

# United States Department of the Air Force

**MAJCOMname**  
Air Force Real Property  
Agency (AFRPA)



Enhanced Use Leasing Project  
**Basename** Air Force Base

## SITE DEVELOPMENT LEASE

RFQ No. AFRPA-**FY-XXXX**

PROPOSALS ARE DUE NO LATER THAN  
5:00 P.M. ET **Proposal due date** AT:

**RESSNAME**

**RESSaddress**

**RESScity**

Voice: **RESSphone** Fax: **RESSfax**

Email: **RESSemail**

Web site: **RESSwebsite**

Lease Number [\_\_\_\_\_]

**DEPARTMENT OF THE AIR FORCE  
SITE DEVELOPMENT LEASE  
ON **BASENAME** AIR FORCE BASE,  
**BASECITY, BASECOUNTY, BASESTATE****

**Dated as of [\_\_\_\_\_]**

**GENERIC SITE DEVELOPMENT LEASE**

**TABLE OF CONTENTS**

LIST OF EXHIBITS ..... iii

Recitals ..... 1

Leased [Land][Premises] ..... 2

CONDITION 1      TERM AND DELIVERY OF POSSESSION ..... 3

CONDITION 2      REPRESENTATIONS AND WARRANTIES OF LESSEE ..... 3

CONDITION 3      EASEMENTS AND RIGHTS OF WAY ..... 4

CONDITION 4      CONDITION OF LEASED [LAND][PREMISES] ..... 4

CONDITION 5      RENT ..... 6

CONDITION 6      DEVELOPMENT AGREEMENT ..... 9

CONDITION 7      USE OF LEASED [LAND][PREMISES] ..... 10

CONDITION 8      DEFAULT, REMEDIES, AND TERMINATION ..... 11

CONDITION 9      TAXES ..... 13

CONDITION 10      RESTORATION AND SURRENDER ..... 13

CONDITION 11      ENVIRONMENTAL PROTECTION ..... 16

CONDITION 12      MAINTENANCE OF LEASED [LAND][PREMISES] ..... 22

CONDITION 13      COMPLIANCE WITH APPLICABLE LAWS ..... 23

CONDITION 14      ACCESS AND INSPECTION ..... 23

CONDITION 15      GENERAL INDEMNIFICATION BY LESSEE ..... 24

CONDITION 16      INSURANCE ..... 24

CONDITION 17      CONSTRUCTION OF IMPROVEMENTS AND ALTERATIONS/CONSTRUCTION  
CONSULTANT ..... 28

CONDITION 18      UTILITIES AND SERVICES ..... 32

CONDITION 19      OPERATION AND MANAGEMENT OF THE PROPERTY ..... 33

CONDITION 20	NOTICES.....	33
CONDITION 21	ASSIGNMENT, SUBLEASES, AND LICENSES.....	35
CONDITION 22	LIENS AND MORTGAGES .....	36
CONDITION 23	DISPUTES .....	39
CONDITION 24	CERTAIN ACCOUNTS.....	39
CONDITION 25	REPORTING PROVISIONS.....	40
CONDITION 26	RIGHTS NOT IMPAIRED.....	42
CONDITION 27	RENEWAL OF THE LEASE .....	43
CONDITION 28	GOVERNMENT REPRESENTATIVES AND THEIR SUCCESSORS.....	43
CONDITION 29	AMENDMENTS .....	44
CONDITION 30	OPTION TO PURCHASE .....	44
CONDITION 31	GENERAL PROVISIONS.....	45
CONDITION 32	DEFINED TERMS .....	49

## LIST OF EXHIBITS

Exhibit A	Description and Map of Leased Land [List each parcel, if applicable] [Parcel A-1] [Parcel A-2 ]
[Exhibit B]	[Description and Map of Existing Improvements] [Identify improvements by parcel, if applicable] [Parcel B-1] [Parcel B-2]
Exhibit [B] [C]	Third Party Property Interests
Exhibit [C] [D]	List of Environmental Documents
Exhibit [D] [E]	Rent Schedule
Exhibit [E] [F]	Mandatory Clauses Required by Law
Exhibit [F] [G]	[Description and Map (Points of Demarcation) of Existing Utility Facilities]

DEPARTMENT OF THE AIR FORCE

SITE DEVELOPMENT LEASE

ON **BASENAME** AIR FORCE BASE, **BASECITY**, **BASESTATE**

THIS SITE DEVELOPMENT LEASE (“**Lease**”) is made to be effective as of [month][day], [year], (the “**Effective Date**”), by and between THE UNITED STATES OF AMERICA, acting by and through THE SECRETARY OF THE AIR FORCE (the “**Secretary**” or the “**Government**”) and [name of Lessee], a [type of entity] created under the laws of the State of **Statename**, with its principal offices located at [physical address, city, state, zip] (the “**Lessee**”). The Government and the Lessee may sometimes be referred to jointly as the “**Parties**,” and each separately may be referred to as a “**Party**.”

**Recitals**

R-1 The Secretary, under the authority contained in 10 U.S.C. § 2667 (the “**Enabling Statute**”), has determined:

(i) that the [Leased Land][Leased Premises] (hereinafter defined) is not excess property as defined by 40 U.S.C. § 102(3) based on the following:

*[Note: Subsections (a), (b) and (c) will need to be reviewed on a project-by-project basis and mirror the non-excess determination memo justifications submitted by the Wing Commander.]*

[(a) all of the [Leased Land][Leased Premises] is essential to future mission flexibility, operational changes, equipment changes, and for potential expansion of the current operations/activities or new, as well as relocating, operational unit bed down;]

[(b) with encroachment problems impacting Air Force facilities nationwide, the Government’s continued ownership of the [Leased Land][Leased Premises] ensures only compatible uses and provides an essential buffer zone against uncontrolled incompatible uses that may otherwise be approved by local community or private interests if the [Leased Land][Leased Premises] was declared excess and transferred;] and/or

[(c) the [Leased Land] [Leased Premises] is located within the boundaries of the **Basename** AFB perimeter fence and providing public access to the property if the [Leased Land] [Leased Premises] was declared excess would disrupt installation operations.]

(ii) that the Lessee will provide consideration in an amount that is not less than the fair market value of the Lessee’s leasehold interest in the [Leased Land] [Leased Premises];

(iii) that the [Leased Land] [Leased Premises] is under the control of the Secretary;

(iv) that the [Leased Land] [Leased Premises] is not for the time needed for public use;

(v) that a lease of the [Leased Land] [Leased Premises] is advantageous to the United States; and

(vi) that a lease of the [Leased Land][Leased Premises] for the term established in **Condition 1.1** will promote the national defense or be in the public interest.

R-2 The Secretary has further determined that the omission of a provision to permit the Secretary to unilaterally revoke this Lease at any time will promote the national defense or be in the public interest.

### **Leased [Land][Premises]**

**NOW, THEREFORE**, the Government, by virtue of the authority conferred by law, for the consideration set out below, hereby leases to the Lessee the real property as more specifically described in **Exhibit A** to this Lease (the “**Leased Land**”), which consists of [ ] (xx) parcel[s] of land situated within the boundaries of **Basename** AFB [together with those certain existing improvements and personal property located on the Leased Land as more particularly described in **Exhibit B** to this Lease (the “**Existing Improvements**”). [The term “**Leased Premises**” shall refer collectively to the Leased Land and the Existing Improvements.] The term “**Project**” shall refer collectively to the [Leased Land][Leased Premises] and such improvements and personal property as may be constructed or placed on the [Leased Land][Leased Premises] by the Lessee in accordance with this Lease (the “**EUL Improvements**”).

**AND GRANTS TO THE LESSEE** the right to gain access to the [Leased Land][Leased Premises] through a route or routes designated from time to time by the Government, and to use the streets, driveways, sidewalks, and walkways on **Basename** AFB for the purposes of pedestrian and vehicular ingress and egress to and from the [Leased Land][Leased Premises] in order to fulfill its contractual obligations for completion, operation, and maintenance of the Project, as such obligations are set forth in this Lease. The Lessee shall provide thirty (30) days advanced notice to the Government and obtain the Government’s written consent prior to engaging in any activities that would disrupt or interfere with pedestrian and vehicular ingress and egress to and from the [Leased Land][Leased Premises]. The Government reserves the right to change, modify, or eliminate, or temporarily to close, any portion or portions of streets, driveways, sidewalks, and walkways on **Basename** AFB. Provided, however, the Government agrees that it will not change, modify, eliminate, or temporarily close such streets, driveways, sidewalks, and walkways in a manner that unreasonably interferes with the Lessee’s use or the value of the [Leased Land][Leased Premises] under this Lease, as determined by the Government in its reasonable discretion.

[**TOGETHER WITH** the right to connect certain utility infrastructure on the [Leased Land][Leased Premises] to utility systems owned and operated by the Government, or, subject to certain other terms and conditions, utility systems owned and operated by non-Government entities, located on **Basename** AFB, and to use such utility systems on a reimbursable basis for so long as the Government or such non-Government entity operates such systems for the benefit of the Project;]

**RESERVING, HOWEVER**, unto the Government general access to the [Leased Land][Leased Premises] for its officers, agents, employees, contractors and subcontractors for the purpose of exercising the rights, interests, privileges, and benefits contained in this Lease, to the extent that those rights, interests, privileges, and benefits go across, include, or encompass all or part of the [Leased Land][Leased Premises], including, specifically, the utility systems, if any, located within the [Leased Land][Leased Premises], and to the extent they are needed by the Government for the operation, security, or safety of **Basename** AFB, or its assigned personnel, or for any other reasonable purpose.

**THIS LEASE** is granted subject to the following conditions:

**CONDITION 1**  
**TERM AND DELIVERY OF POSSESSION**

1.1 THIS LEASE shall be for a term beginning at 12:01 a.m. on the Effective Date and of a duration of [ ] (xx) years ending at 12:00 p.m., [month][day], [year] (the “Lease Expiration Date”), unless sooner terminated in accordance with the terms contained in this Lease. The period from the Effective Date through the Lease Expiration Date shall be referred to as the “Lease Term.”

1.2 Possession of the [Leased Land][Leased Premises] will be delivered on the Effective Date.

**CONDITION 2**  
**REPRESENTATIONS AND WARRANTIES OF LESSEE**

2.1 Representations and Warranties of the Lessee. The Lessee represents and warrants as follows:

2.1.1 The Lessee is a [type of entity], duly organized and validly existing under the laws of the State of Statename and is in good standing and qualified to do business in Basestate and in every other state in which the nature of its business requires such qualification. The Lessee has full power and authority to own its properties and to carry on its business as now being conducted and as contemplated to be conducted with respect to the Project, and to enter into, and to perform and carry out the transactions provided for in this to which it is a party. This Lease has been duly authorized, executed and delivered by the Lessee and constitutes the legal, valid and binding obligation of the Lessee, enforceable against the Lessee in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general equitable principles.

2.1.2 The Lessee’s execution, delivery, and performance of this Lease will not violate any provision of law, any order of any court or other agency of government, or any of the organizational or other governing documents of the Lessee, or any indenture, agreement or other instrument to which the Lessee is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument or any license, judgment, decree, law, statute, order, rule or regulation of any governmental agency or body having jurisdiction over the Lessee or any of its activities or properties or, except as provided hereunder, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee Owner, except as permitted by this Lease or otherwise approved by the Government.

2.1.3 No litigation or proceeding is pending or, to the Lessee’s knowledge, threatened against the Lessee, its members or the Project which has a reasonable probability of having a material adverse effect on the financial condition or business of the Lessee, or the transactions contemplated by this Lease or which in any way would adversely affect the validity or enforceability of this Lease or the ability of the Lessee to perform its obligations under this Lease. The Lessee is not currently in default under any document, instrument or commitment to which the Lessee is a party or to which it or any of its property is subject which default would or could adversely affect the ability of the Lessee to carry out its obligations under this Lease.

2.1.4 There is no completed, pending or, to the Lessee's knowledge, threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Lessee.

2.1.5 No event has occurred and no condition exists with respect to the Lessee or the Project that would constitute an "Event of Default" under this Lease or, with the lapse of time, if not cured, or with the giving of notice, or both, would become an "Event of Default" under this Lease.

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

### **CONDITION 3 EASEMENTS AND RIGHTS OF WAY**

3.1 This Lease is subject to all existing easements, rights of way, licenses and other property rights and interests, whether of public record or not, for any purpose with respect to the [Leased Land][Leased Premises] (collectively, "**Third Party Property Interests**"). A non-exclusive list of the Third Party Property Interests is attached as **Exhibit [B][C]** hereto.

3.2 Nothing herein shall preclude the Government's creation of additional easements, rights-of-ways, licenses or other property rights and interests with respect to the [Leased Land][Leased Premises] to meet its own or other public requirements ("**Future Third Party Property Interests**"); however, any such Future Third Party Property Interests shall not, unreasonably interfere with the Lessee's use of the Project under this Lease, as determined by the Government in its reasonable discretion. The holders of Third Party Property Interests and Future Third Party Property Interests shall have reasonable rights of ingress and egress over the [Leased Land][Leased Premises] in order to exercise their rights. These rights may also be exercised by workers engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities located on the Future Third Party Property Interests, and by any Federal, state, or local official engaged in the official inspection thereof.

3.3 At the request of the Lessee, the Government will grant, in accordance with statutory requirements including without limitation the requirement, if applicable, for the Government to receive consideration in an amount not less than fair market value of the property interest, easements, rights-of-way, licenses or other property interests with respect to the [Leased Land][Leased Premises] and other areas of **Basename** AFB for utilities and other purposes reasonably necessary to the construction, maintenance and operation of the Project for a term not to exceed the Lease Term; *provided, however*, any such easements, rights-of-way, licenses or other property interests shall not interfere with the operations of the Government on any portion of **Basename** AFB not within the [Leased Land][Leased Premises], as determined by the Government in its reasonable discretion.

### **CONDITION 4 CONDITION OF LEASED [LAND][PREMISES]**

4.1 The Lessee has inspected, knows and accepts the condition and state of repair of the [Leased Land][Leased Premises]. It is understood and agreed that the [Leased Land is][Leased Premises

are] leased in an “AS IS,” “WHERE IS” condition without any representation or warranty by the Government concerning their condition and without obligation on the part of the Government to make any alterations, repairs or additions. Except as set forth in **Condition 11.5**, the Government shall not be liable to Lessee for any damages or losses, whether direct or consequential, incurred by Lessee as the result of the discovery of any latent or patent defect in the [Leased Land][Leased Premises]. The Lessee acknowledges that the Government has made no representation or warranty concerning the condition and state of repair of the [Leased Land][Leased Premises] nor any agreement or promise to alter, improve, adapt, or repair the [Leased Land][Leased Premises] which has not been fully set forth in this Lease.

4.2 The Lessee represents, warrants, and acknowledges that it has entered into this Lease on the basis of its own full investigation of all facts relating to, and conditions underlying, the [Leased Land][Leased Premises] and the development and use of the [Leased Land][Leased Premises], including without limitation, environmental conditions, and that it has solely relied upon its own investigation. Given the Lessee’s deemed knowledge of the facts and conditions affecting the [Leased Land][Leased Premises], the Lessee shall exercise an appropriate level of care when conducting any ground-disturbing activities to ensure that such activities do not result in the unmanaged release of any hazardous substances, materials, or waste of any kind, including, but not limited to, pesticides, asbestos, and lead-based paint. The Lessee shall also be responsible for exercising an appropriate level of care with respect to any underground pipes and related infrastructure that may exist within the [Leased Land][Leased Premises]. The Lessee waives any claim or cause of action the Lessee may have against the Government under any Federal, state, or local law, ordinance, rule, or regulation now existing or hereafter enacted or promulgated, relating to environmental matters or conditions, in, on, under, about, or migrating from or onto, the [Leased Land][Leased Premises], or by virtue of any common law right related to environmental conditions or matters in, on, under, about, or migrating from or onto, the [Leased Land][Leased Premises] except for (i) pre-existing environmental conditions that are attributable to the Government and that are not exacerbated by the Lessee, and that the Government specifically accepts responsibility for under **Condition 11.5** of this Lease; and (ii) Hazardous Substance releases caused by the Government that migrate onto the [Leased Land][Leased Premises] and that are not exacerbated by the Lessee. The provisions of this **Condition 4.2** shall survive the expiration or earlier termination of this Lease.

4.3 The Lessee acknowledges receipt of the environmental baseline survey (“EBS”) for the [Leased Land][Leased Premises] dated [\_\_\_\_]. The EBS sets forth those environmental conditions and matters on and affecting the [Leased Land][Leased Premises] as of its effective date [add recertification date, if any], as determined from the records and analyses reflected therein. The EBS is not, and shall not constitute, a representation or warranty by the Government regarding the environmental or physical condition of the [Leased Land][Leased Premises] and the Government shall have no liability in connection with the accuracy or completeness thereof. In this regard the Lessee acknowledges and agrees that the Lessee has relied, and shall rely, entirely on its own investigation of the [Leased Land][Leased Premises] in determining whether to enter into this Lease. A separate EBS for each parcel of the Leased Land will be prepared by the Government after the expiration or earlier termination of this Lease for each respective parcel (“Final EBS”). The Final EBS will be used by the Government in determining whether the Lessee has fulfilled its obligations to maintain and restore the [Leased Land][Leased Premises] under this Lease including without limitation, all obligations set forth in **Condition 10** and **Condition 11**. Lessee acknowledges and agrees that it has received and reviewed the items provide by the Government as set forth on **Exhibit [C][D]**, List of Environmental Documents.

**CONDITION 5  
RENT**

5.1 The Lessee agrees to pay to the Government as rent for the [Leased Land][Leased Premises] the following amounts:

5.1.1 On the Effective Date, the sum of [ ] dollars (\$xx) as a transaction fee to the Government. Such payment shall be made as directed by the Government in writing.

5.1.2 Commencing on [the Effective Date][month day, year] and continuing thereafter throughout the Lease Term, [monthly][quarterly] installments of funds, payable on or before the [ ] day of each [month][January, April, July and October], in such amounts as detailed in the Rent Schedule at **Exhibit [D][E]** (“**Base Rent**”), plus any adjustments to such amounts as provided in **Condition 5.1.2.1**

5.1.2.1 Base Rent shall be subject to adjustment as provided in this **Condition 5.1.2.1 (“Adjustments”)** on January 1<sup>st</sup> of each calendar year commencing on [month, day, year] and continuing every year thereafter, in direct proportion to any increases in the Consumer Price Index for all Urban Consumers, [ ] All Items (1982-1984 = 100) issued by the Bureau of Labor Statistics of the United States Department of Labor (“**Index**”). For purposes of determining Adjustments, the term “**Basic Index**” shall mean the Index issued for calendar year [ ] and the term “**Current Index**” shall mean the Index issued for the calendar year for which an Adjustment is to be made. If the Current Index is greater than the Basic Index, then each installment of Base Rent for such year shall be separately increased by an amount equal to the product obtained by multiplying (a) the percentage difference between the Current Index and the Basic Index, by (b) the installments of Base Rent for such year. Adjustments shall never cause any installment of Base Rent to be reduced below the amount of such installment as set forth in the Rent Schedule at **Exhibit [D][E]** as of the Effective Date.

