October 30, 1973

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MEMORANDUM FOR HOWARD WILLENS

Re: Land for Military Purposes in the Marianas

The Joint Communiqué issued at the end of the last round of negotiations stated that "[t]he Marianas Political Status Commission agreed in principle to make land available to the United States [for military purposes], with the question of the extent of such land and the terms under which it is to be made available still to be negotiated" (p. 9). This memorandum is concerned with "the terms under which" the land might be made available.

The memorandum is organized as follows:

Attached to this memorandum are the following: Tab A, Portion of Chapter 159 of Title 10 of the United States Code (§ 2661 et seq.); Tab B, DOD Directive 4165.6; Tab C, DOD Directive 4165.16; Tab D, Excerpts from Chapters 2 and 13 of the Department of the Navy Regulations concerning real property; Tab E, the form used by the Navy for leases of real property;*/ Tab F, the documents constituting the use agreement for Lajes Air Base in the Azores.

I. THE LAW RELATING TO LAND ACQUISITION FOR MILITARY PURPOSES

A. Authorization and Appropriations for Acquisition of Real Property Interests

Specific statutory approval is required before real property or interests therein can be acquired by the United States. 41 U.S.C. § 14 (1970) provides that "[n]o land shall be purchased on account of the United States, except under a law authorizing such purchase." This statute has been interpreted to prohibit the acquisition of a leasehold or other

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*/ I have used Navy materials when possible because Grant Reynolds, who works in the Air Force General Counsel's Office, told me in a conversation on September 5 that the Naval Facilities Engineering Command will have local responsibility for acquisition and construction of the base. There is little substantive difference between the Army Regulations in this area and the Navy's, however, since both are based on the same statutes and Department of Defense Directives. The Army Corps of Engineers is the agent for the Air Force in acquisition and construction matters.

lesser interest in land as well as the acquisition of a fee, in the absence of statutory authorization, 35 Op. A.G. 183 (1927). The military departments are further restrained by 10 U.S.C. § 2676 (1970), which prohibits them from "acquir[ing] real property not owned by the United States unless the acquisition is expressly authorized by law." See also 41 U.S.C.A. § 11(a) (Supp. 1973) (prohibits any "contract or purchase on behalf of the United States" not "authorized by law or . . . under an appropriation adequate to its fulfillment" except that the Armed Services may acquire "clothing, subsistence, forage, fuel" and the like "not to exceed the necessities of the current year"); Navy Regulations, Chapter 2, ¶¶ 2, 3.*/

Congressional approval for the acquisition of land or interests in land usually comes in one of three ways:

-- permanent authority to lease or purchase: for example, 10 U.S.C.A. § 2672 (Supp. 1973) grants the military departments the authority to acquire any interest in land which does not cost more than $50,000; 10 U.S.C.A. § 2675 (Supp. 1973) permits leasing in a foreign country of "structures and real property . . . that are not located on a military base and that are needed for military purposes"

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*/ Section 107 of the Military Construction Appropriations Act For Fiscal Year 1973, P.L. 92-547, § 107, 86 Stat. 1156 (Oct. 25, 1972) provides:

> "None of the funds appropriated in this Act may be used to begin construction of new bases inside the continental United States for which specific appropriations have not been made."

for up to five years;*/

-- authority to lease or purchase for specific projects from the Military Construction Authorization Act: this is a yearly bill which authorizes construction of military installations and facilities "including land acquisition" for each of the services; language regularly included in the bill provides that "[t]he authority to acquire real estate or land includes authority to . . . acquire land, and interests in land (including temporary use), by . . . purchase, . . . or otherwise," P.L. 92-545, § 701, 86 Stat. 1151 (Oct. 25, 1973) (Military Construction Authorization Act For Fiscal Year 1973);

-- authority to lease from the Department of Defense Appropriations Act: this bill provides money for all defense activities other than construction, and regularly

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*/ The military departments can also acquire options on real property before its acquisition is authorized for up to 5% of the market value of the property, 10 U.S.C.A. § 2677 (Supp. 1973). Two other sections of the code appear to give wide authority to the military to acquire property, but they are interpreted as procedural only, granting no substantive power, according to Grant Reynolds, and confirmed by the absence of any reference to these sections in the other materials I found. 10 U.S.C. § 2663 (1970) permits the military departments to "have proceeding brought in the name of the United States . . . to acquire by condemnation any interest in land, including temporary use, needed for . . . fortifications . . . ." The same statute allows the Secretary to "contract for or buy any interest in land" for such purpose if the price is considered "reasonable." 10 U.S.C. § 9773 (1970) grants the Secretary of the Air Force similar power with respect to airbases under certain conditions.

