicable Federal and state law. The Lessee agrees to be responsible for any future remediation of lead-based paint found to be necessary on the Leased Premises.

(2) LEAD-BASED PAINT PROVISION WHERE LEASED PREMISES CONTAIN RESIDENTIAL HOUSING

16. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT AND COVENANT:

a. The Lessee is hereby informed and does acknowledge that all buildings on the Leased Premises, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 residential housing, lessors must disclose to lessees and sublessees the presence of lead-based paint and/or lead-based paint hazards therein. "Residential Housing" means any housing constructed prior to 1978, except housing for the elderly (households reserved for and composed of one or more persons 62 years of age or more at the time of initial occupancy) or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. A risk assessment or inspection for possible lead-based paint hazards by the Lessee is recommended prior to lease.

b. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Baseline Survey, which has been provided to the Lessee. Additionally, the following reports pertaining to lead-based paint and/or lead-based paint hazards have been provided to the Lessee: _____.

All lessees and sublessees must also receive the federally-approved pamphlet on lead poisoning prevention. The Lessee hereby acknowledges receipt of all of the information described in this subparagraph.

c. The Lessee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this Lease.

d. The Lessee shall not permit the occupancy or use of any buildings or structures as residential housing without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of residential housing, if required by law or regulation, the Lessee, at its sole expense, will abate and eliminate lead-based paint hazards by treating any defective lead-based paint surface in accordance with all applicable laws and regulations.

e. The Army assumes no liability for remediation or damages for personal injury, illness, disability, or death, to the Lessee, its successors or assigns, sublessees or to any other person, including members of the general public, arising from or incident to possession and/or use of any portion of the Leased Premises containing lead-based paint as residential housing. The Lessee further agrees to indemnify and hold harmless the Army, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death or property damage resulting from, related to, caused by or arising out of the possession and/or use of any portion of the Leased Premises containing lead-based paint as residential housing. This section _____ and the obligations of the Lessee hereunder shall survive the expiration or termination of this Lease and any conveyance of the Leased Premises to the Lessee. The Lessee's obligation hereunder shall apply whenever the United States of America incurs costs or liabilities for actions giving rise to liability under this section.

NOTE: INSERT FOLLOWING ASBESTOS PROVISION, IF APPLICABLE

17. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT:

a. The Lessee is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing materials (“ACM”) has been found on the Leased Premises, as described in the final base-wide EBS. The ACM on the Leased Premises does not currently pose a threat to human health or the environment. All friable asbestos that posed a risk to human health has either been removed or encapsulated.

b. The Lessee covenants and agrees that its use and occupancy of the Leased Premises will be in compliance with all applicable laws relating to asbestos; and that the Lessor assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to the Lessee, its successors or assigns, sublessee or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Leased Premises described in this Lease, whether the lessee, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The Lessee agrees to be responsible for any future remediation of asbestos found to be necessary on the Leased Premises.

NOTE: INSERT MODEL HISTORICAL PROPERTIES PROVISION, IF APPLICABLE

18. Subject property is eligible for listing in the National Register of Historic Places. The building will be maintained by the Lessee in accordance with the recommended approaches in the *Secretary of the Interior’s Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings* (U.S. Department of the Interior, National Park Service 1992) (Secretary’s Standards). The Lessee will notify the Department of the Army and the State Historic Preservation Officer (SHPO) of any proposed rehabilitations and structural or landscape alterations to these buildings prior to undertaking said rehabilitation or alteration. Any approved rehabilitation or structural or landscape alteration to this building must adhere to the Secretary’s Standards. If the Lessee does not receive a written objection from the Department of the Army or the SHPO within 30 days, the Lessee may proceed with the proposed rehabilitation or alterations

NOTE: INSERT STORAGE OF HAZARDOUS OR TOXIC MATERIALS PROVISION, IF APPLICABLE

19. The Lessee shall not use the Leased Premises for the storage or disposal of non-Department of Defense owned hazardous or toxic materials, as defined in 10 U.S.C. 2692, unless authorized under 10 U.S.C. 2692 and properly approved by the Government.

NOTE: INSERT ALL PURPOSE CLAUSE, AS APPLICABLE

20. The Army may impose any additional environmental protection conditions and restrictions during the terms of this lease that it deems necessary by providing written notice of such restrictions to the Lessee.