5.1.2.2 If the Index is hereafter converted to a different standard reference base or is otherwise revised, the determination of the Basic Index and Current Index shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, in the event that no such conversion factor, formula or table is published or the Index ceases to be published, then by the Government using such other index of a reasonably comparable type.

5.1.3 Commencing on [the Effective Date][the Government issuing a Certificate of Compliance pursuant to **Condition 17.15** following the completion of the Project][month day, year] and continuing thereafter throughout the Lease Term, [monthly][quarterly][annual] installments of funds, payable on or before [the ( ) (xx) day of each month][the ( ) (xx) day of each January, April, July and October][the (xx) day of each January], in an amount equal to [ ] percent (xx%) of [Net Operating Income Less Rent(hereinafter defined)][Effective Gross Revenue (hereinafter defined)] (“**Percentage Rent**”); *provided, however*, that in no event shall any [monthly][quarterly][annual] installment of Percentage Rent be less than [ ] (\$xx). Percentage Rent shall be appropriately pro-rated for any installment period of less than a complete calendar [month][quarter][year].

5.1.3.1 For the purpose of determining Percentage Rent, [“**Net Operating Income Less Rent**” shall mean all receipts (rental, sales, and other) derived from the Project, less (a) any vacancy and/or credit loss factor, and less (b) all reasonable standard and actual costs incurred by the Lessee in connection with operating the Project on the [Leased Land][Leased Premises] including rent and deposits to the Demolition Reserve Account (“**Project Costs**”); *provided, however*, that Project Costs shall not include extraordinary gains and losses, financial expenses and income taxes.][“**Effective Gross**

**Revenue**” shall mean all receipts (rental, sales, and other) derived from the Project, less any vacancy and/or credit loss factor].

5.1.3.2 On or before the due date of each [monthly][quarterly][annual] installment of Percentage Rent, the Lessee shall submit to the Government a written certification from an authorized officer of the Lessee certifying (a) to the amounts of the [Net Operating Income Less Rent][Effective Gross Revenue] and Percentage Rent for each of the preceding months, (b) to the accuracy and completeness of the financial information used by the Lessee in determining such amounts, and (c) that the reported amounts of [Net Operating Income Less Rent][Effective Gross Revenue] and Percentage Rent were determined in accordance with the requirements of this Lease.

5.1.3.3 Within [ ] (xx) days after the close of each calendar year during the Lease Term, Lessee shall furnish to the Government a written certification from an authorized officer of the Lessee certifying (a) to the amounts of the [Net Operating Income Less Rent][Effective Gross Revenue] and Percentage Rent for the preceding calendar year, (b) to the accuracy and completeness of the financial information used by the Lessee in determining such amounts, and (c) that the reported amounts of [Net Operating Income Less Rent][Effective Gross Revenue] and Percentage Rent were determined in accordance with the requirements of this Lease (“**Annual Certification of Percentage Rent**”). The Annual Certification of Percentage Rent shall include a copy of the Lessee’s audited annual financial statement prepared in accordance with **Condition 25.1.2** that shall include footnotes detailing the calculation of [Net Operating Income Less Rent][Effective Gross Revenue] and Percentage Rent. If the Annual Certification of Percentage Rent establishes that the [total of the monthly installments][total of the quarterly installments][annual installment] paid by Lessee during the preceding calendar year in accordance with this **Condition 5** is in excess of the required amount of Percentage Rent for that calendar year, the Lessee shall receive a credit of such excess amount against the next [monthly][quarterly][annual] installment of Percentage Rent. If the Annual Certification of Percentage Rent establishes that the [total of the monthly installments][total of the quarterly installments][annual installment] paid by Lessee during the preceding calendar year is less than the required amount of Percentage Rent for that calendar year, the Lessee shall pay the difference to the Government concurrently with the next [monthly][quarterly][annual] installment of Percentage Rent. The Lessee shall furnish to the Government any documents, statements, records, reports and other information the Government might reasonably request for purposes of its evaluation of the Annual Certification of Percentage Rent.

5.2 All sums other than Base Rent and Percentage Rent that are payable by the Lessee to the Government under this Lease, including but not limited to all items of reimbursement, such as reimbursements for police and fire protection services and water provided by the Government, shall be deemed supplemental rent (“**Supplemental Rent**”). Any request by the Government to the Lessee for reimbursement under this Lease shall identify the expenses included in such reimbursement request. For the purposes of defining the Lessee’s obligations under this Lease, all payments required by **Condition 5.1**, and all funds payable by the Lessee to the Government under this Lease to be applied to Supplemental Rent may sometimes be collectively referred to as “**Rent.**” Notwithstanding the use of the term “Rent” to include Supplemental Rent, no payment to the Government of a reimbursement constituting Supplemental Rent shall be considered to be the receipt by the Government of money compensation for the occupancy of the [Leased Land][Leased Premises] for purposes of the Enabling Statute or the Bankruptcy Code or for any other purpose.

5.3 If any installment of Rent is not paid within ten (10) business days after its due date, then such arrearage shall, consistent with the Debt Collection Act of 1982 (31 U.S.C. § 3717), (i) bear interest from the due date at the rate prescribed by the Secretary of the Treasury for amounts past due

to the Federal government until paid in full; (ii) include an administrative charge to cover the costs of processing and handling delinquent debts; and (iii) include an assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due.

5.4 Except as provided in **Condition 5.5**, all Rent shall be paid in lawful money of the United States of America without deduction, offset, prior notice, or demand, to the Treasurer of the United States of America and forwarded directly to [provide instructions], or to such other official as the Government may designate, for deposit in the special Treasury Account established under the Enabling Statute.

5.5 In lieu of receiving Rent in cash as provided in **Condition 5.4**, the Government may elect to receive in-kind consideration in accordance with the Enabling Statute and this **Condition 5.5**.

5.5.1 If the Government elects to receive in-kind consideration, the Government shall notify the Lessee of the general scope of the project or services required and the Government's estimated value of the project or services.

5.5.2 If the Government's estimated value of the in-kind consideration project or services is less than \$[XXX], the Government may issue a Project Notice under the **In-Kind Consideration Delivery Agreement** of even date herewith. In such event, the Parties shall cooperate to execute a Work Order Agreement (as defined in the In-Kind Consideration Delivery Agreement) for the project or services as set forth in the In-Kind Consideration Delivery Agreement. The Lessee shall provide the in-kind consideration pursuant to the Work Order Agreement and, upon the Government's acceptance of the work, the Lessee shall be entitled to offset the Project Value (as agreed upon in the Work Order Agreement) against Rent otherwise payable under this Lease.

5.5.3 If the Government's estimated value of the in-kind project or services is \$[XXX] or more, the Lessee may elect to: (i) provide the in-kind consideration and be reimbursed as an offset against Rent under **Condition 5.5.2**; or (ii) establish an account ("**In-Kind Consideration Account**") in which to deposit Rent payments and thereby defer providing the in-kind consideration until sufficient funds accumulate in the In-Kind Consideration Account to reimburse the Lessee for the estimated value of the project or services.

5.5.4 If the Lessee elects to establish an In-Kind Consideration Account and defer delivery of in-kind consideration pursuant to **Condition 5.5.3**, such account must meet the following requirements:

5.5.4.1 The In-Kind Consideration Account must be established with a third-party trustee ("**Trustee**") approved by the Government and pursuant to a written trust agreement among the Government, the Lessee and the Trustee ("**Trust Agreement**").

5.5.4.2 The Trustee must be the legal owner of the In-Kind Consideration Account free and clear of any liens, security interests or encumbrances created by the Lessee. The Trustee shall file and tax returns and pay any taxes due on In-Kind Consideration Account investment income.

5.5.4.3 The Trust Agreement shall provide that funds from the In-Kind Consideration Account shall be released to the Lessee only upon written confirmation by the

Government that the Lessee has delivered in-kind consideration acceptable to the Government in accordance with a Work Order Agreement.

5.5.4.4. The Trust Agreement shall provide that the Trustee, after reimbursing the Lessee for the agreed-upon cost of providing the in-kind consideration, shall pay all funds remaining in the In-Kind Consideration Account to the Government as cash Rent pursuant to **Condition 5.4**.

5.5.4.5 The Trust Agreement shall provide that in the event the Government fails to receive all or part of the in-kind consideration for which the In-Kind Consideration Account has been established (whether because of the Parties' failure to execute a Work Order Agreement, the Lessee's default under a Work Order Agreement, the Government's termination of a Work Order Agreement or any other reason) the Trustee shall pay any or all funds remaining in the In-Kind Consideration Account to the Government as cash Rent pursuant to **Condition 5.4**.

5.5.4.6 The Trust Agreement shall provide that the Trustee shall be reimbursed from the In-Kind Consideration Account for its ordinary expenses and fees in administering the account.

5.5.5 When sufficient funds have accumulated in the In-Kind Consideration Account to reimburse the Lessee for the estimated value of the in-kind consideration project or services, the Government may issue a Project Notice under the In-Kind Consideration Delivery Agreement. In such event, the Parties shall cooperate to execute a Work Order Agreement for the project or services as set forth in the In-Kind Consideration Delivery Agreement. The in-kind consideration project or services specified in the Project Notice may vary from those described in the Government's original election to receive in-kind consideration based on changes to Government requirements. The Lessee shall provide the in-kind consideration pursuant to the Work Order Agreement and, upon the Government's acceptance of the work, the Lessee shall be reimbursed for the Project Value (as agreed upon in the Work Order Agreement) from the In-Kind Consideration Account, as more fully set forth in the Work Order Agreement and the Trust Agreement.

5.5.6 After sufficient funds have accumulated in the In-Kind Consideration Account to reimburse the Lessee for the Project Value set forth in a Work Order Agreement, the Lessee shall revert to paying Rent in cash under **Condition 5.4**, unless and until such time as the Government elects to receive additional in-kind consideration for which Lessee is permitted to establish an In-Kind Consideration Account under **Condition 5.5.3**.

## **CONDITION 6 DEVELOPMENT AGREEMENT**

6.1 The Development Agreement dated of even date herewith, as amended and supplemented from time to time, is hereby incorporated into and made a part of this Lease ("**Development Agreement**"). The Development Agreement sets forth certain detailed procedures and requirements to be followed by the Lessee in designing, demolishing, constructing, renovating, operating, and maintaining the Project.

6.2 The following plans are attached to and are a part of the Development Agreement:

- Site Plan *[Site Plan is to include a narrative description of the features and components for all facilities (including utility systems), landscaping, any required building, any other design related matters as necessary and a copy of the final*

*Design Plans to be completed in accordance with the requirements of **Condition 17.3.**];*

- Construction Management Plan *[Construction Management Plan is to include a narrative description of the construction schedule (identifying any phasing), quality control program, arrangements for Construction Consultant, demolition plan (if any), plans for installation ingress and egress, haul routes, disposition of debris, lay down areas, and other construction-related matters as necessary. The Construction Management Plan shall also identify any temporary structures or facilities needed during the construction phase of the Project.];*
- Environmental Management Plan (including the Spill Plan and Pesticide Management Plan) *[Environmental Management Plan is to include the Spill Plan, Asbestos Disposal Plan, Pesticide Management Plan, as applicable, and address any other environmental matters of concern to the Government related to the Project.];*
- [Relocation Plan (should address movement of the perimeter fence)];
- [Historic Preservation Plan];
- Police and Fire Plan *[Police and Fire Plan details how law enforcement and fire protection services will be provided to the Project and how reimbursements for any services provided by the Government shall be calculated.].*

Each plan is referred to in this Lease by its title.

6.3 In the event of a conflict between any provisions of the Development Agreement and any provisions of this Lease, the provisions of this Lease will control. A conflict exists only when there is an irreconcilable difference between a provision in this Lease and a provision in the Development Agreement. An additional requirement, condition, or term in the Development Agreement shall not be in conflict with this Lease except when such requirement, condition or term is clearly inconsistent with an express requirement, condition, or term of this Lease.

#### **CONDITION 7 USE OF LEASED [LAND][PREMISES]**

7.1 The sole purpose for which the Project may be used, in the absence of prior written approval of the Government for any other use, is for the **[demolition, design, construction, renovation, operation, and maintenance of (describe the approved use)]**. The Lessee shall not use or occupy the Project in any manner that is unlawful or dangerous or that shall constitute waste, unreasonable annoyance, or a nuisance to the Government.

7.2 Specifically, but without limitation, in no event shall the Project be used by the Lessee for any of the following activities without the prior written approval of the Government:

7.2.1 Ultra-hazardous activities involving the storage, treatment, transportation, disposal, or manufacture of hazardous materials, hazardous substances, or hazardous wastes, except as specifically authorized by **Condition 11**.

7.2.2 Activities that the Government, in its sole discretion, determines adversely affect the health, safety, morals, welfare, morale, and discipline of the Armed Forces, such as the sale or use of drug abuse paraphernalia, illicit gambling, and prostitution.

7.2.3 Partisan political activities.

7.2.4 Activities by persons or entities advocating the overthrow of the United States.

## **CONDITION 8 DEFAULT, REMEDIES, AND TERMINATION**

8.1 Any one or more of the following shall constitute an event of default (“**Event of Default**”) under this Lease by the Lessee:

8.1.1 The Lessee’s failure to comply with any provision of this Lease other than with respect to the payment of Rent, where such failure to comply continues for thirty (30) Days after delivery of written notice thereof by the Government to the Lessee and all Approved Mortgagees, if any. If, however, such default is not reasonably susceptible to cure within such thirty (30) day period, the Lessee shall have such longer period as may be approved in writing in advance by the Government, which approval shall not be unreasonably withheld, to cure such default so long as the Lessee commences curing such default within the initial thirty (30) day period and diligently prosecutes such cure to completion in accordance with a schedule approved in writing by the Government, which approval shall not be unreasonably withheld.

8.1.2 The failure of the Lessee to pay Rent pursuant to **Condition 5**, when due if such failure remains uncured for a period of ten (10) days after delivery of written notice thereof by the Government to the Lessee and all Approved Mortgagees, if any.

8.1.3 A Trust Agreement Event of Default that the Government expressly declares to be an Event of Default under this Lease, which declaration may be made in the sole and absolute discretion of the Government.

8.1.4 The Lessee’s voluntarily filing for bankruptcy protection under the United States Bankruptcy Code (“**Bankruptcy Code**”) or voluntarily becoming subject to any reorganization, receivership, insolvency proceeding, or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights, or having an involuntary case commenced against the Lessee by any creditor of the Lessee pursuant to the Bankruptcy Code or other federal or state law affecting debtor and creditor rights and is not dismissed or discharged within sixty (60) days after filing.

8.1.4.1 If any voluntary or involuntary petition is filed under the Bankruptcy Code by or against the Lessee (other than an involuntary petition filed by or joined in by the Government), the Lessee shall not assert, or request any other party to assert, that the automatic stay under the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce, or inhibit the ability of the Government to enforce any rights it has by virtue of any agreement between the Parties, or any other rights that the Government has, whether now or hereafter acquired, against any party responsible for the debts or obligations of the Lessee under such agreements. Furthermore, the Lessee shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to the Bankruptcy Code, to stay, interdict, condition, reduce, or inhibit the ability of the Government to enforce any of its rights under such agreements against any party responsible for the debts or obligations of the Lessee. The waivers contained in this **Condition 8.1.3.1** are a material inducement to the Government’s willingness to enter into this Lease and the Lessee acknowledges and agrees that no grounds exist for equitable relief that will bar, delay, or impede the exercise by the

Government of its rights and remedies under such agreements against the Lessee or any party responsible for the debts or obligations of the Lessee.

8.1.4.2 If any or all of the Project or any interest in the Project becomes the property of any bankruptcy estate or subject to any state or Federal insolvency proceeding, then the Government shall immediately become entitled, in addition to all other relief to which the Government may be entitled under law or any agreement between the Parties, to obtain (i) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to the Bankruptcy Code so as to permit the Government to pursue its rights and remedies at law and in equity under applicable state law, and (ii) an order from the Bankruptcy Court prohibiting the Lessee's use of all "cash collateral," as defined under the Bankruptcy Code. In connection with such Bankruptcy Court orders, the Lessee shall not contend or allege in any pleading or petition filed in any court proceeding that the Government does not have sufficient grounds for relief from the automatic stay. The Lessee acknowledges and agrees that any bankruptcy petition or other action taken by the Lessee to stay, condition, or prevent the Government from exercising its rights or remedies under this Lease or any other agreement between the Parties shall be deemed to be in bad faith.

8.1.4.3 If any voluntary or involuntary petition is filed under the Bankruptcy Code by or against the Lessee (other than an involuntary petition filed by or joined in by the Government), the Lessee shall notify the Government of such filing within ten (10) business days of receiving notice. If any or all of the Project or any interest in the Project becomes the property of any bankruptcy estate or subject to any state or Federal insolvency proceeding, then the Lessee shall notify the Government of such proceeding within ten (10) business days of receiving notice of the proceeding.

8.2 No Event of Default shall be deemed to have occurred for any period of time during which an Excusable Delay exists with respect to the alleged default or the Lessee and the Government are attempting to resolve a dispute about the alleged default as provided in **Condition 23**. For an Excusable Delay, the Lessee's period for cure shall be tolled for the period of time that the Excusable Delay exists. For a dispute, if, pursuant to the dispute resolution procedures set forth in **Condition 23**, a default is determined to have occurred, the Lessee's period for cure shall not begin until the Day after the final decision on the dispute is issued, and such default shall not become an Event of Default until any applicable cure period has expired.

8.3 Subject to **Condition 22.7**, this Lease may be terminated as provided below:

8.3.1 The Government may terminate this Lease upon written notice to the Lessee, and without any cost or liability to the Government, if an Event of Default exists. Such notice shall be referred to as a "**Default Termination Notice**" and shall be effective as of the date specified therein, which shall be at least five (5) but not more than thirty (30) Days after its receipt by the Lessee.

8.3.2 Either of the Government or the Lessee may, terminate this Lease, upon written notice to the other Party and any Approved Mortgagee in the event of Extensive Damage or Destruction of Improvements, as that term is defined in **Condition 16.5.2**. Such notice shall be referred to as a "**Termination Notice for Extensive Damage or Destruction of Improvements**" and shall be effective as of the date to be specified therein, which shall be at least thirty (30) Days but not more than forty five (45) Days after its receipt by the Lessee.

8.4 The Lessee hereby waives any claims or suits against the Government arising out of any termination of this Lease pursuant to **Condition 8.3**.

8.5 If an Event of Default exists and all notices of such Event of Default required by this Lease have been given, then subject to the rights, if any, of any Approved Mortgagee, the Government shall have the following rights and remedies in addition to all other rights and remedies available to the Government at law or in equity:

8.5.1 The Government shall have the right to enforce specific performance by the Lessee of its obligations under this Lease in any state or federal court of competent jurisdiction.

8.5.2 The Government shall have the right to exercise any of the rights provided in **Condition 10** with respect to the restoration and surrender of the [Leased Premises][Leased Land].

8.5.3 The Government shall have the right to take possession of the Project and operate, repair, restore, maintain, manage, and use the Project in accordance with the provisions of this Lease.

8.5.4 The Government shall have the right to obtain the appointment of a receiver to take possession of the Project and operate, repair, restore, maintain, manage, and use the Project in accordance with the provisions of this Lease.

8.5.5 The Government shall have the right to collect reimbursements from the Lessee for the cost of all repairs and maintenance undertaken by the Government pursuant to **Condition 8.5.3**.