This memorandum focuses on real property used for military bases and therefore such authority as the military departments have to acquire real property or interests therein for family housing, industrial, or other purposes is not considered.

provides that "[a]ppropriations for the Department of Defense for the current fiscal year shall be available . . . [for] payments under leases for real or personal property for twelve months beginning at any time during the fiscal year . . .", P.L. 92-570, § 707(j), 86 Stat. 119- (Oct. 26, 1972) (Department of Defense Appropriations Act for Fiscal Year 1973).

Congressional approval for real property leasing or purchasing could, of course, come in other legislation, and for the military bases in the Marianas might well come in the statutes which implement the new political status agreement.

Financing for the military's real estate transactions comes from two sources: for purchases and leases "currently authorized" by the Military Construction Authorization Act, and for projects undertaken pursuant to 10 U.S.C. § 2675 (Supp. 1973), appropriations are provided, usually "available until expended," in the annual Military Construction Appropriations Act, supra; for leases authorized by the annual Department of Defense Appropriations Act appropriations are provided for only one year in that bill, under the "Operations and Maintenance" appropriation made to each service. Appropriations "for the current fiscal year for maintenance or construction" are available for leases and purchases under 10 U.S.C. §§ 2672 or 2675 (Supp. 1973), Department of Defense

Appropriations Act For Fiscal Year 1973, supra, § 706 (emphasis supplied).*/

Under these statutory provisions, most leases of land by the military will be limited to one year, either because the authority or the appropriation is available only for that period. To obtain assurances that leased property will continue to be available, the military takes an option to renew for a series of one-year terms. See Navy Regulations, Chapter 13, ¶ 26. Congress virtually always provides funds or authority necessary for renewal, and the leases are as a practical

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*/ Art. I, § 8, cl. 12 of the Constitution gives Congress the power "[t]o raise and support armies," but provides that "no appropriation of money to that use shall be for a longer term than two years." This restriction does not, however, extend to the various means which the Army may use in military operations, such as arms, ammunition and forts, the appropriations for which may remain available for a period greater than two years, or even until expended. See 25 Op. A.G. 105, 106-08 (1904); 40 Op. A.G. 555 (1948).

matter long-term arrangements, according to people I spoke to at both the Army and Air Force. Congress, of course, could provide authority for long-term commitments for any particular real estate transaction or class of transactions, as it has done in the past in both military and other areas.*/ Congress could combine this authorization with a lump-sum appropriation as in the Military Construction Appropriations Act or could simply provide the appropriations yearly, as needed, as it does when it liquidates contract authority.

Even after the authorization and appropriation process is completed, further approvals are required for military real estate transactions. The Assistant Secretary of Defense

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*/ In the military area, 10 U.S.C.A. § 2675(a) (Supp. 1973) authorizes the secretary of a military department to enter into leases for up to five years in foreign countries for structures and real property not on a military base but needed for a military purpose. Funds appropriated in the Military Construction Appropriations Act are "available until expended" for projects undertaken with the authority of this section. Apparently projects authorized by the Military Construction Authorization Act and funded through the Military Construction Appropriations Act can also involve long-term leases, for the Authorization Act grants the authority to obtain termporary interests in land, and the Appropriations Act makes funds available until expended for projects "currently authorized" by the Authorization Act.

In the ncn-military area, 46 U.S.C.A. § 1173 (Supp. 1973) authorizes the Secretary of Commerce to enter into contracts to pay operating differential subsidies for up to 20 years. See, e.g., Pacific Far East Line, Inc. v. United States, 394 F.2d 990 (Ct. Cl. 1968) (suit against U. S. for failure to pay under a subsidy contract covering period January 1953 through December 1962).

(Installations and Logistics) must approve any lease or purchase in excess of $50,000 "fair market value (or annual or one-time cost, as applicable)" in the United States, Puerto Rico or the Virgin Islands; he must also approve "leases outside those areas when the annual rental exceeds $50,000 and a firm term in excess of one year is proposed," Department of Defense Directive No. 4165.12, Re: Prior Approval of Real Property Actions ¶¶ II(A), IV(A) (Feb. 6, 1967). In addition 10 U.S.C.A. § 2662 (Supp. 1973) requires submission to the two Committees on Armed Services reports on fee acquisitions in excess of $50,000 and leases with annual rentals in excess of $50,000, among other transactions, in the United States and Puerto Rico, 30 days before the transaction is actually entered into. While in form this is a notification requirement, in practice it is an approved requirement, according to my conversation with Grant Reynolds.

B. The Decision to Lease or to Purchase

As Section I(A) shows, the ultimate decision whether to lease or purchase land in the Marianas is up to Congress. But as a practical matter, the Congress generally follows the recommendations in the President's Budget -- that is, the recommendations of the Department itself, approved by the Office of Management and Budget. Therefore, the question becomes, what legal restraints are there on the Department

in making this decision? The answer is this: there are no statutory restraints or even statutory guidelines by which the Department is bound in deciding whether to lease or purchase land in the Marianas or elsewhere; but there are Department Directives and Navy Regulations implementing those Directives which are in point.

The most important document is Department of Defense Directive No. 4165.6, Re: Real Property; Acquisition, Management and Disposal (Sep. 15, 1955) (Tab B). The Directive is designed to establish Department "policy with respect to the acquisition . . . of real property" for military purposes, ¶ I. Its policies are applicable to "all real properties under the control and/or jurisdiction of the military departments" located in "[t]he United States, its Territories and Possessions, and the Commonwealth of Puerto Rico," ¶ IV (A)(1), or located in foreign countries "to the extent possible, in accordance with international law and agreements," ¶ IV(B). The Directive provides that no real property or interest therein will be acquired unless it is necessary to do so because, for example, existing military property or other government-owned property or the public domain is not satisfactory, and no exchange of property or donation is available, ¶ V(A)(1), (4). It also provides that if real property must be acquired, "only the minimum

amount of property necessary shall be acquired," ¶ V(A)(3).*/ The Directive goes on to state that property needed "should" be acquired by "whichever of the following methods will satisfy the defense requirement in the most economical manner and create the least impact on the civilian economy," ¶ V(A)(5):

> "a. Acquisition of fee title to land, inclusive of all mineral rights, and improvements shall generally be considered in the best interest of the Government when one or more of the following conditions exist:
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> "1. Proposed construction to be placed on the land by the Government has an estimated cost equal to or in excess of the current market value of the land (See paragraph V(A)(5)(b) herein).
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> "2. Calculated period of required use is of sufficient duration that the sum expended for rentals and restoration, if required, would exceed 50% of the fair market value of the fee title (See paragraph IV(D) [of DOD Directive 4165.16, discussed within, which concerns situations in which permanent construction may be placed on leased property] . . . for exceptions to this policy).
>
> "3. Cost of acquiring an easement right exceeds 75% of the current fair market value of the fee title.

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*/ The same policy -- which may be helpful to our side in negotiations over the amount of land to be taken on Tinian -- is stated in DOD Directive No. 4165.20, Re: Utilization and Retention of Real Property (Aug. 29, 1958) ¶ V(A):

> "Department of Defense real property, wherever located, shall be limited to the land area and the number and types of buildings and other improvements that are essential to the support of current missions and the forces which have been authorized by the latest mobilization guidance of the Secretary of Defense. All real property of whatever size, kind or nature not essential to such support shall be reported as excess to the needs of the military department having control."

b. Acquisition of use of land and improvements by easement (permanent or so long as required for Government use), license, permit, lease contract, or condemnation of leasehold interest shall generally be considered in the best interest of the Government if the calculated period of required use is of such duration that fee acquisition under (5)(a) above could not be economically justified. Leaseholds should be negotiated to provide for the right of cancellation of the lease in whole or in part or upon giving the shortest notice agreed to by the lessor."

Directive 4165.6 contains no explicit exceptions to the policy guidelines it lays down. However, ¶ V(A)(5) does say that "[r]eal property should be acquired" under the scheme the Directive establishes (emphasis supplied). And the Directive says that a purchase "shall generally be considered in the best interest of the Government" if certain conditions are met, ¶ V(A)(5)(a) (emphasis supplied), and that a lease "shall generally be considered in the best interest of the Government" if the conditions are not met, ¶ V(A)(5)(b) (emphasis supplied). Arguably, therefore, the Directive is not binding in all situations, for it uses words which indicate that there may be exceptions to its policies. However, the Directive does not provide any criteria for identifying an exceptional case.