8.5.6 The Government shall have all rights provided in the Trust Agreement with respect to the In-Kind Consideration Account and the Demolition Reserve Account, including without limitation the right to direct the disposition of any funds deposited in the In-Kind Consideration Account and Demolition Reserve Account, as well as any investment earnings on such funds, without the consent of the Lessee, any Approved Mortgagee or any other Person, and the Lessee shall not exercise any authority or powers with respect to such funds.

8.5.7 The Government shall have the right to pursue more than one right or remedy at the same time.

## **CONDITION 9 TAXES**

9.1 The Lessee shall pay to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time during the term of this Lease may be imposed on the Lessee or the Project. Each Party shall have the right, but not the obligation, at its own expense to (a) contest any such taxes, assessments or similar charges, and (b) take such actions as may be necessary and appropriate (i) to contest the validity, applicability or amount thereof; (ii) minimize such taxes, assessments or charges; or (iii) assert any exemption which may be available with respect to taxes, assessments or charges imposed on the Project. If and to the extent the [Leased Land][Leased Premises] is later made taxable by State or local governments under an Act of Congress, this Lease shall be renegotiated pursuant to 10 U.S.C. § 2667(f).

## **CONDITION 10 RESTORATION AND SURRENDER**

10.1 Except to the extent not required because of a Government Retention Notice delivered pursuant to **Condition 10.3**, no later than one hundred eighty (180) Days after the Lease Expiration Date, or the effective date of a Default Termination Notice pursuant to **Condition 8.3.1** or a Termination Notice for Extensive Damage or Destruction of Improvements pursuant to **Condition 8.3.2**, as applicable, or a date mutually agreed to by Lessee and the Government (the “**Restoration Deadline**”), the Lessee shall, at no cost to the Government, remove all of the [Existing Improvements,] EUL Improvements and its other property from the [Leased Land][Leased Premises] and restore the [Leased Land][Leased Premises] to the reasonable satisfaction of the Government (“**Removal and Restoration Obligation**”).

10.2 Except to the extent not required because of a Government Retention Notice delivered pursuant to **Condition 10.3**, no later than ten (10) years prior to the Lease Expiration Date or within forty-five (45) Days after Lessee’s receipt of a Default Termination Notice or a Termination Notice for Extensive Damage or Destruction of Improvements, the Lessee shall provide to the Government (a) a report (an “**Improvement Removal Report**”) prepared by a construction and demolition expert approved by the Government, such approval not to be unreasonably withheld or delayed, which report details and estimates the cost of removing all improvements on the [Leased Land][Leased Premises] (“**Estimated Restoration Costs**”), and (b) a written plan which sets forth how Lessee proposes to discharge its Removal and Restoration Obligations pursuant to this **Condition 10**.

10.3 Notwithstanding anything to the contrary in this **Condition 10**, no later than five (5) years prior to the Lease Expiration Date or concurrently with the delivery to Lessee of a Default Termination Notice or a Termination Notice for Extensive Damage or Destruction of Improvements, as applicable, the Government may provide written notice to Lessee of its election to require that all or any portion of the [Existing Improvements or] EUL Improvements and any personal property located therein revert or be transferred to the Government, at no cost, on the Lease Expiration Date or the effective date of any Default Termination Notice or Termination Notice for Extensive Damage or Destruction in lieu of the Lessee’s Removal and Restoration Obligation and without additional consideration therefore (a “**Government Retention Notice**”).

10.4 If the Government delivers a Government Retention Notice to Lessee in accordance with **Condition 10.3**, for all or any portion of the [Existing Improvements,] EUL Improvements and the personal property of the Lessee located therein, then on the Lease Expiration Date, or the effective date of a Default Termination Notice pursuant to **Condition 8.3.1** or a Termination Notice for Extensive Damage or Destruction of Improvements pursuant to **Condition 8.3.2**, the Lessee shall terminate its operations on the [Leased Land][Leased Premises] and vacate and surrender possession of the [Leased Land][Leased Premises], EUL Improvements and any personal property of the Lessee located therein described in the Government Retention Notice to the Government. Such reversion or transfer in lieu of Lessee’s Removal and Restoration Obligation shall be automatic and at no cost to the Government. The Lessee shall execute any documentation reasonably requested by the Government to confirm or effect such conveyance, which conveyance shall be free and clear of any and all encumbrances other than those approved by the Government pursuant to **Condition 22**.

10.5 After completion of any demolition required pursuant to this **Condition 10** of all or any portion of the at grade, above-grade, and below-grade structures, buildings and improvements of any kind whatsoever placed or maintained on the [Leased Land][Leased Premises], whether placed thereon or maintained by Lessee or others before or after the Effective Date, including, but not limited to, concrete foundations, pilings, structures and buildings, Lessee shall immediately restore, quit, and peacefully surrender possession of, the [Leased Land][Leased Premises] to the Government in good,

usable, and buildable condition, consisting of a level, graded, buildable pad with no excavations, hollows, hills or humps other than those existing prior to the removal of such structures.

10.6 In addition to any other remedies, if the Lessee does not satisfy its Removal and Restoration Obligation prior to or by the Restoration Deadline (“**Restoration Default**”), then at the option of the Government, the EUL Improvements [and Existing Improvements] and the personal property of Lessee located therein shall either (a) become the property of the Government without compensation therefor, or (b) the Government may cause said improvements to be removed and/or destroyed, and the [Leased Land][Leased Premises] to be so restored at the expense of the Lessee. In the event the Government elects to restore the [Leased Land][Leased Premises] pursuant to this **Condition 10.6**, the Government shall have the right, upon [ ] (xx) days advance written notice to the Lessee and any Approved Mortgagee, to direct, without the consent of the Lessee, any Approved Mortgagee or any other Person, the disposition of any funds deposited in the Demolition Reserve Account, as well as any investment earnings on such funds, for the purpose of paying the reasonable costs of such demolition, removal and restoration and the Lessee shall not exercise any authority or powers with respect to, or permit the withdrawal of such funds, except to the extent necessary to accomplish any written disposition instructions issued by the Government; *provided, however*, that if the funds available to the Government in the Demolition Reserve Account are insufficient to cover said costs, Lessee shall be liable to the Government for any deficiency. The Lessee shall reimburse the Government for any expenses the Government incurs in restoring the [Leased Land][Leased Premises], within thirty (30) Days after the Government provides written notice to Lessee of the reimbursement amount, together with reasonable documentation of such amount. In no event shall any claim for damages against the Government, its officers, employees, agents, or contractors be created by or made on account of the Government exercising any of its rights pursuant to this **Condition 10.6**.

10.7 Unless the Government delivers a Government Retention Notice to Lessee for all of the [Existing Improvements and] EUL Improvements, then during the period after the Lease Expiration Date, the effective date of a Default Termination Notice or the effective date of a Termination Notice for Extensive Damage or Destruction of Improvements, as applicable, until the date on which Lessee satisfies its Removal and Restoration Obligation under this **Condition 10**, or such later date as may be provided, all obligations set forth in **Conditions 10, 11, 13, 15, 16.2.2, 16.3.3, 16.4, and 23** shall remain in full force and effect.

10.8 On the Effective Date, Lessee shall establish an escrow account with a commercial escrow holder approved by the Government to fund its Removal and Restoration Obligations (“**Demolition Reserve Account**”). Funds deposited to the Demolition Reserve Account will be utilized solely to provide for payment for Lessee’s Removal and Restoration Obligation. The Demolition Reserve Account shall be subject to such procedures and controls set forth in that certain **Demolition Reserve Escrow Agreement** dated as of the Effective Date. The Lessee shall pledge and grant to the Government a continuing first lien security interest in and to all of Lessee’s right, title, and interest in the Demolition Reserve Account, as well as all funds held, or designated for deposit in the Demolition Reserve Account, whether now owned, existing, or hereafter acquired, and regardless of where located. The Lessee shall not grant or allow any security interests in, liens to, or encumbrances on the Demolition Reserve Account or the funds in it, except for the first lien security interest granted to the Government. However, the Lessee may grant to any Approved Mortgagee a continuing security interest in the Lessee’s right to receive a disbursement of any funds remaining in the Demolition Reserve Account pursuant to **Condition 10.8.2**, second in priority to the continuing first lien security interest pledged and granted to the Government. The Lessee shall deliver to the Government for filing one or more financing

statements, as necessary, in connection with the Demolition Reserve Account in the form reasonably required by the Government to properly perfect its security interest in the Demolition Reserve Account, and shall keep the lien secured by such statement(s) perfected at all times during the existence of the Demolition Reserve Account in accordance with the laws of Basestate. The Lessee shall deliver to the Government, within ten (10) days after filing, the original and any amendments to, and continuations of, any financing statement. Except as otherwise expressly provided in the Demolition Reserve Escrow Agreement, the Lessee shall be solely liable to the escrow agent for the fees and expenses related to the Demolition Reserve Account. All disbursements from the Demolition Reserve Account shall be made upon the Lessee's written direction, with the consent of the Government, to the escrow agent, provided that upon the occurrence of either (i) an Event of Default, or (ii) a Restoration Default pursuant to **Condition 10.6**, all disbursements from the Demolition Reserve Account shall be made solely upon the Government's written direction to the escrow agent without the consent of the Lessee, any Approved Mortgagee or any other person.

10.8.1 On January 1<sup>st</sup> of each calendar year commencing on [ ] and continuing every year thereafter until the Lessee satisfies its Removal and Restoration Obligations, the Lessee shall make annual cash deposits in the amount of [ ] dollars (\$xx) to the Trustee to be held in trust in the Demolition Reserve Account ("**Demolition Deposits**"). Upon the Government's receipt of the Improvement Removal Report pursuant to **Condition 10.2**, the Government shall have the right, following consultation with the Lessee and any Approved Mortgagee, to require the Lessee to increase the frequency and/or amounts of the Demolition Deposits throughout the remainder of the Lease Term to ensure that upon the expiration or earlier termination of this Lease the total amount of funds on deposit in the Demolition Reserve Account, together with any investment earnings on such funds, is not less than the Estimated Restoration Costs. In the event the funds deposited to the Demolition Reserve Account pursuant to this **Condition 10.8.1** are insufficient to satisfy the Lessee's Removal and Restoration Obligation, Lessee shall be immediately liable for any deficiency.

10.8.2 Any funds remaining in the Demolition Reserve Account upon either (i) the expiration or earlier termination of the Lease, if no demolition or restoration is required pursuant to **Condition 10**, or (ii) thirty (30) days following the Lessee's satisfaction of its Removal and Restoration Obligations will be distributed as follows:

- a. [ ] percent (xx%) to the Lessee,
- b. [ ] percent (xx%) to the Government.

#### **CONDITION 11 ENVIRONMENTAL PROTECTION**

11.1 The Lessee shall comply with Applicable Laws that are or may become applicable to Lessee's activities on the [Leased Land][Leased Premises].

11.2 The Lessee shall obtain at its cost and expense any environmental permits required for its operations under this Lease, independent of any existing permits.

11.3 The Lessee shall indemnify, defend, save, and hold harmless the Government from any claims for damages, response, remediation or other costs, expenses, liabilities, fines, or penalties resulting in any way from releases, discharges, emissions, spills, storage, handling, disposal, or any other acts or omissions by the Lessee, its officers, agents, employees, contractors, subcontractors or any

sublessees or licensees, or the invitees of any of them, giving rise to Government liability, civil or criminal, or responsibility under Applicable Laws.

11.3.1 This **Condition 11.3** shall survive the expiration or earlier termination of this Lease, and the Lessee's obligations under this **Condition 11.3** shall apply whenever the Government incurs costs or liabilities of the types described in this **Condition 11**.

11.3.2 The Lessee is warned that the [Leased Land][Leased Premises] may contain current and former improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground that may contain ACM. The Lessee is cautioned to use due care during property development activities that may uncover pipelines or other buried ACM. Prior to undertaking such development activities, the Lessee is responsible for inquiring as to whether the Government has records of the location, type, quantity, and characteristics of asbestos in any improvements prior to renovation, maintenance, repairs, or construction that may disturb suspect materials. If the Government does not have adequate records to substantiate the status or presence of ACM, the Lessee is required to obtain the necessary confirmatory samples and obtain analysis by a State of **Basestate** certified laboratory for the analysis of bulk materials for asbestos. The Government is not responsible for any handling, removal or containment of asbestos or ACM, or to the extent consistent with applicable law, for any liability related thereto. The Lessee will perform any and all asbestos work in accordance with Applicable Laws. Lessee shall have its employees and agents trained and certified as required in accordance with the State of **Basestate's** asbestos administrative code. The Lessee will be responsible for removal and disposal of all ACM in the improvements on the [Leased Land][Leased Premises] and will incorporate an asbestos disposal plan ("**Asbestos Disposal Plan**") in the Environmental Management Plan required by **Condition 6.2** of this Lease. The Asbestos Disposal Plan will identify the proposed disposal site for the asbestos. Removal and disposal of ACM must be carried out in compliance with all applicable federal, state, and local laws, rules, regulations, and standards. The Lessee further acknowledges that the Government assumes no liability for property damages or damages for personal injury, illness, disability, or death to the Lessee, 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 or from the [Leased Land][Leased Premises], whether the Lessee has properly warned, or failed to properly warn, the persons injured.

11.4 **[Note: 11.4 should only be used in leases having above ground Existing Improvements.]** [The Lessee recognizes and acknowledges that lead based paint materials ("**LBP**") may be present on exterior and interior surfaces of facilities within the Leased Premises or in the soil. The Lessee will be responsible at its sole cost and expense for the management, maintenance, removal and disposal of all LBP either located in or attributable to the Existing Improvements and EUL Improvements. Removal and disposal of LBP must be carried out in compliance with Applicable Laws. The Lessee further acknowledges that it is responsible at its sole cost and expense for complying with the requirements of the Residential Lead Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§ 4851 – 4856), if applicable.]

11.5 Notwithstanding any other provision of this Lease to the contrary (other than **Conditions 11.5** and **11.6**), and except as provided in this Condition, the Lessee, as between the Parties, does not assume any liability (including liability to third parties) or responsibility for environmental impacts and damage caused by the Government's use of toxic or hazardous wastes, substances, or materials on any portion of **Basename** AFB, including the [Leased Land][Leased Premises]. The Lessee has no responsibility or obligation under this Lease to undertake the defense of any claim or action,

whether in existence now or brought in the future, alleging environmental impacts and damage solely arising out of the use of or release of any toxic or hazardous wastes, substances, or materials on or from any part of **Basename** AFB, including the [Leased Land][Leased Premises], occurring prior to the Effective Date. Further, the Lessee shall have no obligation to undertake environmental response, remediation, or cleanup relating to such use or release. As used in this **Condition 11**, the terms “toxic or hazardous wastes, substances or materials” shall include any flammables, explosives, radioactive materials ,or other hazardous wastes, substances, or materials including, without limitation, substances defined as “hazardous substances”, “hazardous materials”, or “toxic substances” in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (“**CERCLA**”)(42 .U.S.C. §§ 9601-9675), the Hazardous Materials Transportation Act, and the Resource Conservation and Recovery Act (“**RCRA**”), all as now or hereafter amended. The Government acknowledges that pursuant to section 120 of CERCLA, the Government is subject to liability imposed by section 107 of CERCLA to the extent that it is responsible for the release or disposal of a hazardous substance on the [Leased Land][Leased Premises]. The Government agrees, as between the Parties, that it will not consider, or seek to have others consider, the Lessee a potentially responsible Party solely due to the presence of a hazardous substance on the [Leased Land][Leased Premises] on the Effective Date, provided that the Lessee has not by its acts or omissions caused a further release of such hazardous substance, released or disposed of new or additional hazardous substances, or increased the cost of a required response action. Nothing in this acknowledgment shall be construed to affect the liability of any person or entity, including the Lessee, under sections 106 or 107 of CERCLA.

11.5.1 For the purposes of this **Condition 11**, “defense” or “environmental response, remediation, or cleanup” includes liability and responsibility for the costs of damage, penalties, legal, and investigative services relating to such use or release. “Occupancy” or “use” shall mean any activity or presence (including preparation and construction) in or upon the [Leased Land][Leased Premises].

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

11.5.3 This Condition shall survive the expiration or termination of this Lease.

11.6 The Lessee must comply with Applicable Laws relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes.

11.7 Except as provided in this **Condition 11.7** for the temporary accumulation of toxic or hazardous material on the Project and **Condition 11.19**, the Lessee must obtain written Government approval, as required by 10 U.S.C. § 2692, prior to storing, treating, or disposing of any toxic or hazardous material on the Project. Toxic or hazardous material includes any material that is a “hazardous substance” under section 101(14) of CERCLA, or designated a “hazardous substance” by the U.S. Environmental Protection Agency under section 102 of CERCLA. The Lessee shall strictly comply with the hazardous waste permit requirements under RCRA, as amended, or its **Basestate** equivalent and Applicable Laws. The Lessee shall be liable for any violations of the requirements set forth in this **Condition 11.7**. The Lessee shall be liable for the cost of proper disposal of any hazardous waste generated by any Sublessee in the event of failure by the Sublessee to dispose of such wastes properly.

11.7.1 The Lessee must provide, at its own expense, such hazardous waste accumulation points, complying with all laws and regulations, as it may need for the temporary

accumulation of hazardous wastes prior to such wastes being disposed of in accordance with Applicable Laws. The Lessee will not use Government accumulation points for hazardous and other wastes and the Lessee will not permit its hazardous waste to be commingled with hazardous wastes of the Government.

11.7.2 Any violation of the requirements of this **Condition 11.7** shall constitute a material breach of this Lease.

11.8 On or before the Effective Date, the Government shall provide the Lessee access to the **Basename** AFB Installation Restoration Program (“**IRP**”) records, if any, and thereafter shall provide to the Lessee a copy of any amendments to or restatements of the **Basename** AFB IRP records affecting the **[Leased Land][Leased Premises]**. The Lessee expressly acknowledges that it fully understands that some or all of the response actions to be undertaken with respect to the **Basename** AFB IRP may impact the Lessee’s quiet use and enjoyment of the Project. The Lessee agrees that notwithstanding any other provision of this Lease, the Government shall have no liability to the Lessee or its Sublessees should implementation of the **Basename** AFB IRP or other hazardous waste cleanup requirements, whether imposed by law, regulatory agencies, or the Government or the Department of Defense, interfere with the Lessee’s or its Sublessee’ use of the Project. The Lessee shall have no claim or cause of action against the United States, or any officer, agent, employee, contractor, or subcontractor thereof, on account of any such interference, whether due to entry, performance of remedial or removal investigations, or exercise of any right with respect to the **Basename** AFB IRP or under this Lease or otherwise.

11.9 The Government and its officers, agents, employees, contractors, and subcontractors shall have the right, upon reasonable notice to the Lessee, to enter upon the Project for the purposes enumerated in this **Condition 11.9**.

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

11.9.2 To inspect field activities of the Government and its contractors and subcontractors in implementing the **Basename** AFB IRP;

11.9.3 To conduct any test or survey related to the implementation of the **Basename** AFB IRP or environmental conditions at the Project or to verify any data submitted to the United States Environmental Protection Agency (EPA) or the **Basestate** Department of Natural Resources by the Government relating to such conditions; and

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

11.9.5 Any investigations and surveys, drilling, testpitting, test soil borings, and other activities undertaken pursuant to this **Condition 11.9** shall be conducted in a manner that is as inconspicuous as practicable. Any monitoring wells, pumping wells, and treatment facilities required pursuant to this Condition shall be designed and installed to be as inconspicuous as practicable. The Government shall attempt to minimize any interference with the Lessee’s quiet use and enjoyment of the Project arising as the result of such wells and treatment facilities. The Government shall, subject to

the availability of appropriations therefore, repair any damage caused by its exercise of the rights in this paragraph.

11.10 The Lessee agrees to comply with the provisions of any health or safety plan in effect under the Basename AFB IRP (to the extent the Lessee has received notice thereof), or any hazardous substance remediation or response agreement of the Government with environmental regulatory authorities (to the extent the Lessee receives notice thereof if the agreement is not of public record) during the course of any of the above-described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee. The Lessee and any Sublessees, assignees, licensees, or invitees shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof, except to the extent permitted under Federal law, including the Federal Tort Claims Act.

11.11 The Lessee must maintain and make available to the Government all records, inspection logs, and manifests that track the generation, handling, storage, treatment, and disposal of hazardous waste, as well as all other records required by Applicable Laws. The Government's rights under this Lease specifically include the right for Government officials to inspect the Project, upon reasonable notice as provided under **Condition 14**, for compliance with Applicable Laws, including environmental laws, rules, regulations, and standards, particularly those relating to the generation, handling, storage, treatment, and disposal of hazardous waste, as well as to the discharge or release of hazardous substances, 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. Violations identified by the Government will be reported to the Lessee and to appropriate regulatory agencies, as required by applicable law. The Lessee will be liable for the payment of any fines and penalties that may be imposed as a result of the actions or omissions of the Lessee.

11.12 The Lessee shall have an approved plan prior to commencement of operations on the [Leased Land][Leased Premises] for responding to hazardous waste, fuel, and other chemical spills ("**Spill Plan**"). The Spill Plan shall comply with all applicable requirements and shall be updated as required to comply with changes in site conditions or applicable requirements and shall be approved by all agencies having regulatory jurisdiction over such plan. The Spill Plan shall be independent of Government spill prevention and response plans. Except for initial fire response and/or spill containment, the Lessee shall not rely on use of Basename AFB personnel or equipment in execution of its Spill Plan. The Lessee shall incorporate a copy of the approved Spill Plan, and any approved amendments thereto, into the Environmental Management Plan required by **Condition 6.2** of this Lease. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment or otherwise on request of the Lessee or because the Lessee was not, in the opinion of the Government, conducting timely cleanup actions, the Lessee agrees to reimburse the Government for its costs as Supplemental Rent, and in accordance with Applicable Laws.

11.13 Prior to the storage, mixing, or application of any pesticide, as that term is defined under the Federal Insecticide, Fungicide, and Rodenticide Act ("**FIFRA**"), the Lessee shall prepare a plan for storage, mixing, and application of pesticides ("**Pesticide Management Plan**"). The Pesticide Management Plan shall be sufficient to meet Applicable Laws. The Lessee shall store, mix, and apply all pesticides within the Project only in strict compliance with the Pesticide Management Plan. The pesticides will only be applied by a licensed applicator.

11.14 The Lessee shall comply with all requirements of the Federal Water Pollution Control Act, the National Pollutant Discharge Elimination System (NPDES), and any applicable state or local requirements. If the Lessee discharges wastewater to a publicly or federally owned treatment works, the Lessee must submit a Pretreatment Permit Application prior to the Effective Date. The Lessee will be responsible for meeting all applicable wastewater discharge permit standards. The Lessee will not discharge wastewater under the authority of any NPDES permit, pretreatment permit, or any other permit issued to **Basename** AFB. The Lessee or its Sublessees shall make no use of any septic tank installed on **Basename** AFB.

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

11.16 The Lessee will comply with the **Basename** AFB water conservation policy, as amended from time to time (to the extent that such policy exists and the Lessee receives copies thereof).

11.17 The Lessee will use all reasonable means available to protect environmental and natural resources, consistent with Applicable Laws and this Lease. Where damage nevertheless occurs, arising from the Lessee's activities, the Lessee shall be fully liable for any such damage.

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

11.19 The Lessee acknowledges that the surface soil on the [Leased Land][Leased Premises] may contain elevated levels of pesticides and pesticide-related chemicals applied in the normal course of maintaining the [Leased Land][Leased Premises]. The Lessee shall manage all such soil on the [Leased Land][Leased Premises] in accordance with the requirements of Applicable Laws. The Government will not be responsible for injury or death of any person affected by such soil conditions whether the person is warned or not. [The Lessee recognizes and acknowledges that chlordane, applied in the normal course of maintaining the Leased Premises, may be present in soil under or in the area immediately surrounding some building foundations on the Leased Premises and that such soils must be tested and evaluated for chlordane before excavation occurs. The Lessee shall be responsible, at its sole cost and expense, for any testing or evaluation of chlordane required in connection with such conditions on the Leased Premises, including without limitation any testing and evaluation required under Applicable

Laws.] To the extent that environmental testing detects chlordane on any portion of the [Leased Land][Leased Premises], the Lessee shall, at its sole cost and expense, manage such chlordane in place to the fullest extent permitted under Applicable Laws; *provided, however*, that the Lessee may request written consent from the Government to remove contaminated soil as permitted under Applicable Laws, which consent shall not be unreasonably withheld. The provisions of **Condition 11.7** shall apply to such chlordane only to the extent that it cannot be managed in place under Applicable Laws.

11.20 If at any time either Party shall become aware, or have reasonable cause to believe, that any toxic or hazardous wastes, substances, or materials have been released or have otherwise come to be located on or beneath the [Leased Land][Leased Premises] in amounts greater than either the reportable quantities or a level requiring response action(s) under an Applicable Law, such Party shall immediately upon discovering the release or the presence or suspected presence of the toxic or hazardous wastes, substances, or materials, give written notice of that condition to the other Party. In addition, the Party first learning of the release or presence of any toxic or hazardous wastes, substances, or materials on or beneath the [Leased Land][Leased Premises], shall immediately notify the other Party in writing of: (i) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Applicable Law;(ii) any claim made or threatened by any person against the Government, the Lessee, or the [Leased Land][Leased Premises] arising out of, or resulting from, the release or presence of toxic or hazardous wastes, substances, or materials; and (iii) any reports made to any local, state, or Federal environmental agency arising out of, or in connection with, any toxic or hazardous wastes, substances, or materials.

11.21 Regulatory Issues. The Project is subject to all applicable federal and state environmental laws and regulations, including but not limited to, the National Environmental Policy Act, Executive Order 11990 Protection of Wetlands, and Executive Order 11988 Floodplain Protection. The Lessee shall be responsible for ensuring compliance with all applicable federal and state environmental laws and regulations. The Lessee shall also comply with the [Basename] AFB Integrated Natural Resource Management Plan (INRMP) and [Basename] AFB Cultural Resource Management Plan (CRMP). The Government will provide the Lessee a reasonable opportunity to review and comment on any proposed revisions to the [INRMP] [or] [CRMP] that may affect the Leased Land. *[Note: Delete either or both of the foregoing plans if the Base does not have such a plan or such plan does not pertain to the Leased Land. Insert other specific Base environmental management plans, but only when the Lessee's compliance with such plans is required, as a matter of law, to satisfy environmental laws and regulations applicable to the Air Force.]*

## **CONDITION 12 MAINTENANCE OF LEASED [LAND][PREMISES]**

12.1 The Lessee, at no expense to the Government, shall at all times preserve, maintain, repair, and manage the Project in an acceptable, safe, and sanitary condition in accordance with this Lease and the Development Agreement.

12.1.1 The Lessee shall be responsible for the operation and maintenance of the utility systems owned and/or leased by it within the [Leased Land][Leased Premises], including, but not limited to, water, gas, TV, electric, sanitary sewer, and storm systems. The Government assumes no responsibility under this Lease for utility systems leased or owned by the Lessee.

12.1.2 The Lessee shall at all times maintain all roads, streets, curbing, sidewalks, parking areas, access drives, and appurtenant drainage thereto within the Project in good condition and keep them free of debris and obstructions of any kind. [The Lessee shall keep roads, streets, and common paved areas (including common sidewalks) free of ice and snow.]

12.2 If the Lessee damages or destroys any real or personal property of the Government other than as contemplated by the Construction Management Plan, the Lessee shall promptly repair or replace such real or personal property to the reasonable satisfaction of the Government. At the Government's election, in lieu of such repair or replacement the Lessee shall pay to the Government money in an amount sufficient to compensate for the loss sustained by the Government by reason of damage or destruction of Government property, including natural resources.

### **CONDITION 13 COMPLIANCE WITH APPLICABLE LAWS**

13.1 The Lessee shall comply, at its sole cost and expense (except for matters for which the Government remains obligated hereunder pursuant to **Condition 11.7**), with all federal, state, and local laws, rules, regulations, orders, ordinances, and other governmental standards and requirements which are applicable to the Lessee or the Project during the Lease Term (collectively, the "**Applicable Laws**").

13.2 Nothing in this Lease shall be construed to constitute a waiver of Federal supremacy or Federal sovereign immunity. Only laws and regulations applicable to the Project under the Constitution and statutes of the United States are covered by this Condition. The United States presently exercises [proprietary][concurrent][exclusive] Federal jurisdiction over the [Leased Land][Leased Premises]. The Government reserves the right to change the jurisdiction and the Lessee shall have no claim against the Government on account of the exercise of this reserved right to change jurisdiction.

13.3 Responsibility for compliance as specified in this **Condition 13** rests exclusively with the Lessee. The Government assumes no enforcement or supervisory responsibility, except with respect to matters committed to its jurisdiction and authority. The Lessee shall be liable for all costs associated with compliance, defense of enforcement actions or suits, payment of fines, penalties, or other sanctions and remedial costs related to the Lessee's use and occupation of the Project.

13.4 The Lessee shall have the right to contest by appropriate proceedings diligently conducted in good faith, without cost or expense to the Government, the validity or application of any law, ordinance, order, rule, regulation, or requirement of the nature referred to in this **Condition 13**. The Government shall not be required to join in or assist the Lessee in any such proceedings nor shall it be limited in its right to oppose or otherwise act to restrict any such proceedings.

### **CONDITION 14 ACCESS AND INSPECTION**

14.1 Any agency of the United States, its officers, agents, employees, contractors, and subcontractors may enter the Project at all times for any purposes not inconsistent with the Lessee's quiet use and enjoyment of them under this Lease, including but not limited to confirming compliance by the Lessee with the terms of this Lease. The Government normally will enter the Project during regular business hours and give the Lessee at least twenty four (24) hours prior notice of its intention to do so, unless it determines the entry is required for safety, environmental, operations, or mission

security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof.

#### **CONDITION 15 GENERAL INDEMNIFICATION BY LESSEE**

15.1 Except as otherwise provided in this Lease, the Government shall not be responsible for damages to property or injuries or death to persons that may arise from, or be attributable or incident to, the condition or state or repair of the Project, or the use and occupation of the Project, or for damages to the property of the Lessee, or injuries or death of the Lessee's officers, agents, servants, employees, or sublessees, or others who may be on the Project at their invitation or the invitation of any one of them.

15.2 Except as otherwise provided in this Lease, the Lessee agrees to assume all risks of loss or damage to property and injury or death to persons by reason of, or incident to, the possession and/or use of the Project by the Lessee, the Lessee's officers, agents, servants, employees, or others (excluding those employees or agents of the Government who are on the [Leased Land][Leased Premises] for the purpose of performing official duties) who may be on the [Leased Land][Leased Premises] at their invitation or the invitation of any one of them (the "**Lessee Parties**"), or the activities conducted by or on behalf of the Lessee Parties under this Lease. The Lessee expressly waives all claims against the Government for any such loss, damage, bodily injury, or death caused by, or occurring as a consequence of, such possession and/or use of the Project by the Lessee Parties, or the conduct of activities or the performance of responsibilities under this Lease. The Lessee further agrees, to the extent permitted by Applicable Laws, to indemnify, save, and hold harmless the Government, its officers, agents, and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon bodily injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of any portion of the Project, or any activities conducted or services furnished by or on behalf of the Lessee Parties in connection with, or pursuant, to this Lease, and all claims for damages against the Government arising out of, or related to, the Lease. The agreements of Lessee contained in this **Condition 15.2** do not extend to claims caused by the gross negligence or willful misconduct of officers, agents, or employees of the United States, without contributory fault on the part of any other person, firm, or corporation. The Government will give the Lessee notice of any claim against it covered by this indemnity as soon as practicable after learning of it.

#### **CONDITION 16 INSURANCE**

16.1 The Lessee shall in any event and without prejudice to any other rights of the Government bear all risk of loss or damage or destruction to the [Leased Land][Leased Premises], and any building(s), improvements, fixtures, or other property thereon, arising from any causes whatsoever, with or without fault by the Government, *provided, however*, the Government shall not be relieved of responsibility for loss or damage that is solely the result of the gross negligence or willful misconduct of the Government (i) to the extent such loss or damage is not covered by coverage of insurance required under this Lease and (ii) to the extent recovery is authorized under Applicable Laws.

16.2 During the entire Lease Term, the Lessee (or its contractors or sublessees), at no expense to the Government, shall procure, carry and maintain the following insurance:

16.2.1 Upon the commencement of any, demolition, renovation or construction on the [Leased Land][Leased Premises], the Lessee (or its contractor or sublessee) shall procure, carry, and maintain until completion of the initial Improvements commercial builders' risk insurance with limits of coverage equal to the full replacement cost value of the completed project. Upon completion of the Building and/or Improvements on the [Leased Land][Leased Premises], the Lessee shall procure, carry, and maintain at Lessee's cost a standard all-risk property insurance policy or policies on the Project, including loss of rents coverage for actual loss sustained having an extended period of indemnity of one hundred eighty (180) Days in an amount not less than gross rents for one year and other appropriate coverages as determined by the Lessee. Property coverage will be on a replacement cost value basis with no coinsurance for full replacement value of the [Existing Improvements and] EUL Improvements. Such replacement value shall be determined by the Lessee, subject to adjustment not more frequently than once in any twelve-month period unless there have been substantial changes to the Project within such period. Property insurance shall have: (i) a deductible no greater than \$10,000, unless otherwise approved in writing by the Government; (ii) earthquake, flood, sewer backup, boiler, and machinery coverages with commercially available limits and deductibles approved by the Government; and (iii) terrorism insurance with limits and deductibles if available at reasonable rates. The Property insurance policies shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of Lessee but subject to any prior rights of any mortgagee to collect such insurance proceeds and apply them to the repayment of any outstanding mortgage loan, shall be payable to Lessee to be used for the repair, restoration or replacement of the property damaged or destroyed. Any balance of the proceeds not required for such repair, restoration or replacement shall be paid to Lessee, or to a mortgagee of Lessee's leasehold interest in this Lease, as designated in writing by Lessee. The standard all-risk and builders' risk insurance policies issued by the insurers shall be for the mutual benefit of the Government, any Approved Mortgagee(s), and the Lessee will name the Government and any Approved Mortgagee(s) as named insured or loss payees as to their respective interests.

16.2.2 Commercial general liability insurance issued on an occurrence basis insuring against claims for bodily injury, death resulting therefrom, and property damage suffered or alleged to have been suffered by any person(s) resulting from the operations of the Lessee during and/or after construction at the [Leased Land][Leased Premises] under the terms of this Lease, with other appropriate coverages as reasonably determined by the Lessee. Subject to the provisions of **Condition 16.3**, the commercial general liability insurance shall insure the operations conducted in and on the [Leased Land][Leased Premises], including independent contractors and contractual liability coverage and provide that any losses shall be payable notwithstanding any act, failure to act, or negligence of the Lessee, the Government, any Approved Mortgagee or any other person. Commercial general liability insurance must be effective at all times throughout the Lease Term, with limits of liability appropriate to this project in a range of \$1,000,000 to \$100,000,000 per occurrence, general aggregate, and products and completed operations aggregate, and include coverage for fire, legal liability, and medical payments. The appropriate limits of liability for the Lessee after construction will be determined upon execution of the tenant lease. The general aggregate limit of liability shall apply on a per location or per project basis. The Government and other appropriate entities shall be listed on the commercial general liability and any excess umbrella liability policy(ies) as named insureds and shall have equal standing with other named insureds for the purpose of submitting claims directly with the insurer. This coverage shall be primary, non-contributory and may be provided under a combination of primary liability and umbrella excess liability policies.

16.2.3 Commercial business automobile liability insurance that insures against claims for bodily injury and property damage arising from the use of “any auto” having at least a combined single limit of \$1,000,000 per accident.

16.2.4 Commercial workers’ compensation liability insurance having at least limits of liability as required by the respective state statutory law(s). Waiver of subrogation in favor of the Government must be evidenced in this insurance coverage.

16.2.5 Commercial employers’ liability insurance to include third-party property coverage having limits of liability of at least \$1,000,000 each accident, \$1,000,000 per disease – each employee, and \$1,000,000 per disease – policy limit.

16.2.6 Lessee (or its contractor) shall be required to purchase the following commercial insurance coverages for limits adequate to protect the Lessee if each respective exposure exists:

- Commercial crime insurance or a fidelity bond;
- Commercial environmental or pollution legal liability insurance, including coverage for mold when available; and
- Commercial underground and/or aboveground storage tank liability insurance.

The insurance carried and maintained by the Lessee pursuant to this **Condition 16** shall provide coverage to protect the Government from any damage and liability for which the Lessee is liable or responsible or agrees to hold harmless and indemnify the Government under this Lease. Proceeds under all policies of insurance carried and maintained to provide the coverage required by **Condition 16.2.2** shall be available only for that purpose.

16.3 Lessee may require any sublessees, as joint and several responsible parties with Lessee for those portions of the Project under their control, to procure, carry and maintain at their expense portions of the insurance required hereby and Lessee shall not be required to carry insurance on such portion of the Project insured by any sublessees, provided that the insurance carried by any sublessee is no less than the following:

16.3.1 All-Risks Commercial Property insurance coverage for business personal property and improvements & betterments made to the [Leased Land][Leased Premises] having limits based upon the full replacement cost value basis and business interruption coverage having limits of one year of gross rents, subject to an extended period of indemnity. In the event Lessee allows any sublessee rather than the Lessee to provide the all-risk property insurance on any Improvements, Lessee shall notify the Government and provide the Government a copy of the certificate of insurance with respect thereto.

16.3.2 Commercial General Liability insurance whose base liability insurance policy, together with any excess liability coverage provided under blanket umbrella coverage, is primary, non-contributory coverage having limits of liability of at least \$2,000,000 per occurrence and \$2,000,000 annual aggregate. The policy issued by the insurer for commercial general liability insurance provided for in this paragraph shall be for the benefit of the Government and the sublessee will designate the Government and other appropriate entities as a named insured(s).

16.3.3 Commercial workers' compensation insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against the Government or the Lessee, having at least limits of liability as required by the respective state statutory law(s). Waiver of Subrogation in favor of the Lessee must be evidenced in this insurance coverage.

16.3.4 Commercial employers' liability insurance having at least limits of liability of \$1,000,000 each accident, \$1,000,000 per disease – each employee, and \$1,000,000 per disease - policy limit.