Department of Defense Directive No. 4165.16, Re: Real Property; Construction on Leased Land and Release of Leaseholds (Dec. 19, 1958) (Tab C) is also relevant. That Directive applies "in the United States, its Territories, Possessions and the Commonwealth of Puerto Rico" to Department

activities other than civil works projects, ¶¶ III, IV. Paragraph IV(D) of the Directive -- which is an exception to the policy stated in ¶ V(A)(5)(a)(2) of Directive 4165.6, quoted above*/ -- provides that no funds will be spent "for construction of buildings or improvements of permanent type on land in which" (emphasis supplied) the government has "less than fee title or a permanent easement," with the following exceptions:

> "1. Property including land or buildings over which the Government currently holds the right of re-use by exercise of the National Security Clause.
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> "2. Property including land or buildings over which the Government holds the right of re-use by exercise of a national emergency use provision . . .
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> "3. Property used for industrial production and related purposes pursuant to existing law and procurement regulations.
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> "4. Property required as a site for installation of utility lines and necessary appurtenances thereto, provided a long-term easement or lease can be secured at a consideration of $1.00 per term or per annum.
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> "5. Property required for airbases of the armed forces, provided such property can be acquired by lease containing provisions for:

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*/ Directive 4165.6, ¶ V(A)(5)(a)(2) states that a fee should be obtained if total rentals plus restoration costs exceed 50% of the fair market value of the fee, and states that Directive 4165.16, ¶ IV(D) contains exceptions to that policy. Apparently the reference is to the exceptions contained in Directive 4165.16, ¶ IV(D); if so, this would mean that even if the cost of rentals plus restoration exceeded 50% of the fair market value of the fee, a lesser interest should be obtained if the situation falls within one of the exceptions in Directive 4165.16, ¶ IV(D). Since the Marianas situation does not fall with any of those exceptions, the reference in Directive 4165.6, ¶ V(A)(5)(a)(2) is of no concern to us.

a. Right of continuous use by the Government under firm term or right of renewal, for a minimum of 50 years.

b. A rental consideration of $1.00 per term or per annum.

c. Reserving to the Government title to all improvements to be placed on the land and the right to dispose of such improvements by sale or abandonment.

d. Waiver by the lessor of any and all claims for restoration of the leased premises.

e. Use of the property for 'Government purposes' rather than for a specific purpose.

6. Property required for facilities for civilian components of the armed forces, provided such property can be acquired by lease containing provisions detailed in IV(D)(5)(a), (b), (c), and (d), above. Although not mandatory, every effort shall be made to avoid inserting in the lease a provision restricting the use of the land to a specific purpose; use of a term such as 'for Government purposes' should be employed whenever possible.

7. Property required for NIKE sites or aircraft warning stations, provided such property can be acquired by lease containing provisions detailed in IV(D)(5)(b), (c), and (d), above and in addition thereto a right of continuous use by the Government under firm term or right of renewal, for a minimum of 25 years.

8. Construction projects performed with funds appropriated by the Department of Defense Appropriations Act, 1956, and subsequent years, not in excess of $25,000 will not be considered as permanent construction for the purposes of this Directive.

NOTE: Consideration of exceptions to the above will be on a case by case basis and shall include

> evaluation of a summary of lease terms to which the proposed lessor will agree; a proximity map depicting sites surveyed with details on each as to availability for purchase, estimated value and disqualifying factors; estimated fee value of the property proposed for lease; estimated cost of existing and/or proposed construction by the Government; estimated period of time use of leased space will be required, and estimated net cost of ultimate restoration thereof."