16.4 All insurance policies this Lease requires the Lessee to procure, carry, and maintain, or cause to be procured, carried, or maintained pursuant to this **Condition 16**, shall be effected under valid and enforceable policies in such forms and amounts as issued by insurance company(ies) having a rating by A.M. Best's Key Rating Guide of not less than "A-/VIII". All such policies shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Lessee, the Government, any Approved Mortgagee, or any other person. Each policy shall provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least ten (10) Days after receipt by the Government and any Approved Mortgagee of written notice thereof. Each policy shall provide that the insurer shall have no right of subrogation against the Government or any Approved Mortgagee. Each policy shall also be reasonably satisfactory to the Government in all other respects. All property insurance policies required by **Condition 16.2.1** shall be payable to the Lessee and any Approved Mortgagee in accordance with this Lease and **Condition 16.2.1**. The Lessee is not entitled to assign to any third-party rights of action that the Lessee may have against the Government except for assignments to sublessees or mortgagees of Lessee hereunder. Notwithstanding the foregoing, any cancellation of insurance coverage based on nonpayment of the premium shall be effective upon ten (10) Days' written notice to the Government and any Approved Mortgagee. The Lessee understands and agrees that cancellation of any insurance coverage required to be carried and maintained by the Lessee under this **Condition 16** will constitute a failure to comply with the terms of this Lease, and the Government shall have the right to terminate this Lease for default and breach pursuant to **Condition 8** upon receipt of any such cancellation notice, but only if the Lessee fails to cure such noncompliance to the extent allowed under **Condition 8**. The Lessee shall deliver or cause to be delivered upon execution of this Lease (and thereafter not less than fifteen (15) Days prior to the expiration date of each policy furnished pursuant to this **Condition 16**), at the Government's option, a certified copy of each policy of insurance required by this Lease as soon as each such policy is made available by the insurer in a form acceptable to the Government, and including such endorsements necessary to afford additional insured or loss payee status or evidence other conditions as required per provisions above, or both.

16.5 In the event that any part of the Project is damaged (except de minimis damage) or destroyed, the risk of which is assumed by the Lessee under **Condition 16.1 ("Damaged or Destroyed Property")**, the Lessee shall promptly give notice thereof to the Government and any Approved Mortgagees.

16.5.1 The Lessee shall, as soon as reasonably practicable after the casualty, restore the Damaged or Destroyed Property as nearly as possible to the condition that existed immediately prior to such loss or damage, subject to **Condition 16.5.2**.

16.5.2 In the event that the Government and any Approved Mortgagees in consultation with the Lessee determine that the magnitude of Damaged or Destroyed Property is so

extensive that the Project cannot be used by the Lessee for its operations and the repairs, rebuilding, or replacement of the Damaged or Destroyed Property cannot reasonably be expected to be substantially completed within nine (9) months of the occurrence of the casualty (“**Extensive Damage or Destruction of Improvements**”), either Party may terminate this Lease as provided in **Condition 8.3.2**. In the event that the Government shall determine that an Extensive Damage or Destruction of Improvements has not occurred, then neither Party shall have the right to terminate this Lease. In the event the Government determines that such an event has occurred, and the Approved Mortgagee disagrees with that determination, then the matter shall be determined pursuant to the provisions of **Condition 23** of this Lease. If the Parties and any Approved Mortgagees mutually agree to repair, rebuild, and replace less than all Damaged or Destroyed Property, then neither Party shall have the right to terminate this Lease as provided in **Condition 8.3.2** with respect to the [Leased Land][Leased Premises] on which the Damaged or Destroyed Property that will be repaired, rebuilt, and replaced is situated.

16.5.3 Unless this Lease is terminated pursuant to **Condition 8.3.2**, any insurance proceeds received as a result of any casualty loss to the Project shall be applied in the following order of priority: (i) first, to restoring the damaged area and removing any related debris to the reasonable satisfaction of the Government; (ii) second, to repairing, rebuilding, and/or replacing the [Existing Improvements and]EUL Improvements and the damaged area to the reasonable satisfaction of the Government; (iii) third, if required by any Approved Mortgagee, to the payment of any outstanding liens held any Approved Mortgagee, in accordance with the order of priority of such liens, until all such liens are fully satisfied and released, and (iv) fourth, the excess, if any, shall be paid to the Lessee. If this Lease is terminated pursuant to **Condition 8.3.2**, then any insurance proceeds received as a result of any casualty loss to the Project shall be applied to the restoration of the [Leased Land][Leased Premises] in accordance with **Condition 10** after repayment of any outstanding Mortgage on the Project.

16.6 Lessee shall require its insurance company or companies to furnish to the Government a copy of the certificate or certificates of insurance evidencing the purchase of such insurance and from time to time the renewal of such insurance as soon as each such certificate is made available by the insurer in a form reasonably acceptable to the Government, and including such endorsements necessary to afford named insured status or evidence other conditions as required per provisions above, or both. The minimum amount of liability insurance coverage is subject to reasonable review by the Government every ten (10) years or upon renewal or modification of this Lease. If the amount of Lessee’s liability insurance is reasonably comparable to the liability coverage generally carried by other owners of buildings similar to the Improvements, then such insurance shall be deemed acceptable to the Government.

## **CONDITION 17**

### **CONSTRUCTION OF IMPROVEMENTS AND ALTERATIONS/CONSTRUCTION CONSULTANT**

17.1 This Lease is subject to and conditioned on the Lessee’s [demolition, design, construction, renovation, operation, and maintenance of a (*describe the approved use*) on the [Leased Land][Leased Premises] in accordance with this Lease]. The Government’s sole and exclusive interest in and liability under this Lease are limited to that of lessor of the [Leased Land][Leased Premises]. The Lessee shall not be entitled to receive from the Government and the Government shall not be obligated to pay to the Lessee any monetary consideration for the Lessee’s activities undertaken pursuant to this Lease, including without limitation construction of the Project.

17.2 The Lessee shall be responsible for and obtain, at its sole expense, prior to the commencement of any demolition, renovation or construction, and upon completion of said demolition, renovation or construction, any approvals, permits, or licenses that may be necessary to construct, occupy, and operate the Project in compliance with Applicable Laws, including without limitation, any certificates of occupancy, and other applicable approvals from governmental authorities necessary for the construction, use, or occupancy of the Project.

17.3 The Lessee shall submit to the Government, for its review and approval, design plans and drawings of features and components for all facilities and improvements (including without limitation all utility systems) and grounds (including without limitation all landscaping, roads and traffic flows) that are to be a part of the Project ("**Design Plans**"). Design Plans shall be [ ] (xx%) conceptual drawings and designs and be prepared, signed and [sealed][certified] by a duly qualified architect registered in the state of **Basestate**. Design Plans shall be prepared in accordance with the requirements of: (i) this Lease, (ii) the State of **Statename** building codes, standards, regulations and the federal laws, as they may be amended, that would apply to like development activities outside the base and within the County of **Basecounty** ("**County**") or **Basecity** ("**City**"), as applicable, in which the installation is situated ("**Applicable Codes**"), and (iii) Applicable Laws (collectively, the "**Design Criteria**"). Upon the Government's written approval, the Design Plans shall be incorporated into and made a part of the Site Plan.

17.3.1 If at any time the Lessee wants to propose changes to the Design Plans previously approved by the Government, the Lessee shall submit the proposed changes ("**Plan Alterations**") to the Government. Plan Alterations must be prepared, signed and [sealed][certified] by a duly qualified architect registered in the state of **Basestate**.

17.3.2 If the Government believes that any Plan Alterations submitted to it for its review and approval are not consistent with the Design Criteria, the Government may, in its sole discretion, disapprove such Plan Alterations or provide written notice to the Lessee of such inconsistency and any corrective action proposed by the Government (a "**Plan Alterations Exception Notice**"). If within twenty (20) Days after delivery to the Lessee of a Plan Alterations Exception Notice, the Lessee and the Government are unable to agree on whether the plans can be made consistent the development activities previously approved, such Plan Alterations shall be deemed disapproved.

17.4 Within [ ] (xx) weeks after the Government provides written confirmation to the Lessee of its approval of the Design Plans, the Government will, subject to Lessee's continued compliance with this Lease and the Government's receipt of payment and performance bonds in accordance with **Condition 17.6** with respect to the construction work to be undertaken by the Lessee, issue written authorization for the Lessee to proceed with the construction of the EUL Improvements [and/or renovation and/or demolition of the Existing Improvements] ("**Notice to Proceed**"). The Lessee shall not undertake any construction work until it receives a Notice to Proceed. Subject to **Condition 17.6**, within [ ] (xx) days after issuance of a Notice to Proceed, the Lessee shall commence and diligently proceed with construction of the EUL Improvements [and/or renovation and/or demolition of the Existing Improvements] covered by such Notice to Proceed in a good and workmanlike manner and in accordance with: (i) this Lease, (ii) Applicable Codes, (iii) the Site Plan including without limitation the Design Plans, and (iv) Applicable Laws (collectively, the "**Construction Requirements**"). Adherence to the approved construction schedule shall be subject to Excusable Delays (as defined in **Condition 32**).

17.5 Throughout the construction period, the Lessee shall maintain an effective quality control program that will assure that the workmanship and materials used by any contractor, subcontractor, or vendor satisfy the Construction Requirements. The Lessee shall retain, at its own cost, an independent certified professional who is not affiliated with the Lessee or any of the Lessee's affiliates to administer such quality control program ("**Construction Consultant**"). The Construction Consultant shall be approved in advance by the Government and any Approved Mortgagee and shall, among other things, conduct reviews of construction plans and specifications, conduct basic and engineering site reviews, independently verify all processes, procedures, cover up inspections and material tests, review and approve as-built plans, and certify to the Government and any Approved Mortgagee that [each phase of] the Project has been completed in accordance with the Construction Requirements. All reports prepared by the Construction Consultant shall be delivered simultaneously to the Lessee and the Government. The Government shall have the right, at its election, to participate in any of the Lessee's meetings with the Construction Consultant and allow the Government to participate in such meetings. The Construction Consultant shall provide written evidence to the Government that it maintains malpractice insurance for the benefit of the Government under terms and in an amount reasonably satisfactory to the Government.

17.6 The Lessee must provide to the Government payment and performance bonds with respect to the construction work to be undertaken by the Lessee covered by any Notice to Proceed. Each of the bonds must: (i) be issued by a Qualified Surety (as defined below); (ii) be in a form satisfactory to the Government and any Approved Mortgagee and run in favor of the Government and any Approved Mortgagee; (iii) be in the amount of the total cost of constructing the portion of the Project covered by such Notice to Proceed, as such cost is stipulated in the construction contract between the Lessee and its general contractor; (iv) guarantee the performance of the contract for the construction of such improvements in accordance with the Construction Requirements; and (v) provide that the Government and any Approved Mortgagee are dual obligees on such bonds. A "**Qualified Surety**" is a corporate surety or insurer authorized to do business, and to issue bonds for construction payment and performance, in the state of **Basestate** and possessing a long-term unsecured debt rating from any Rating Agency of no lower than two rating categories below the highest rating outstanding on the securities backed by this transaction.

17.7 The Government and its representatives, agents, and employees shall have access to the [Leased Land][Leased Premises] during construction of the Project for purposes of monitoring, observing, making inquiries, taking samples of materials for testing, as well as such other matters as the Government deems to be reasonably necessary for the Government to determine the Lessee's compliance with the Construction Requirements. The Parties expressly understand and agree that: (i) any inspection activity by the Government shall not relieve the Lessee of its responsibility for completing the Project in accordance with the Construction Requirements; (ii) failure of the Government to make any on-site inspections or conduct any testing shall not limit, or be construed to limit, any of the Government's rights under this Lease; and (iii) no action by the Government shall be deemed to be confirmation that the [Existing Improvements and] EUL Improvements shown in the Design Plans approved by the Government comply with the Construction Requirements and Applicable Laws. The Lessee's failure to comply with the Construction Requirements shall constitute an Event of Default.

17.8 The Lessee, the Lessee's general contractor and the Government shall attend pre-construction conferences to acquaint the Lessee, the Government, and the other participants with the Construction Management Plan (each a "**Pre-construction Conference**"). Each Pre-construction Conference shall take place in accordance with the construction schedule included as part of the

Construction Management Plan, and on such additional dates as the Government may reasonably require. At the first Pre-construction Conference, the Lessee shall submit the payment and performance bonds required under **Condition 17.6**, and such other documents and information as the Government may require.

17.9 [Any Existing Improvements that will be demolished by the Lessee shall be demolished in accordance with the requirements of this Lease and the Demolition Plan prepared by the Lessee and approved by the Government as part of the Construction Management Plan.]

17.9.1 [The Demolition Plan shall clearly set out a schedule of demolition activities.]

17.9.2 [The Demolition Plan shall include an asbestos and lead-based paint disposal plan that identifies the proposed disposal site for the asbestos and lead-based paint as required under this Lease.]

17.9.3 [The Demolition Plan shall incorporate a plan, as described in **Condition 11**, for maintenance of soils containing pesticide or pesticide-related chemical contaminants in place to the fullest extent permitted by applicable Environmental Requirements unless the Government has provided its written consent for the removal and disposal of such soils in accordance with **Condition 11**.]

17.10 All matters of ingress, egress, contractor haul routes, construction activity, and disposition of excavated material in connection with this Lease shall be approved in advance by the Government.

17.11 The Lessee agrees to engage contractors and builders to construct portions of the Project in accordance with the requirements of this Lease, including without limitation, those those requirements set forth on **Exhibit [E][F], Mandatory Clauses** (“**Mandatory Clauses**”). The Lessee shall, as applicable, include the Mandatory Clauses in all subleases, and all contracts with contractors and builders and shall use commercially reasonable efforts to cause its sublessees, contractors and builders to comply with the Mandatory Clauses. If a sublessee, contractor or builder fails to comply with the Mandatory Clauses despite the Lessee’s efforts, then the Lessee agrees to commence and diligently pursue actions necessary to terminate and replace the defaulting sublessee, contractor or builder, in addition to commencing and diligently pursuing any other actions as may be required by the Mandatory Clauses.

17.12 During the Lease Term, the Lessee shall have the right at its sole cost and expense, to install such of its own machinery and equipment, to make improvements, and to attach such removable fixtures in or upon the [Leased Land][Leased Premises] as may be necessary for its use of the Project pursuant to this Lease; and to remove such machinery, equipment, minor improvements, and removable fixtures at any time prior to the expiration or earlier termination of this Lease. In the event of termination of this Lease by the Government, the Lessee shall have a reasonable period of time following the effective termination date, as determined by the Government, to remove such property.

17.13 The Lessee shall not construct any permanent structure, including without limitation any advertising signs, [or make any structural modifications, alternations or additions to the Existing Improvements] on the [Leased Land][Leased Premises] except as shown in the Design Plans approved by the Government, and shall not construct any temporary structure on the [Leased Land][Leased Premises] needed during the construction phase of the Project except as provided in the Construction Management Plan . Upon the Government issuing a Certificate of Completion pursuant to **Condition**

**17.14** following completion of the construction of the Project, the Lessee shall make no subsequent structural modifications, alterations, renovations or additions to the Project, without the prior written consent of the Government, which shall not be unreasonably withheld or delayed.

17.14 Upon completion of construction of the Project, or any construction phase of the Project as established by the Construction Management Plan approved by the Government, and each subsequent renovation, the Lessee shall furnish to the Government: (i) certificates of each of a duly qualified architect registered in the state of **Basestate**, a duly qualified structural engineer registered in the state of **Basestate**, any inspecting architect, and the Construction Consultant, confirming that the Project has been completed in accordance with the Construction Requirements; (ii) a true, correct and complete copy of the permits and licenses, if any, that were required in connection with the construction, renovation, and demolition of any of the improvements, including without limitation, any certificates of occupancy, and other applicable approvals from governmental authorities; (iii) an as-built plat of survey (prepared, to the maximum extent practicable, in accordance with ALTA/ACSM Standards) of the Project detailing easements, the parcel boundaries and any encroachments to the boundaries, certified to the Lessee, any Approved Mortgagees, and the Government; (iv) an electronic record contained within a Geographic Information System in a format, and with the level of detail, specified by the Government, in its reasonable discretion, providing (a) as-built drawings of the improvements shown in the Design Plans (contract drawings and specifications); (b) the final Design Plans; and (c) any approved Plan Alterations; (v) evidence, which may consist of UCC searches and a title insurance policy or an update endorsement to an existing title insurance policy issued by a title insurance company reasonably acceptable to the Government, that the Project is free and clear of all liens (other than liens approved in accordance with **Condition 22.2**) arising out of, or connected with, the construction, renovation, and demolition of the Project; and (vi) a certificate of the Lessee confirming that the Lessee is not in default under any provisions of this Lease. All of the foregoing shall be satisfactory to the Government in its reasonable discretion.

17.15 Within fifteen (15) Days following the Government's receipt of the items required to be delivered pursuant to **Condition 17.14**, the Government, acting through the Director, Air Force Real Property Agency, shall, in its reasonable discretion, either issue to the Lessee (i) a Certificate of Compliance, or (ii) a written notice specifying in detail the reasons for the Government's refusal to issue a Certificate of Compliance.

17.16 Nothing in this **Condition 17** shall prevent the Lessee from executing a sublease for any completed facility before the Certificate of Compliance is issued; *provided, however*, that no facility shall be occupied by a Sublessee until the Government has received and accepted the certificates described in **Condition 17.14(i)** above for such facility and has provided a written notice to the Lessee that such building unit may be occupied by a sublessee.

## **CONDITION 18 UTILITIES AND SERVICES**

18.1 **[Option A. Use this option if Government leases utility systems to Lessee:** The Government herein leases to the Lessee those certain existing utility distribution and collection systems for providing electricity, gas, water and sewer to the [Leased Land][Leased Premises] as more particularly described in **Exhibit A.3 ("Utility Facilities")**. The Lessee shall be responsible for all necessary construction, maintenance and repair of (i) the Utility Facilities, and (ii) all connections to Government owned facilities, conduits, and utility mains. The Lessee shall be responsible for the

purchase, installation, maintenance, and repair of all meters. The maintenance and repair of all utility distribution and collection systems operated by the Lessee shall be accomplished as provided in the Utilities Service Agreement. All new utilities shall be installed underground, unless otherwise approved by the Government in the Site Plan.]

**[Option B. Use this option if Government does not lease utility systems to Lessee:** The Lessee shall be responsible for the construction, maintenance and repair of all utility distribution and collection systems necessary for the Project. The Lessee shall be responsible for the purchase, installation, maintenance, and repair of all meters. All new utilities shall be installed underground, unless otherwise approved by the Government in the Site Plan.]

18.1.1 The Lessee shall be responsible at its sole expense for all utility meters and related expenses and shall pay for any utilities and services furnished in connection with its use or operation of the Project. The charges and the method of payment for each utility or service furnished by anyone other than the Government will be determined by the appropriate supplier of the utility or service in accordance with Applicable Laws, on such basis as the appropriate supplier of the utility or service may establish.

18.2 The sale of any utility service by the Government will be in accordance with 10 U.S.C. § 2686 and Air Force Instruction (AFI) 32-1061, Providing Utilities to US Air Force Installations, as the same may be amended, modified or superseded from time to time. Any purchase of utility services from the Government is subject to **Conditions 18.2.1** and **18.2.2**.