Permanent construction is defined "as that which produces a building suitable and appropriate to serve a specific purpose for a maximum period of time (at least 25 years) and with a minimum of maintenance," 32 C.F.R. § 552.34 (j) (1973) (Department of Army Regulations), and which costs more than $25,000, Directive 4165.16, ¶ IV(D)(8), supra.*/

Unlike Directive 4165.6, Directive 4165.16 contains

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*/ Congress regularly provides that "[t]he authority to place permanent or temporary improvements on land . . . may be exercised . . . even though the land is held temporarily," e.g., Military Construction Authorization Act for Fiscal Year 1973, supra, § 701. Arguably, this shows that Congress recognizes the propriety of such construction at least in some circumstances on land the government does not own. It also provides protection for the agency against charges that by placing permanent improvements on non-government owned land, it has given away government property without statutory authorization. See 38 Comp. Gen. 143, 145 (1958). Cf. 40 U.S.C. § 278a (1970)(prohibits "alterations, improvements, and repairs" to premises rented by the government in excess of 25% of the first year's rent; does not apply to unimproved land, 38 Comp. Gen. 143, 144 (1958)).

explicit exemptions, just stated.*/ None of them, unfortunately, seems applicable to the Tinian situation. The Note at the end of the paragraph does, however, provide that "exceptions to the above will be on a case by case basis and shall include [among other things] evaluation of a summary of lease terms to which the proposed lessor will agree . . . ." Assuming, as seems likely, that the Note refers to

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*/ Paragraph IV(C) of Directive 4165.16 provides: "Acquiring or retaining use of leased real property may be justified in the following instances:

"1. Where it is demonstrated that the function to be accommodated is an essential activity and the geographic location thereof in other than Government-owned space is vital to the accomplishment of the assigned mission. Examples that may fall in this group are, recruiting stations (exclusive or kindred examining and induction units), units of the Ground Observer Corps, airbases, NIKE sites, sites for construction of facilities for civilian components of the armed forces and aircraft warning stations.

"2. Where comparison of costs of necessary repairs, alterations and rehabilitation of a Government-owned facility plus moving costs, with savings of rental and other related expenditures in the leased space that could be effected during the period of anticipated future use, clearly demonstrates the economic propriety of remaining in the leased area."

Arguably this paragraph contains another exception to the general rules, an exception which turns on the nexus between the activity and its location in "other than Government-owned space." It is not clear to me, however, why an airbase or the other examples given in the paragraph is the sort of mission which can better be accomplished on leased land than on owned land. Therefore it seems more sensible to read the paragraph as directed to the question of whether property ought to be acquired at all, not to the question of the estate to be acquired. The Army Regulations support this reading of the section. They provide that in the situations described in this paragraph, the "[a]cquisition of title or a leasehold interest . . ." can be justified, 32 C.F.R. § 552.34(f) (1973) (emphasis supplied). The Navy Regulations, Chapter 13, ¶ 16, while not as clear, point in the same direction by saying that leasing is justified when the "geographical location" is vital and "no suitable Government-owned real property is available."

additional exceptions to the general prohibition against permanent construction on leased property, and not merely to alterations of the conditions contained in the exceptions already laid out in the paragraph,*/ it appears that the Department can waive its rule against permanent construction on leased property, though the criteria for waiver are not clear. Arguably, non-economic factors such as the views of the neighbors of the proposed base can be taken into account in granting an exception, for the Note says that the analysis is to "include," and thus not be limited to, the factors it mentions.**/

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*/ One could read the Note to refer only to situations in which the military department can obtain a lease containing some, but not all, of the conditions which must be met to justify a lease of, for example, an airbase. However, the argument that the Note refers to additional exceptions is stronger in light of the way the regulations implementing the Directive treat the Note, see, e.g., Navy Regulations, Chapter 13, ¶ 33 (refers to the method by which "consideration of an exception" to "the Department of Defense policy concerning permanent construction on leased land" will be had).

**/ Some support for this conclusion can be found by an analysis of ¶ IV(A) of Directive 4165.16. That paragraph directs that studies be undertaken of all currently leased property to determine whether acquisition of a fee is desirable under, essentially, the criteria laid out in ¶ V(A)(5)(a)(1) of Directive 4165.6 (if the cost of construction equals or exceeds fair market value, acquire a fee). Projects which fall within certain of the categories of ¶ IV(D) of Directive 4165.16 are exempted from "further consideration for fee acquisition." Paragraph IV(a)(2) then provides:

> "Consideration of all other cases, where it clearly appears contrary to the interests of the Government to purchase or condemn fee title to the property, will include evaluation of data enumerated in Note" at the end of paragraph IV(D) . . . ."

True, this paragraph is addressed to currently leased land, not land about to be acquired. But it shows that exceptions to the policy of acquiring title instead of leasing land when the cost of all construction meets or exceeds fair market value may be available upon a clear enough showing of benefit to the government.

This survey of the relevant Directives leads to the following conclusions. In general, property on which permanent improvements are to be made will be acquired in fee, rather than leased, by military departments; and, generally, property will be acquired in fee whenever the economic analysis provided in Directive 4165.6 indicates that such an interest is more advantageous to the government than a lesser interest (taking into account planned construction, the amount of the rentals, and the fair market value of the land, among other factors). There are exceptions to these rules: specific exemptions provided in Directive 4165.16 with respect to that portion of the rule based on plans for permanent construction, for example, and, arguably, other exemptions (to both the permanent construction portion of the rule and the general economic analysis portion) to be granted on a case by case basis because of unusual non-economic factors which should properly be taken into account in determining what is in the best interest of the United States.*/ Since, as will be demonstrated in the next section, the Directives indicate that the land on Tinian should be purchased, not leased,

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*/ A little support for this argument -- but only a little -- can be found in Army Regulation 405-10, Re: Real Estate: Acquisition of Real Property and Interests Therein ¶ 2-6(d) (May 1970) which, in a section applicable only in the United States, Puerto Rico, the Virgin Islands, and the Canal Zone, states that where, despite the fact that no construction is to be put on land, it should nevertheless the acquired in fee under the regulations, a leasehold can be taken instead when "based on favorable lease terms, public relations considerations, or other circumstances, it may be in the best interests of the Government to" do so (emphasis added).

the Marianas will have to argue that their situation falls within the latter sort of exemption.

One last point should be made. The Directives discussed are either not applicable in foreign countries (No. 4165.16) or applicable there "to the extent possible, in accordance with international law and agreements." (No. 4165.6). As will be discussed in Section II(B) of this memorandum, the practice in foreign countries is for the United States to obtain the temporary use of real property (either by ordinary lease with the property owner or by agreement with the host government), not to purchase property. The practice is essentially ad hoc, I am told by Grant Reynolds, and I found no statutes or guidelines in point.

C. Application of the Standards to the Marianas

Though the available information is skimpy, it is interesting to see how the Directives above might be applied to the Marianas. The United States wants to purchase the entire Island, some 26,200 acres, use somewhat over two-thirds of it, approximately 18,500 acres, for military purposes, and lease the remainder back to the inhabitants. Statement of James M. Wilson, Jr., U. S. Deputy Representative for Micronesian Status Negotiations at 10 (May 10, 1973). The military expects to incur construction costs, including site preparation, base facilities and dependent support, but excluding planning and land acquisition costs, of approximately $144.6 million. Proposed Military Basing in the Marianas District, Tinian Base 15 (undated). The remaining necessary figure is more elusive:

the fair market value of land in Tinian. One estimate is $2,500 per acre; land in Guam sells for $4,000 an acre, however, and we have documents showing land transactions in Tinian at both $1,500 an acre and $8,500 an acre -- for the same land.*/ If one arbitrarily assumes an average value of $3,000 an acre, Tinian is worth $78.6 million.

On these facts -- preliminary and arbitrary though they be -- the Directives point to acquisition of a fee, not a lease. First, certainly some of the $144.6 million will be spent for "construction of buildings and improvements of a permanent type," so Directive 4165.16, ¶ IV(D) prohibits leasing, and the situation on Tinian falls within none of the stated exceptions to that policy, leaving only the possibility of an exception "on a case by case basis." Second, the situation probably falls within both of the applicable conditions indicating that acquisition of a fee is "generally considered in the best interest of the Government" under the economic tests laid out in Directive 4165.6, ¶ V(A)(5)(a) -- and only one condition needs to be met to indicate a fee is best. Under ¶ V(A)(5)(a)(1), the cost of the "[p]roposed construction to be placed on the land by the Government" exceeds "the current market value of the land" -- and this would be so unless the market value were close to $6,000 an

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*/ Sources for the statements made in this sentence are Jay Lapin (Guam prices and $2,500 an acre price); and copies of warranty deeds in our files dated May 24, 1973 ($1,500 an acre) and dated May 29, 1973 ($8,500 an acre). Jim Leonard has said that no valuation of the land on Tinian is possible.