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

18.2.2 The Government in no way warrants the continued provision, maintenance, or adequacy of any utilities or services it may furnish to the Lessee. The Government, where economically feasible, intends to divest itself of its currently owned utility systems during the Lease Term. The Government may elect in its sole and absolute discretion to cease furnishing any utilities or services, and shall provide written notice to Lessee at least one (1) year prior to its termination of such utilities. In the event that the Government notifies Lessee of its intent to cease furnishing any of the utilities or services that are being provided on the Effective Date, the Government shall enter into good-faith negotiations with Lessee to assist the Lessee in obtaining any necessary approvals, agreements, and/or permits for the provision of such utilities or services from sources other than the Government.

18.3 The Lessee shall pay for any firefighting, fire protection, and police protection services furnished by the Government for the benefit of the Project in accordance with the Police and Fire Plan.

## **CONDITION 19 OPERATION AND MANAGEMENT OF THE PROPERTY**

19.1 The Lessee agrees to operate and manage the Project, at its sole cost and expense, in accordance with the terms of this Lease and Applicable Laws.

## **CONDITION 20 NOTICES**

20.1 Whenever the Government or the Lessee shall desire to give or serve upon the other (or in the case of the Government, also any Approved Mortgagee) any notice, demand, order, direction, determination, requirement, consent or approval, request, or other communication with respect to this Lease or with respect to the [Leased Land][Leased Premises] and any improvements located thereon, each such notice, demand, order, direction, determination, requirement, consent or approval, request, or other communication shall be in writing and shall not be effective for any purpose unless same shall be given or served by personal delivery to the Party or Parties to whom such notice, demand, order, direction, determination, requirement, consent or approval, request, or other communication is directed or by mailing the same, in duplicate, to such Party or Parties through a national recognized and reputable overnight delivery service at the regular mailing address for the parties specified below. In the latter case, delivery shall be effective on the date confirmed by the records of such service.

If intended for the Lessee:

[ ]

Attn: [Name and Title]

Mailing address [and delivery address if different from mailing address]

With a copy to:

[ ]

Attn: [Name and Title]

Mailing address [and delivery address if different from mailing address]

If intended for the Secretary of the Air Force:

Department of the Air Force

Attn: Director, Air Force Real Property Agency

Mailing Address:

2261 Hughes Ave., Suite 121

Lackland AFB, TX 78236-9821

Delivery Address:

3515 S. Gen McMullen, Door 2

San Antonio, TX 78226-1858

*(All notices, requests and other communications to any party)*

With copies to:

Department of the Air Force

Attn: Chief Counsel, Office of the General Counsel  
(Environment & Installations)

Mailing Address:

2261 Hughes Ave., Suite 121

Lackland AFB, TX 78236-9821

Delivery Address:

3515 S. Gen McMullen, Door 2

San Antonio, TX 78226-1858

*(All notices, requests and other communications to any party)*

And

Department of the Air Force

Attn: Division Chief, AFRPA/RPM

Mailing Address:  
2261 Hughes Ave., Suite 121  
Lackland AFB, TX 78236-9821  
Delivery Address:  
3515 S. Gen McMullen, Door 2  
San Antonio, TX 78226-1858

And

[ ]  
[Installation POC]  
Mailing address [and delivery address if different from mailing address]

If to any Approved Mortgagee:

The address provided to the Government pursuant to **Condition 22.6.1**

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

20.2 Every notice, demand, order, direction, determination, requirement, consent or approval, request, or communication hereunder shall be personally served, sent by certified first-class mail, return receipt requested, or by recognized overnight delivery service. Any such notice, demand, order, direction, determination, requirement, consent or approval, request, or other communication shall be deemed to have been delivered on the date of the receipt of such delivery or transmission at the address set forth above (or such other address designated pursuant hereto), or, if sent by certified first-class mail, return receipt requested, and delivery is refused, upon the date of refusal to accept service.

#### **CONDITION 21 ASSIGNMENT, SUBLEASES, AND LICENSES**

21.1 The Lessee shall neither transfer nor assign its interests in the Project or this Lease (other than to an Approved Mortgagee under the terms of this Lease), without the prior written consent of the Government. For purposes of this Lease a prohibited transfer or assignment shall be deemed to include (A) any transfer that directly or indirectly results in a change of Control of the Lessee, or (B) the transfer of the direct or indirect beneficial ownership interests of Lessee in the Project that exceeds either (i) 5% of the ownership interests of Lessee in the Project in any one year or (ii) 20% of the ownership interests of Lessee in the Project on a cumulative basis. Such consent shall not be unreasonably withheld or delayed.

21.1.1 Any transfer, assignment or sublease granted by the Lessee shall be consistent with all of the terms and conditions of this Lease, and the rights of the transferee, assignee or sublessee shall terminate no later than immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of the Government to the Lessee or any transferee, assignee or sublessee. Under any transfer or assignment made, with or without consent, the transferee or assignee shall be deemed to have assumed all of the obligations of the Lessee under this Lease. No transfer, assignment or sublease shall relieve the Lessee of any of its obligations hereunder.

21.1.2 The Lessee shall furnish the Government, for its prior written consent, a copy of each agreement of sublease or assignment it proposes to execute. Such consent may include the requirement to delete, add, or change provisions in the sublease or assignment instrument as the Government shall deem necessary to protect its interests. Consent to any sublease or assignment shall not be taken or construed to diminish or enlarge any of the rights or obligations of either of the Parties under this Lease including, without limitation, the rights and obligations stated in **Condition 22.2**. Consent or rejection of any required changes shall be provided within  (xx) business Days of receipt of the proposed agreement.

21.1.3 Any agreement of transfer, sublease or assignment must expressly provide that: the transfer or assignment is subject to all of the terms and conditions of this Lease; all rights of transferee or assignee shall terminate no later than immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of the Government to the Lessee or any transferee, assignee or sublessee; the transferee or assignee shall assume all of the obligations of the Lessee under this Lease; and in case of any conflict between any provisions of this Lease and any provisions of the agreement of transfer, sublease or assignment, this Lease will control. A copy of this Lease must be attached to any agreement of transfer, sublease or assignment.

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

21.2 The Government will not execute any Subordination and Non-Disturbance Agreements.

## **CONDITION 22 LIENS AND MORTGAGES**

22.1 Except as provided in **Condition 22.2**, the Lessee shall not: (i) engage in any financing or other transaction creating any mortgage or security interest upon the Project; (ii) place or suffer to be placed upon the Project any lien or other encumbrance; (iii) suffer any levy or attachment to be made on the Lessee's interests in the Project; or (iv) pledge, mortgage, assign, encumber, or otherwise grant a security interest in the Project or the rents, issues, profits, or other income of the Project located thereon.

22.2 During the Lease Term, the Lessee may encumber by mortgage, deed of trust, or security agreement its interest in the Project to secure one or more loans to finance the Project, subject to **Condition 22.3**. The proposed holder of any such mortgage, deed of trust, or security agreement must be approved in writing by the Government prior to the execution of such loan, which approval shall not be unreasonably withheld or delayed. Any mortgagee approved by the Government or successor or assignee of such mortgagee approved by the Government shall be referred to in this Lease as an "**Approved Mortgagee**." The Government agrees to execute an Estoppel Certificate and any other similar documentation as may reasonably be required by any Approved Mortgagee to evidence the Government's consent to the conditional assignment or mortgage of the Lessee's interest in this Lease and to certify the status of this Lease and performance by the Lessee of its obligations under this Lease as of the date of such certification. Notwithstanding any foreclosure, the Lessee shall remain liable for

the performance of all the terms, covenants, and conditions of this Lease, which by the terms hereof are to be carried out and performed by the Lessee.

22.3 No mortgage or deed of trust shall extend to or affect the fee, the reversionary interest, or the estate of the Government in the [Leased Land][Leased Premises]. No mortgage, deed of trust, or security agreement shall be binding upon the [Leased Land][Leased Premises] until it is approved by the Government and a copy thereof has been delivered to the Government.

22.4 The Lessee shall notify the Government promptly of any lien or encumbrance on the Project, or the Lessee's interest in the Project, whether created by act of the Lessee or otherwise, of which the Lessee has notice.

22.5 If any Approved Mortgagee or any Approved Mortgagee Affiliate (defined below) acquires the Lessee's interest in the Project by deed-in-lieu, at a foreclosure of its mortgage or deed of trust, or otherwise, this Lease shall continue in full force and effect. The acquisition of the Lessee's interest in the Project, by anyone other than any Approved Mortgagee or any Approved Mortgagee Affiliate shall require the prior written approval of the Government. No agent or nominee shall be appointed to operate and manage any portion of the Project without obtaining the prior written approval of the Government. Such approval shall not be unreasonably withheld or delayed so long as the proposed agent or nominee has demonstrated experience or expertise in the development, management, and operation of facilities similar to the Project. Notwithstanding anything to the contrary contained in this **Condition 22.5**, the Government may withhold approval of any purchaser of the Lessee's interest in the Project (other than with respect to any Approved Mortgagee or any Approved Mortgagee Affiliate) if in the Government's sole discretion such purchaser could pose a threat or breach of security by its ownership or use of the [Leased Land][Leased Premises] at **Basename** AFB. As used in this **Condition 22.5**, "**Approved Mortgagee Affiliate**" means any corporation, limited liability company, or other entity that controls, is owned or controlled by, or is under common ownership and control with, any Approved Mortgagee.

22.6 With respect to any Approved Mortgagees, the following shall apply:

22.6.1 If any Approved Mortgagee has given written notice to the Government of its address, any notice to the Lessee given pursuant to this Lease, including, without limitation, notice of a default or a termination of this Lease shall be delivered simultaneously to any such Approved Mortgagee, and no notice of default or termination of this Lease given by the Government to the Lessee shall be deemed effective until like notice is given to any such Approved Mortgagee.

22.6.2 Any Approved Mortgagee shall have the same rights to cure any default as the Lessee has under this Lease with such additional time as may be afforded to any Approved Mortgagee pursuant to this **Condition 22** and the Government shall accept performance by such Approved Mortgagee, if any, as if the Lessee had performed.

22.6.3 The Government will not accept any cancellation of this Lease by the Lessee without the prior written consent of each Approved Mortgagee, if any. The Lessee shall provide each Approved Mortgagee with notice of any proposed material modification or cancellation.

22.6.4 No Approved Mortgagee, or purchaser at a foreclosure sale who has been approved by the Government as required by **Condition 22.5**, shall be required to cure any "Personal Default," as defined below, of the Lessee. As used in this **Condition 22**, "**Personal Default**" means any

default of the Lessee that cannot be cured by the payment of money or performance of the development activities undertaken pursuant to this Lease, including any bankruptcy of the Lessee. Examples of Personal Defaults include, without limitation, defaults in **Conditions 25.2, 31.1** through **31.4, and 31.6** of this Lease. Defaults under **Condition 25** also shall constitute Personal Defaults to the extent records are not available to prepare the reports required by that Condition.

22.7 If the Government elects to terminate this Lease pursuant to **Condition 8.3**, each Approved Mortgagee, if any, shall have the right to postpone ("**Mortgagee's Right to Postpone**") and extend the termination date specified in the Default Termination Notice, subject to the following conditions:

22.7.1 Prior to the termination date specified in the Default Termination Notice, any Approved Mortgagee must give the Government written notice of its exercise of the Mortgagee's Right to Postpone and simultaneously cure all monetary defaults and deliver to the Government as security for the cure of all other defaults other than personal defaults an amount sufficient to effect such cure.

22.7.2 The Mortgagee's Right to Postpone shall extend the date specified in the Default Termination Notice for the termination of this Lease for a period of up to six (6) months, or such longer period as may be reasonably requested by any Approved Mortgagee and approved by the Government, which approval shall not be unreasonably withheld. The Government will grant a reasonable extension of the date for termination of this Lease pursuant to the Mortgagee's Right to Postpone ("**Lease Termination Extension Date**") so long as any Approved Mortgagee (i) promptly commences all steps necessary to cure any default other than personal defaults of the Lessee, including such steps as may be required for any Approved Mortgagee to obtain possession or control of the Project, and diligently prosecutes the same to completion; and (ii) provides the Government with monthly updates in writing that describe in reasonable detail the steps any Approved Mortgagee has taken and will take in the future to cure any such defaults, and the anticipated time-frame for curing such defaults.

22.7.3 Prior to the termination date specified in the Default Termination Notice, such Approved Mortgagee, if any, shall assume performance and observance of the covenants and other agreements of the Lessee in this Lease.

22.7.4 If prior to the Lease Termination Extension Date, all defaults under this Lease other than personal defaults are cured or otherwise resolved as memorialized in a written agreement, then the Government shall withdraw the Default Termination Notice.

22.8 Nothing in this **Condition 22** shall be deemed to impose any obligation on the part of the Government to deliver physical possession of the Project to such Approved Mortgagee.

22.9 If more than one Approved Mortgagee shall seek to exercise any of the rights provided for in this **Condition 22**, the holder of the mortgage or deed of trust having priority of lien over the other Approved Mortgagees shall be entitled, as against the others, to exercise such rights. Should a dispute arise among the Approved Mortgagees regarding the priority of their respective liens, all of the Approved Mortgagees must provide written confirmation to the Government that they have settled that dispute; *provided, however*, that any such dispute shall not toll the termination date specified in the Default Termination Notice.

22.10 In the event this Lease is terminated by the Government for any reason or is rejected in bankruptcy, the Approved Mortgagee(s) in the order of the priority of their respective mortgages, may request a new lease (“**New Lease**”) from the Government, and the Government shall execute and deliver such New Lease provided the applicable Approved Mortgagee (i) pays all past due amounts due to the Government pursuant to the terms of this Lease, and (ii) cures or otherwise resolves in a manner acceptable to the Government any non-monetary defaults, except for personal defaults, of the Lessee under this Lease. Such New Lease shall be for the remaining term of this Lease and shall be on the same terms and conditions as set forth in this Lease.

### **CONDITION 23 DISPUTES**

23.1 Disputes under this Lease are subject to Contract Disputes Act of 1978, as amended, 41 U.S.C. §§ 601 *et seq.*

23.2 If a dispute should arise, the Parties agree to first attempt to resolve the dispute using unassisted negotiation techniques (i.e., without the assistance of a neutral third party). Either party may request in writing that unassisted negotiations commence. As part of the unassisted negotiation, the Parties shall consider employing joint fact-finding, if material factual disputes are involved, and shall use other early resolution techniques appropriate to the circumstances. If the dispute involves material issues of fact, the Parties may employ a neutral third party to provide a confidential evaluation of the issues of fact.

23.3 If the dispute is not resolved within 60 Days of the request for unassisted negotiations, and the Parties do not mutually agree to continue the unassisted negotiations, the Parties shall employ alternative dispute resolution (ADR) procedures involving nonbinding mediation of the dispute by a neutral third party. The ADR procedures employed shall include a confidential evaluation of both the facts and the law and the issuance of confidential recommendations by the third party neutral

23.4 If the Parties are unable to resolve the dispute following unassisted negotiations and/or the ADR proceeding, the contracting officer shall issue a final decision under the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613. Before the contracting officer can issue a final decision on a contractor claim, the claim must be submitted in writing to the contracting officer at the address provided in **Condition 20**, and must comply with all requirements of 41 U.S.C. § 605. The contracting officer’s final decision may be appealed as provided in 41 U.S.C. §§ 607 and 609.

23.5 By entering into this Lease, the Parties have voluntarily adopted ADR procedures in accordance with 5 U.S.C. § 572(c). These procedures shall not be employed if determined by either Party to be inappropriate after taking into consideration the factors enumerated at 5 U.S.C. § 572(b). A Party rejecting ADR as inappropriate shall document its reasons in writing and deliver them to the other Party. The Parties shall enter into a master written ADR Agreement governing ADR proceedings that may be amended as needed to fit individual proceedings. (A template of an acceptable ADR agreement may be found at [www.adr.af.mil](http://www.adr.af.mil).)

23.6 The Government’s obligation to make any payment arising out of an agreement resolving a dispute under this Lease is contingent upon the availability of funds proper for such payment.

### **CONDITION 24 [INTENTIONALLY OMITTED]**

## CONDITION 25 REPORTING PROVISIONS

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

25.1.1 Within thirty (30) days after the end of each quarter, the Lessee shall prepare and deliver to the Government, in such media and format as the Government shall reasonably require, a quarterly financial report setting forth with respect to the performance of this Lease: (i) income statement; (ii) balance sheet; (iii) debt service coverage ratios; and (iv) occupancy and delinquency reports. An officer of the Lessee shall certify each of these statements as true and accurate. In lieu of these financial reports, the Government, at its sole discretion, may accept financial reports that are required by a third party lender.

25.1.2 Annual Financial Information and Operational Reports. Annual financial information and operational reports shall include the auditor's report, financial statements with notes thereto, financial statement supplementary information, the auditor's management letter, the auditor's engagement letter, the client's letter to the auditor concerning related parties and related party transactions, and the local property tax and federal income tax returns for the Project. The auditor's management letter, the auditor's report or the financial statements must disclose any illegal act noted by the auditor regardless of materiality. Financial statements shall be prepared on the basis of generally accepted accounting principles (GAAP) or on the basis used for the Project's federal income tax return. If the financial statements are prepared on the tax basis, then the footnotes must include all disclosures required by GAAP. Financial statements shall also include footnotes that detail the calculations of [Net Operating Income Less Rent][Effective Gross Revenue] and Percentage Rent in accordance with **Condition 5**. The supplemental schedules must include the beginning and ending balances and activity within each cash and reserve account, and the amount of local property taxes paid or due or a statement that the project is not subject to such taxes. The supplemental schedule, which includes property taxes, must disclose the amount of property taxes, which the Lessee budgeted in its final pro forma submittal to the Government and the amount of actual property taxes. A supplemental schedule shall identify all owners of any interest in the Lessee and the interest held by each. If the Lessee or any owner of the Lessee is a corporation, all officers and directors of such corporation should be disclosed in the schedule, and if the Lessee or any owner is a limited liability company or partnership, all members and partners should be disclosed in the schedule. A supplemental schedule shall list the number of tenants by month and the amount of occupied space by month. The income tax return must be the federal income tax return of the Project, or the tax return of the owner of the Project if the Project does not file a federal income tax return. The auditor must be a certified public accounting (CPA) firm that participates in the peer review program of the American Institute of Certified Public Accountants. The annual financial information and the auditor's latest peer review report must be furnished directly by the CPA to the Government no later than four (4) months after the end of the Project's fiscal year, which

fiscal year shall be on a calendar year basis. Compiled or reviewed financial statements shall not meet the requirements of this **Condition 25.1.2**.