acre, holding construction costs constant, and assuming it is appropriate to use the purchase price of the whole Island, not just the part the military will use, as a reference. Even if the assumptions change, it is still highly likely this condition will be met.*/ The second condition is found in ¶ V(A)(5)(a)(2); it relates to the duration of the use (assumed arbitrary to be 50 years), rentals (assumed to be 15% of the market value)**/ and restoration requirements (assumed to be none). If the market value of the land required by the military (18,500 acres) is $55.5 million ($3,000 an acre), then the annual rental would be $8.3 million; over 50 years this would result in a total cost, undiscounted, of $415 million, substantially in excess of 50% of the assumed fair market value of the fee; thus purchase not lease is indicated by the Directive. Indeed, with the 50 year use assumption, and a $55.5 million value assumption, the only way this paragraph is avoided is if rentals are $556,000 a year -- a plainly unacceptable 1% a year return. A longer assumed use period makes it even more difficult to avoid ¶ V(A)(5)(a)(2).

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*/ Construction costs cannot be expected to go down, and this will make it more difficult to avoid ¶ V(A)(5)(a)(1); and if the proper reference is the price of just that portion of the Island the military will use (18,500 acres), it will be even more difficult to avoid that paragraph than if the larger acreage figure is used.

**/ 40 U.S.C. § 278a (1970), commonly known as the "Economy Act," prohibits the government from paying a rental for any building in excess of 15% of the fair market value of the rented area. Though there are a variety of exceptions to this provision, and though it does not apply to unimproved land rented as such to the government, 38 Comp. Gen. 143, 144 (1958), it provides a useful guide, and one which does not seem wholly out of line in view of present interest rates.

II. PRACTICE AND PRECEDENT RELATING TO LAND ACQUISITION FOR MILITARY PURPOSES

A. In the United States and Its Territories

The Defense Department does very little leasing of land for military purposes in the United States. A review by a law clerk of the computer run of the Army Corps of Engineers' most recent list of its leases yielded the conclusion that "probably 75% of all listings are for family housing, with the bulk of the others listed for office use or testing." According to Grant Reynolds, the United States did enter intc leases for land for military bases in the 1950's, when the Defense Department was under budgetary constraints and was anxious to get SAC bases in place. The only concrete example of substantial leasing for a base I found came from Reynolds' suggestion: Williams Air Force Base in Arizona, where there are 14 leases for 1,078.4 acres at a total rental of $11,770 a year.*/ The only leasing I found in the territories was in Puerto Rico, where a campsite and rifle range at Camp Tortugero are leased -- rent free.**/ In the Trust Territory, the military does no

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*/ The leases at Williams are generally for a year, with options to renew yearly for five years.

Reynolds also told me that a considerable amount of leasing was done for Glasgow Air Force Base in Montana, but I found no listed leases when I checked with the Army Corps, which handles real estate transactions for the Air Force.

**/ The Naval Facilities Engineering Command (NFEC) handles all real estate transactions for military departments in Guam and the Virgin Islands, according to the Army Corps people and Roy Markon at NFEC. I did not check the NFEC records or have them checked by a law clerk, but Markon told me his organization does very little, if any, leasing in those areas.

direct leasing; lands it needs are acquired by the High Commissioner and then a Use and Occupancy Agreement is executed by the Commissioner and the Defense Department.

The Defense Department's preference for purchasing instead of leasing land for military bases, as demonstrated by the small amount of leasing done, is, of course, consistent with the Directives discussed above. This point was driven home to me by persons in the Army Corps and in NFEC, both of whom referred to the "economic" or "businesslike" basis of these decisions. The point was reinforced by the Minority Staff Member of the Senate Appropriations Subcommittee on Military Construction, who said that Congress wants the military to purchase, not lease, land on which it plans to put construction.*/

The United States' position in its Unincorporated Territory Proposal, §§ 405 et seq., and its Commonwealth Proposal, §§ 381 et seq., is basically in accord with this policy. Both proposals would permit acquisition of any interest in land deemed necessary, up to and including a fee which terminates five years after the United States stops using the land for a public purpose; upon termination the land would revert to the person or entity from whom it was acquired.**/ In some ways this appears to be a concession

*/ As noted above, the Senate and House Armed Services Committees have to approve major real estate transactions by the Defense Department in the United States and in Puerto Rico even after they have been authorized and money appropriated. See p. 8 , supra.