25.2 The Lessee agrees that the Government, the Comptroller General of the United States, or the Auditor General of the United States Air Force, or any of its duly authorized representatives, shall, until the expiration of three (3) years after the expiration or earlier termination of this Lease, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Lessee involving transactions related to the Project. The Lessee shall keep and maintain accurate, true, and complete books and records (hereinafter collectively referred to as "books and records"), which shall fully reflect the financial condition, occupancy, physical condition, maintenance, and operational status of the Project, together with all business licenses and permits required to be kept and maintained pursuant to the provisions of any applicable state or local law, regulation, or rule now or hereafter in effect. All books and records shall be kept at the Lessee's principal office, or at the Project, or at such other place as the Government and the Lessee both agree upon in writing. A complete duplicate set of the books and records shall be kept at a separate location mutually agreeable to the Parties. The Government is herewith granted the right to photocopies of same, at the sole expense of the Lessee. The Lessee shall deliver to the Government, upon such schedule as the Government may establish from time to time, and in such media, including electronic media as the Government shall select, all information and supporting documentation which the Lessee has maintained, or which the Government needs in order for the Government to file any report to the Department of the Air Force, the Department of Defense, or required to be submitted by the Government to any governmental or nongovernmental agency, or which the Government needs to assess the financial condition, performance, occupancy, physical condition, maintenance and operational status of the Project. Such items shall: (a) be in a form satisfactory to the Government, (b) be certified to the Government as true, complete, and accurate in all material respects by the Lessee, and (c) be taken from the books and records maintained by the Lessee as aforesaid.

25.2.1 The Lessee shall furnish to the Government all of the following documents, statements, reports, and other information upon the request of the Government:

25.2.1.1 a rent roll for the Project showing the name of each sublessee, the building unit occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any requested related information;

25.2.1.2 a monthly property management report for the Project, showing the number of rental applications received and deposits received, materials relating to marketing and leasing efforts for the Project, and any other information requested by the Government; and

25.2.1.3 a monthly maintenance report for the Project, showing maintenance records and expenditures, and any other information requested by the Government;

25.2.1.4 all income, real and personal property and any other tax returns and any other tax filings relating to the Lessee and/or the Project within thirty (30) days of its filing with the required federal, state or local agencies,

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

25.2.2 The Lessee shall provide the Government with monthly income statements for the Project, including calculations of net cash flow, within fifteen (15) days after Lessee receives a notice of default under this Lease, and for each month thereafter until such time as the default is cured;

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

#### **CONDITION 26 RIGHTS NOT IMPAIRED**

26.1 Nothing contained in this Lease shall be construed to diminish, limit, or restrict any right, prerogative, or authority of the Government over the [Leased Land][Leased Premises] relating to the security or mission of the Installation, the health, welfare, safety or security of persons on the Installation or the maintenance of good order and discipline on the Installation, as established in law, regulation, or military custom. The foregoing rights, prerogatives and authorities include, but are not limited to, the following:

26.1.2 The authority to promulgate and enforce security regulations and restrict public access to the Installation, to include regulations delineating parameters for authorized entry to or exit from the Installation, pursuant to 50 U.S.C. § 797.

26.1.3 The authority to conduct background checks utilizing the National Crime Information Center III data base of the Federal Bureau of Investigation pursuant to guidance promulgated by the Director, Federal Bureau of Investigation.

26.1.4 The authority to bar individuals from the Installation pursuant to 18 U.S.C. § 1382.

26.1.5 The authority to conduct inspections or searches of individuals, the [Leased Land][Leased Premises] or the EUL Improvements pursuant to Military Rule of Evidence 314, 10 U.S.C. § 802, *et seq.*, and 50 U.S.C. § 797.

26.1.6 The authority to issue search authorizations based on probable cause of individuals, the [Leased Land][Leased Premises] or the EUL Improvements pursuant to Military Rule of Evidence 315, 10 U.S.C. § 802, *et seq.* and 50 U.S.C. § 797.

26.1.7 The authority to conduct disaster preparedness exercises and/or emergency recovery operations on the Installation in accordance with 50 U.S.C. § 797 and Department of Defense Directive 5200.8 or a successor authority.

26.1.8 The authority to exercise emergency health powers on the Installation pursuant to Department of Defense Directive 6200.3 in the event of a public health emergency due to biological warfare, terrorism, or other communicable disease epidemic.

26.1.9 The authority to provide force protection and law enforcement services at levels deemed appropriate by the Government for the Project.

26.1.10 Any statutes, directives, regulations, or instructions referenced in subparagraphs 26.1.1 through 26.1.9 above shall be deemed to refer to such authorities as in effect on the Effective Date, as the same may be amended, supplemented or superseded from time to time.

26.2 Each sublease shall include notice to and acknowledgement by the sublessee that (a) the Project is located on the Installation and (b) such Project, including the subleased improvements, occupants of the subleased improvements, invitees, and personal property of the occupants and their invitees, are all subject to the Commander's rights, privileges and authorities, as provided in **Condition 26.1**.

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

26.4 Except as provided in **Condition 26.1**, nothing in this Lease shall be construed to diminish, limit or restrict any right of the Lessee under this Lease, or the rights of sublessees as prescribed under or applicable laws.

26.5 **Basename** AFB Access. The Lessee acknowledges its understanding that the **Basename** AFB is an operating military installation that could remain closed to the public and accepts that the Lessee's operations may from time to time be restricted temporarily or permanently due to the needs of national defense. Access to the installation may also be restricted due to inclement weather and natural disasters. The Lessee further acknowledges that the Government strictly enforces Federal laws and Air Force regulations concerning controlled substances (drugs) and personnel, vehicles, supplies, and equipment entering the Installation are subject to search and seizure, under 18 U.S.C. § 1382. The Government will use reasonable diligence in permitting the Lessee access to the Project at all times, subject to the provisions of this **Condition 26**. Notwithstanding the foregoing, the Lessee agrees the Government will not be responsible for lost time or costs incurred due to delays in entry, temporary loss of access, barring of individual employees from the Installation under Federal laws authorizing such actions, limitation, or withdrawal of an employee's on-base driving privileges, or any other security action that may cause employees to be late to, or unavailable at, their work stations, or delay arrival of parts and supplies.

#### **CONDITION 27 RENEWAL OF THE LEASE**

27.1 The Parties agree that at any time during the Lease Term, a renewal of this Lease may be negotiated and entered into by the Parties, provided that the Project is being operated and maintained as required by this Lease, and the Lessee is not in default of any of its obligations under this Lease.

#### **CONDITION 28 GOVERNMENT REPRESENTATIVES AND THEIR SUCCESSORS**

28.1 The Government, acting through the Secretary of the Air Force, may delegate certain of its responsibilities under this Lease to its duly appointed representatives.

**CONDITION 29  
AMENDMENTS**

29.1 Subject to **Condition 22.6.3**, this Lease may be amended at any time by mutual agreement of the Parties in writing and signed by a duly authorized representative of each of the respective Parties hereto. Amendments to this Lease executed on behalf of the Government must be signed at the level of the Deputy Assistant Secretary of the Air Force (Installations) or higher, unless the authority to execute amendments on behalf of the Government has been otherwise delegated in writing.

**CONDITION 30  
OPTION TO PURCHASE**

30.1 The Lessee is hereby granted the first right to purchase the [Leased Land][Leased Premises] pursuant to Section (b)(2) of the Enabling Statute under the terms and conditions set forth in this **Condition 30** (the "**Purchase Option**").

30.2 The Lessee shall have one hundred twenty (120) days after the Government notifies the Lessee of its intent to sell the [Leased Land][Leased Premises], to provide written notice to the Government that it intends to exercise its Purchase Option (the "**Purchase Option Notice**"). The Purchase Option shall be null and void if the Lessee fails to provide the Purchase Option Notice within such time period.

30.3 Within forty-five (45) days of the date of the Purchase Option Notice, the Government and the Lessee shall each at its own cost retain an appraiser who is a member of the Appraisal Institute, with at least ten (10) years of experience appraising real estate projects that are similar to the Project, to estimate the fair market value of the [Leased Land][Leased Premises] in its "as is, where is" condition, subject to all matters of record including this Lease (the "[Leased Land][Leased Premises] **Fair Market Value**"). Unless otherwise mutually agreed by the Parties, the Government and the Lessee shall deliver their appraisers' reports (respectively, the "**Government Appraisal**" and the "**Lessee Appraisal**") to each other within ninety (90) days of the Purchase Option Notice. All appraisals used in connection with this **Condition 30** shall be reviewed by the Government and any appraisal the Government determines, in its reasonable discretion, does not comply with applicable appraisal standards shall be rejected and shall not be used as any part of the basis for any sale of the [Leased Land][Leased Premises] or any part thereof.

30.4 If the estimates of the [Leased Land][Leased Premises] Fair Market Values in the Government Appraisal and the Lessee Appraisal are ten percent (10%) or less apart, then the purchase price of the [Leased Land][Leased Premises] (the "**Purchase Price**") shall be the average of such [Leased Land][Leased Premises] Fair Market Values. If, however, the value estimates in the Government Appraisal and the Lessee Appraisal are more than ten percent (10%) apart, then within one hundred twenty (120) days of the Purchase Option Notice, or such other date as mutually agreed to by the Parties, the Government and the Lessee shall select a third appraiser who satisfies the criteria set forth in **Condition 30.3** and has not been retained previously by either the Government or the Lessee (or any person or entity affiliated with the Lessee) (the "**Third Appraiser**") to estimate the [Leased Land][Leased Premises] Fair Market Value. The Parties shall each pay one-half (1/2) of the fees and expenses of the Third Appraiser. The Third Appraiser shall deliver its appraisal report (the "**Third Appraisal**") to the Parties within a commercially reasonable time from date the Third Appraiser is retained; *provided, that,*

the Government's obligation to pay one-half of such fees and expenses shall be subject to the availability of appropriated funds proper for such payment. The Third Appraiser shall be provided all market information and data from the Government Appraisal and Lessee Appraisal, but not the analyses or conclusions from such appraisals, prior to delivery of the Third Appraisal to the Parties.

30.5 Upon the Government's determination in accordance with **Condition 30.3** that the Third Appraisal complies with applicable appraisal standards, the Purchase Price shall be the average of the [Leased Land][Leased Premises] Fair Market Value estimated in the two appraisals, from among the Government Appraisal, Lessee Appraisal and Third Appraisal, that are closest in their estimated valuations of the [Leased Land][Leased Premises].

30.6 At any time within ten (10) days following determination of the Purchase Price, Lessee shall have the right in Lessee's sole discretion to withdraw the Purchase Option Notice by delivering written notice of such withdrawal to the Government. Such withdrawal of the Purchase Option Notice shall unconditionally and forever terminate the Purchase Option.

30.7 If Lessee does not withdraw the Purchase Option Notice within that ten (10) day period following the determination of the Purchase Price, then the Government and the Lessee shall finalize the documentation for the sale of the [Leased Land][Leased Premises] to the Lessee pursuant to this **Condition 30** (the "**Closing Documentation**"). The conveyance of the [Leased Land][Leased Premises] shall be made by quitclaim deed, "as is, where is," for all known and unknown conditions, including environmental conditions, not more than ninety (90) days after the last to occur of (a) the determination of the Purchase Price; (b) the preparation and execution by the Parties of a final EBS for the [Leased Land][Leased Premises]; (c) unless otherwise agreed among the Government, Lessee and any Approved Mortgagee, all applicable debt instruments of any Approved Mortgagee have been modified or refinanced to protect the Approved Mortgagee's security interest in the Project subsequent to the conveyance of the [Leased Land][Leased Premises] and (d) satisfaction of all requirements of Applicable Laws (the "**Closing Date**"). The Closing Documentation shall provide, in part, that (i) the Purchase Price shall be paid in full at closing in lawful money of the United States of America as directed by the Government or in the form of in-kind consideration as specified by the Government; (ii) this Lease shall terminate on the Closing Date; and (iii) if the [Leased Land][Leased Premises] have not been severed from **Basename** AFB prior to the Closing Date, then the Government shall have authority over the [Leased Land][Leased Premises] with respect to the security or mission of **Basename** AFB, the health, welfare, safety, or security of persons occupying **Basename** AFB, or the maintenance of good order and discipline on **Basename** AFB until severance of the [Leased Land][Leased Premises] from **Basename** AFB.

### **CONDITION 31 GENERAL PROVISIONS**

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

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

31.3 **Facilities Nondiscrimination.** As used in this **Condition 31.3**, the term “**Facility**” means lodgings, stores, shops, restaurants, cafeterias, restrooms, and any other facility of a public nature in any building covered by, or built on land covered by, this Lease.

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

31.3.2 The Parties agree that in the event of the Lessee’s noncompliance, the Government may take appropriate action to enforce compliance, and subject to **Condition 22.7** may terminate this Lease for default and breach as provided in **Condition 8** above, or may pursue such other remedies as may be provided by law.

31.4 **Gratuities.**

31.4.1 The Government may, by written notice to the Lessee, terminate this Lease if, after notice and hearing, the Secretary of the Air Force or a designee determines that the Lessee, or any agent or representative of the Lessee, offered or gave a gratuity (e.g., an entertainment or gift) to any officer, official, or employee of the Government and intended, by the gratuity, to obtain a lease or other agreement or favorable treatment under a lease or other agreement, except for gifts or benefits of nominal value offered to sublessees in the ordinary course of business.

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

31.4.3 If this Lease is terminated under **Condition 31.4.1** above, the Government shall be entitled to pursue the same remedies against the Lessee as in a breach of this Lease by the Lessee, and in addition to any other damages provided by law, to exemplary damages of not less than three (3) nor more than ten (10) times the cost incurred by the Lessee in giving gratuities to the person concerned, as determined by the Government.

31.4.4 The rights and remedies of the Government provided in this **Condition 31.4** shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Lease.

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

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

31.6.1 During the performance of this Lease, the Lessee agrees to comply with **Conditions 31.6.1.1** through **31.6.1.8** below.

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

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

31.6.1.3 The Lessee shall post, in conspicuous places available to employees and applicants for employment, the notices to be provided by the Government for this Lease that explain this clause.

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

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

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

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

31.6.1.8 In the event of the Lessee's noncompliance with the equal opportunity clause of this Lease or with any of the said rules, regulations, or orders, the Government may take appropriate action to enforce compliance, and subject to **Condition 22.7** may terminate this Lease for default and breach as provided in **Condition 8** above, and the Lessee may be declared ineligible for further Government leases and other contracts in accordance with procedures authorized in Executive Order No. 11246, as amended, or by rule, regulation, or order of the Department of Labor, or as otherwise provided by law.

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

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

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

**31.9 Counterparts.** This Lease is executed in [ ] (xx) counterparts each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

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

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

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

**31.13 Recording.** A Memorandum of this Lease dated of even date herewith shall be filed for record by the Lessee, at no cost to the Government, in the appropriate real estate records on or after the Effective Date.

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

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

31.16 **Third Party Beneficiaries.** Except as otherwise expressly provided with respect to Approved Mortgagees, and solely with respect to **Condition 22** (i) there shall be no third party beneficiaries of this Lease and (ii) none of the provisions of this Lease shall be for the benefit of, or enforceable by, any creditors of the Lessee.

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

31.18 **Non-Merger.** Notwithstanding anything contained herein to the contrary, it is the intention of the Parties that the interest created hereunder shall remain separate and distinct interests and the leasehold interest of Lessee shall not merge with the fee title in the event that the Lessee becomes the owner of the [Leased Land][Leased Premises].

31.19 **Payments to the Government.** All payments to the Government shall be made by the Lessee as directed by the Government in writing.

31.20 **Anti-Kickback Procedures.** The Lessee warrants that it shall have in place and follow reasonable procedures designed to prevent and detect, in its own business operations, any of the following activities in connection with the Lease or any subcontract relating to the Lease or primary agreements: (i) persons providing or attempting to provide or offering to provide any kickback; or (ii) persons soliciting, accepting, or attempting to accept any kickback.

31.20.1 The Lessee further warrants that, when it has reasonable grounds to believe that any of the activities described in **Condition 31.20** may have occurred, it shall promptly report in writing such activities to the Government Representative and either the Air Force Inspector General's office or the Department of Justice. The Lessee shall cooperate fully with any Federal agency investigating such activities.

## **CONDITION 32 DEFINED TERMS**

32.1. Capitalized terms set forth below shall have the following meanings:

**"ACM"** means, collectively, asbestos or asbestos-containing material.

**"Adjustments"** shall have the meaning set forth in **Condition 5.1.2.1**.

**"ALTA/ACSM Standards"** means the standards adopted by the American Land Title Association and the American Congress on Surveying and Mapping.

**"Annual Certification of Percentage Rent"** shall have the meaning set forth in **Condition 5.1.3.3**.

“**Applicable Codes**” shall have the meaning set forth in **Condition 17.3**.

“**Applicable Laws**” shall have the meaning set forth in **Condition 13.1**.

“**Approved Mortgagee**” shall have the meaning set forth in **Condition 22.2**.

“**Approved Mortgagee Affiliate**” shall have the meaning set forth in **Condition 22.5**.

“**Armed Forces**” shall have the meaning set forth in 10 U.S.C. §101(a)(4), as amended from time to time.

“**Asbestos Disposal Plan**” shall have the meaning set forth in **Condition 11.3.2**.

“**Bankruptcy Code**” shall have the meaning set forth in **Condition 8.1.4**.

“**Base Rent**” shall have the meaning set forth in **Condition 5.1.2**.

“**Basic Index**” shall have the meaning set forth in **Condition 5.1.2.1**.

“**CERCLA**” shall have the meaning set forth in **Condition 11.5**.

“**Certificate of Compliance**” means the certificate issued by the Government in accordance with **Condition 17.15** upon the Lessee’s completion of either: (i) construction of the Project, (ii) a construction phase of the Project as established in the Construction Management Plan approved by the Government, or (iii) a subsequent renovation of the Project, in satisfaction of the requirements set forth in **Condition 17**.

“**City**” shall have the meaning set forth in **Condition 17.3**.

“**Closing Date**” shall have the meaning set forth in **Condition 30.7**.

“**Closing Documentation**” shall have the meaning set forth in **Condition 30.7**.

“**Constitution**” means the Constitution of the United States of America.

“**Construction Consultant**” shall have the meaning set forth in **Condition 17.5**.

“**Construction Management Plan**” means the plan by that name attached as an exhibit to and incorporated by reference in the Development Agreement, as amended and supplemented from time to time.

“**Construction Requirements**” shall have the meaning set forth in **Condition 17.4**.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of outstanding securities, equity, or other beneficial ownership interests, by contract or otherwise.

“**County**” shall have the meaning set forth in **Condition 17.3**.

“**Current Index**” shall have the meaning set forth in **Condition 5.1.2.1**.

**“Damaged or Destroyed Property”** shall have the meaning set forth in **Condition 16.5**.

**“Day”** means a calendar day unless otherwise specified in writing in this Lease.

**“Default Termination Notice”** shall have the meaning set forth in **Condition 8.3.1**.

**“Demolition Deposits”** shall have the meaning set forth in **Condition 10.8.1**.

**“Demolition Reserve Account”** means the account of that name created under the Trust Agreement for the purposes of holding, investing, and disbursing the payments made by Lessee to Trustee under **Condition 10.8**.

**“Design Criteria”** shall have the meaning set forth in **Condition 17.3**.

**“Design Plans”** shall have the meaning set forth in **Condition 17.3**.

**“Development Agreement”** shall have the meaning set forth in **Condition 6.1**.

**“EBS”** shall have the meaning set forth in **Condition 4.3**.

**“Effective Date”** shall have the meaning set forth in the Preamble.

**“Effective Gross Revenue”** shall have the meaning set forth in **Condition 5.1.3.1**.

**“Enabling Statute”** shall have the meaning set forth in the Recitals.

**“Environmental Management Plan”** means the plan by that name attached as an exhibit to and incorporated by reference in the Development Agreement, as amended and supplemented from time to time.

**“Estimated Restoration Costs”** shall have the meaning set forth in **Condition 10.2**.

**“Estoppel Certificate”** means a certificate used to evidence the Government’s consent to the conditional assignment or mortgage of the Lessee’s interest in this Lease and to certify the status of this Lease and performance by the Lessee of its obligations under this Lease as of the date of such certification.

**“EUL Improvements”** shall have the meaning set forth in the Recitals.

**“Event of Default”** shall have the meaning set forth in **Condition 8.1**.

**“Excusable Delay”** means the Government and Lessee shall be excused from performing an obligation or undertaking provided for in this Lease, and the period for the performance of any such obligation or undertaking shall be extended for a period equivalent to the period of such delay, so long as such performance is prevented or unavoidably delayed, retarded or hindered by an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, act of terrorism, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure or unavailability of transportation, strike, lockout, action of labor unions, a taking by eminent domain, requisition, laws, orders of government or of civil, military or naval authorities (but only such orders of a general nature pertaining to the Leased Premises and comparable properties in the

State of **Basestate**), governmental restrictions (including without limitation, access restrictions imposed by the Government and arising without fault or negligence on the part of the Lessee that significantly hinder the Lessee's ability to access the Leased Premises and perform its construction responsibilities in a timely manner), required environmental remediation or any other cause, whether similar or dissimilar to the foregoing not within the reasonable control and without the fault or negligence of the Government or the Lessee, as the case may be, and/or any or any of their respective officers, agents, servants, employees and/or any others who may be on the Leased Premises at the invitation of the Lessee or the invitation of any of the aforementioned persons, specifically excluding, however, delays for adjustments of insurance and delays due to shortage or unavailability of funds (collectively, "**Excusable Delays**"). Nothing contained in this **Condition 32** shall excuse Lessee from the performance or satisfaction of an obligation under this Lease that is not prevented or delayed by the act or occurrence giving rise to an Excusable Delay.

**"Existing Improvements"** shall have the meaning set forth in the Recitals.

**"Extensive Damage or Destruction of Improvements"** shall have the meaning set forth in **Condition 16.5.2**.

**"Facility"** shall have the meaning set forth in **Condition 31.3**.

**"FIFRA"** shall have the meaning set forth in **Condition 11.13**.

**"Final EBS"** shall have the meaning set forth in **Condition 4.3**.

**"Future Third Party Property Interests"** shall have the meaning set forth in **Condition 3.2**.

**"Government"** shall have the meaning set forth in Preamble.

**"Government Appraisal"** shall have the meaning set forth in **Condition 30.3**.

**"Government Retention Notice"** shall have the meaning set forth in **Condition 10.3**.

**"Hazardous Substance"** shall have the meaning defined in section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601(14)).

**[ "Historic Preservation Plan"** the plan by that name attached as an exhibit to and incorporated by reference in the Development Agreement, as amended and supplemented from time to time.]

**"In-kind Consideration Account"** means the account of that name created under the Trust Agreement for the purposes of holding, investing, and disbursing the payments made by Lessee to Trustee.

**"In-kind Consideration Delivery Agreement"** means that certain Agreement to Deliver In-Kind Consideration dated as of the Effective Date among the Government, Lessee, and Trustee relating to the delivery of "in-kind" consideration to the Government by the Lessee as authorized by the Enabling Statute.

**"Improvement Removal Report"** shall have the meaning set forth in **Condition 10.2**.

“**Index**” shall have the meaning set forth in **Condition 5.1.2.1**.

“**IRP**” shall have the meaning set forth in **Condition 11.8**.

“**LBP**” shall have the meaning set forth in **Condition 11.4**.

“**Lease**” shall have the meaning set forth in the Preamble.

“**Lease Expiration Date**” shall have the meaning set forth in **Condition 1.1**.

“**Lease Term**” shall have the meaning set forth in **Condition 1.1**.

“**Lease Termination Extension Date**” shall have the meaning set forth in **Condition 22.7.2**.

“**Leased Land**” shall have the meaning set forth in the Recitals.

[“**Leased Land Fair Market Value**” shall have the meaning set forth in **Condition 30.3**.]

“**Leased Premises**” shall have the meaning set forth in the Recitals.

[“**Leased Premises Fair Market Value**” shall have the meaning set forth in **Condition 30.3**.]

“**Lessee**” shall have the meaning set forth in the Preamble.

“**Lessee Appraisal**” shall have the meaning set forth in **Condition 30.3**.

“**Lessee Parties**” shall have the meaning set forth in **Condition 15.2**.

“**Mandatory Clauses**” shall have the meaning set forth in **Condition 17.11**.

“**Mortgagee’s Right to Postpone**” shall have the meaning set forth in **Condition 22.7**.

[“**Net Operating Income Less Rent**” shall have the meaning set forth in **Condition 5.1.3.1**.]

“**New Lease**” shall have the meaning set forth in **Condition 22.10**.

“**Notice to Proceed**” shall have the meaning set forth in **Condition 17.4**.

“**Party**” or “**Parties**” shall have the meaning set forth in the Preamble.

“**Percentage Rent**” shall have the meaning set forth in **Condition 5.1.3**.

“**Personal Default**” shall have the meaning set forth in **Condition 22.6.4**.

“**Pesticide Management Plan**” shall have the meaning set forth in **Condition 11.13**.

“**Plan Alterations**” shall have the meaning set forth in **Condition 17.3.1**.

“**Plan Alterations Exception Notice**” shall have the meaning set forth in **Condition 17.3.2**.

**“Police and Fire Plan”** means the plan by that name attached as an exhibit to and incorporated by reference in the Development Agreement, as amended and supplemented from time to time.

**“Pre-Construction Conference”** shall have the meaning set forth in **Condition 17.8**.

**“Pretreatment Permit Application”** means an application for the Lessee’s discharge that the Lessee shall submit prior to the Effective Date if the Lessee discharges wastewater to a publicly owned treatment works.

**“Project”** shall have the meaning set forth in the Recitals.

**“Project Costs”** shall have the meaning set forth in **Condition 5.1.3.1.**

**“Purchase Option”** shall have the meaning set forth in **Condition 30.1**.

**“Purchase Option Notice”** shall have the meaning set forth in **Condition 30.2**.

**“Purchase Price”** shall have the meaning set forth in **Condition 30.4**.

**“Qualified Surety”** shall have the meaning set forth in **Condition 17.6**.

**“Rating Agency”** means any nationally recognized securities rating agency.

**“RCRA”** shall have the meaning set forth in **Condition 11.5**.

**“Relocation Plan”** means the plan by that name attached as an exhibit to and incorporated by reference in the Development Agreement, as amended and supplemented from time to time.]

**“Removal and Restoration Obligation”** shall have the meaning set forth in **Condition 10.1**.

**“Rent”** shall have the meaning set forth in **Condition 5.2**.

**“Restoration Default”** shall have the meaning set forth in **Condition 10.6**.

**“Restoration Deadline”** shall have the meaning set forth in **Condition 10.1**.

**“Secretary”** shall have the meaning set forth in the Preamble.

**“Site Plan”** means the plan by that name attached as an exhibit to and incorporated by reference in the Development Agreement, as amended and supplemented from time to time.

**“Spill Plan”** shall have the meaning set forth in **Condition 11.12**.

**“Supplemental Rent”** shall have the meaning set forth in **Condition 5.2**.

**“Termination Notice for Extensive Damage or Destruction of Improvements”** shall have the meaning set forth in **Condition 8.3.2**.

**“Third Appraisal”** shall have the meaning set forth in **Condition 30.4**.

**“Third Appraiser”** shall have the meaning set forth in **Condition 30.4**.

**“Third Party Property Interests”** shall have the meaning set forth in **Condition 3.1**.

**“Trust Agreement”** means that certain Trust Agreement dated as of the Effective Date among the Government, Lessee, and Trustee relating to the creation, funding, management, investment and disbursement of an In-Kind Consideration Account in connection with the payment by Lessee of consideration for the occupancy of the Property under this Lease and the delivery of “in-kind” consideration to the Government pursuant to the Trust Agreement as authorized by the Enabling Statute.

**“Trustee”** means the owner and holder of the In-Kind Consideration Account created under the Trust Agreement and funded by Lessee under the provisions of **Condition 5.5.4.1**.

**“Utility Facilities”** shall have the meaning set forth in **Condition 18.1.**

**[REMAINDER OF PAGE LEFT BLANK]**

**Government Signature Page to Site Development Lease**

IN WITNESS WHEREOF, the United States of America has executed this Site Development Lease, effective as of the Effective Date.

**THE UNITED STATES OF AMERICA**, acting by and through the Secretary of the Air Force

By: \_\_\_\_\_

Kathleen I. Ferguson, P.E.

Deputy Assistant Secretary of the Air Force (Installations)

**Lessee Signature Page to Site Development Lease**

IN WITNESS WHEREOF, the Lessee has executed this Site Development Lease, effective as of the Effective Date.

[Lessee], a [type of entity]

By: \_\_\_\_\_

[Printed Name and Title]

**EXHIBIT A**

**DESCRIPTION AND MAP OF LEASED PREMISES**

**EXHIBIT B**

**[DESCRIPTION AND MAP OF EXISTING IMPROVEMENTS]**

[If applicable]

**EXHIBIT [B][C]**

**THIRD PARTY PROPERTY INTERESTS**

[Insert information on all Third Party Property Interests related to the Leased Premises]

**EXHIBIT [C][D]**

**LIST OF ENVIRONMENTAL DOCUMENTS**

[Insert list of environmental documents/data provided to HRO prior to Lease execution, including, but not limited to, Basename AFB Integrated Natural Resource Management Plan (INRMP) and [Basename] AFB Cultural Resource Management Plan (CRMP), if applicable, and any other base specific environmental management plans. See Condition 11 and specifically Condition 11.21.]

EXHIBIT [D][E]

RENT SCHEDULE

EXHIBIT [E][F]

**MANDATORY CLAUSES REQUIRED BY LAW**

The Lessee shall be required to incorporate the clauses in this Appendix into the transaction documents.

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION**

(a) *Applicability.* This clause shall apply only in the case of projects undertaken by the Lessee or subcontractor, for the construction of a public building or public work to be delivered by the Lessee to the Government as in-kind consideration as set forth in the Lease Agreement. “Public building or public work” means a building or work the construction of which is carried on directly or indirectly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(b) *Overtime requirements.* No Lessee or subcontractor contracting for any part of the applicable work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(c) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (b) of this clause, the Lessee and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Lessee and subcontractor shall be liable to the United States (in the case of work done under lease for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (b) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (b) of this clause.

(d) *Withholding for unpaid wages and liquidated damages.* The Government Representative shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of applicable work performed by the Lessee or subcontractor under any such lease or any other Federal Contract with the same Lessee, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Lessee, such sums as may be determined to be necessary to satisfy any liabilities of such Lessee or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (c) of this clause.

(e) Payrolls and basic records.

(1) The Lessee or subcontractor shall maintain payrolls and basic payroll records during the course of accomplishing the applicable “in kind” work and shall preserve them for a period of 3 years from the completion of the construction for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made,

and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (e)(1) of this clause shall be made available by the Lessee or subcontractor for inspection, copying, or transcription by authorized representatives of the Government Representative or the Department of Labor. The Lessee or subcontractor shall permit such representatives to interview employees during working hours on the job.

(f) *Subcontracts.* The Lessee or subcontractor shall insert in any applicable subcontract exceeding \$100,000 the provisions set forth in paragraphs (b) through (f) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Lessee shall be responsible for compliance by any subLessee or lower tier subcontractor with the provisions set forth in paragraphs (b) through (f) of this clause.

#### **DAVIS-BACON ACT**

The Davis-Bacon Act shall apply only in the case of projects undertaken by the Lessee or subcontractor, for the construction of a public building or public work to be delivered by the Lessee to the Government as in-kind consideration as set forth in the Lease Agreement. "Public building or public work" means a building or work the construction of which is carried on directly or indirectly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency. The Government's involvement in the oversight of the Davis-Bacon Act requirements will be limited to monitoring the Lessee's responsibilities only during the applicable construction period(s). This oversight involves validating the Lessee ensures that the wage rates paid to all classes of laborers or mechanics employed or working on the site are in compliance with the Davis-Bacon wage classifications and standards.

#### **WITHHOLDING OF FUNDS**

(a) *Applicability.* This clause shall apply only in the case of projects undertaken by the Lessee or subcontractor for the construction of a public building or public work to be delivered by the Lessee to the Government as in-kind consideration as set forth in the Lease Agreement. "Public building or public work" means a building or work, the construction of which is carried on directly or indirectly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(b) The Government Representative shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Lessee under this lease or any other Federal contract with the same Lessee, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Lessee, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Lessee or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Government Representative may, after written notice to the Lessee, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## PAYROLLS AND BASIC RECORDS

(a) *Applicability.* This clause shall apply only in the case of projects undertaken by the Lessee or subcontractor for the construction of a public building or public work to be delivered by the Lessee to the Government as in-kind consideration as set forth in the Lease Agreement. "Public building or public work" means a building or work, the construction of which is carried on directly or indirectly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(b) Payrolls and basic records relating thereto shall be maintained by the Lessee during the course of the applicable "in kind" construction work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Lessee shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Lessee agrees that it and subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(c) (1) The Lessee shall submit weekly for each week in which any lease work is performed a copy of all payrolls to the Government Representative. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Lessee is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the Lessee or subLessee or his or her agent who pays or supervises the payment of the persons employed under the lease and shall certify—

(i) That the payroll or the payroll period contains the information required to be maintained under paragraph (b) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the lease during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Lessee or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(5) The Lessee or subcontractor shall make the records required under paragraph (b) of this clause available for inspection, copying, or transcription by the Government Representative or the Department of Labor. The Lessee or subcontractor shall permit the Government Representative or the Department of Labor to interview employees during working hours on the job. If the Lessee or subcontractor fails to submit required records or to make them available, the Government Representative may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available, may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **APPRENTICES AND TRAINEES**

(a) *Applicability.* This clause shall apply only in the case of projects undertaken by the Lessee or subcontractor for the construction of a public building or public work to be delivered by the Lessee to the Government as in-kind consideration as set forth in the Lease Agreement. "Public building or public work" means a building or work, the construction of which is carried on directly or indirectly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(b) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Lessee as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Lessee is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate

specified in the Lessee's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Lessee will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Lessee will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(d) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### **COMPLIANCE WITH COPELAND ACT REQUIREMENTS**

In the case of projects undertaken for the construction of a public building or public work to be delivered by the Lessee to the Government as in-kind consideration as set forth in the Lease Agreement, the Lessee or subcontractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this agreement.

#### **SUBCONTRACTS (LABOR STANDARDS)**

(a) *Applicability.* This clause shall apply only in the case of projects undertaken by the Lessee or subcontractor for the construction of a public building or public work to be delivered by the Lessee to the Government as in-kind consideration as set forth in the Lease Agreement. “Public building or public work” means a building or work, the construction of which is carried on directly or indirectly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(b) The Lessee or subcontractor shall insert in any subcontracts the clauses herein entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination--Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Government Representative may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Lessee shall be responsible for compliance by any subLessee or lower tier subcontractor with all of the lease clauses cited in this paragraph.

(c) (1) Within 14 days after award of the lease, the Lessee shall deliver to the Government Representative a completed Statement and Acknowledgment Form (SF1413) for each subcontract, including the subcontractor’s signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Lessee shall deliver to the Government Representative an updated completed SF 1413 for each additional subcontract.

#### **LEASE TERMINATION—DEBARMENT**

In the case of projects undertaken for the construction of a public building or public work to be delivered by the Lessee to the Government as in-kind consideration as set forth in the Lease Agreement, a breach of the clauses entitled *Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon Related Act Regulations, or Certification of Eligibility* may be grounds for termination of the lease, and for debarment as a Lessee and subcontractor as provided in 29 CFR 5.12.

#### **COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this lease. Such rulings and interpretations shall apply only in the case of projects undertaken by the Lessee or subcontractor for the construction of a public building or public work to be delivered by the Lessee to the Government as in-kind consideration as set forth in the Lease Agreement.

#### **DISPUTES CONCERNING LABOR STANDARDS**

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes, to the extent they relate to projects undertaken by the Lessee or subcontractor for the construction of a public building or public

work to be delivered by the Lessee to the Government as in-kind consideration as set forth in the Lease Agreement, shall be resolved in accordance with those procedures. Disputes within the meaning of this clause include disputes between the Lessee (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### **CERTIFICATION OF ELIGIBILITY**

(a) By entering into this agreement, the Lessee certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this any project undertaken by the Lessee for the construction of a public building or public work to be delivered by the Lessee to the Government as in-kind consideration as set forth in the Lease Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **BUY AMERICAN ACT - CONSTRUCTION MATERIALS**

(a) The requirements of this clause shall apply only in the case of projects undertaken by the Lessee or subcontractor for the construction of a public building or public work to be delivered by the Lessee to the Government as in-kind consideration as set forth in the Lease Agreement. "Public building or public work" means a building or work, the construction of which is carried on directly or indirectly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(b) The Buy American Act (41 U.S.C. §§ 10a – 10d) provides that the Government give preference to domestic construction material, as defined below. Components, as used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

*Construction material*, as used in this clause, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies.

Free Trade Agreement country means Canada, Chile, Mexico, or Singapore. Designated country means any of the following: Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, and Denmark. Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Iceland, Ireland, Israel, Italy, Japan, Kiribati, Korea-Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda, Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

*Domestic construction material*, as used in this clause, means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components.

(c) Construction materials. Construction materials that are from a designated country, a Free Trade Agreement country, or domestic construction material are allowable. Construction material originating from countries other than these and are of the same class, kind, and quality, may be approved for use by the Management Review Committee, when requested, if the available construction materials are determined to be not timely available in sufficient quality or quantity, or to be unreasonable in cost.

(d) Notwithstanding any other language in this clause or elsewhere in this agreement, the Lessee or subcontractor shall not acquire or use any materials, supplies, or services originating from, located in, or transported from or through, any country or source prohibited from lawful importation into the United States by applicable statute, Executive Order, or regulation.

(e) The Lessee agrees that only allowable construction material will be used by the Lessee, subcontractors, material men, and suppliers in the performance of applicable work, except for foreign construction materials, if any, listed in this lease.

**EXHIBIT [F][G]**

**[DESCRIPTION AND MAP (POINTS OF DEMARCATION)  
OF EXISTING UTILITY FACILITIES]**

Filename: Generic Site Development Lease (Final) July 24, 2012  
Directory: C:\Users\1268394580C\Documents  
Template: C:\Users\1268394580C\AppData\Roaming\Microsoft\Templates\Normal.dotm  
Title: Generic Lease Agreement  
Subject: EUL  
Author: SAF/GCN-RPO  
Keywords:  
Comments:  
Creation Date: 7/24/2012 1:55:00 PM  
Change Number: 2  
Last Saved On: 7/24/2012 1:55:00 PM  
Last Saved By: S Leslie  
Total Editing Time: 0 Minutes  
Last Printed On: 7/24/2012 1:58:00 PM  
As of Last Complete Printing  
Number of Pages: 76  
Number of Words: 33,001 (approx.)  
Number of Characters: 188,112 (approx.)