**/ Under the Commonwealth Proposal, the land would revert if it were not used "for the public purposes of the United States Government," § 381(3), while under the Unincorporated Territory Proposal, it would revert if not used "for the public purposes of the department or agency for which it was acquired," § 405(d)(i).

to the Marianas, but in view of the likely use of the military base lands for an extremely long time, the requirements that the Department dispose of unnecessary property in any event (though of course it would not automatically go back to the person from whom it was acquired), and the possibility that the reverter clause would reduce the fair market value of the interest acquired -- and thus the price the United States has to pay --, the concession is hardly noteworthy.

B. Outside the United States and Its Territories

The land on which military bases in foreign countries are located, on the other hand, is almost never acquired in fee.*/ Temporary use of the land is obtained either by lease or by a use agreement with the host government. A variety of arrangements are used. Sometimes the United States has simply leased private property for a period of time or an indefinite period. Leasing of this sort was done in Okinawa before the reversion; rental payments for private land totaled $10 million a year, Statement of David Packard,

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*/ In Panama the United States was granted use and control of the Canal Zone and the right to exercise sovereign powers there "in perpetuity" in return for a lump sum payment and later annual payments, Isthmian Canal Convention, , 33 Stat. 2234 (Feb. 26, 1904). The Philippine Independence Act provided that all lands held by the United States would be "granted to the government of the Commonwealth of the Philippine Islands when constituted," except those lands which were designated by the President "for military and other reservations of" the United States, 22 U.S.C. § 1391 (1970) (Act of March 24, 1934). There was no provision for payment for the lands retained, though the Act did authorize the President to negotiate after independence "for the adjustment and settlement of all questions relating to naval reservations and fueling stations of the United States in the Philippines," id. § 1394(b).

Deputy Secretary of Defense before the Senate Foreign Relations Committee on the Okinawa Reversion Agreement at 6 (Oct. 28, 1971). Alternatively, the lease can be entered into between governments. An example is the lease entered into in 1903 for Guantanamo Naval Base in Cuba by which the United States promised to pay "the annual sum of two thousand dollars, in gold coin" in return for a lease of the property (to be acquired by Cuba for that purpose) "for the time required for the purposes of coaling and naval stations" Agreements between the United States and Cuba signed February 16/23, 1903, and July 2, 1903, 1 Malloy's Treaties 358-61 (1910). The lease can be terminated only by mutual consent. A somewhat similar arrangement is the Lend-Lease Agreement between the United States and Great Britain before World War II, whereby the United States obtained 99 year leases for naval and air stations in Newfoundland, Bermuda and a series of places in the Caribbean rent-free, and "in consideration" of the decision to lease, transferred "fifty United States Navy Destroyers generally referred to as the twelve-hundred-ton type" to England. Exchange of Notes dated Sept. 2, 1940, and Agreement dated March 27, 1941, between the United States and Great Britain, 55 Stat. 1560, 1572.

Quite often instead of a formal lease of property, the United States obtains the temporary use of land and facilities by an agreement with the host country. The consideration the United States "pays" for the right to use such property varies. Sometimes the consideration is simply the protection

provided by the presence of American troops. Under the Treaty of Mutual Cooperation and Security Between the United States and Japan, the United States pays the entire cost of the maintenance of its armed forces in Japan, except that the host government provides "all facilities and areas and rights of way" as agreed upon. Agreement under Art. VI of The Treaty of Mutual Cooperation and Security Between the United States and Japan: Facilities and Areas and the Status of United States Armed Forces in Japan Art. XXIV(2), 11 U.S.T. 1652, 1672 (Jan. 19, 1960). This Treaty became applicable in Okinawa after reversion, and now Japan is reponsible for the rental payments under leases the United States had previously made to obtain land for military purposes. Statement of David Packard, supra. Other times the consideration is more substantial. Under agreements with the Philippines entered into in 1947 the United States obtained the right to use certain bases, including three major bases on the island of Luzon, for 99 years and agreed to provide military equipment and training to the Philippines. Paul, American Military Commitments Abroad, 79-82 (1973). Under the Agreement of Friendship and Cooperation between Spain and the United States, certain major military facilities were made available to the United States without any charge for a five-year period. The United States promised, subject to necessary legislation and appropriations, to pay 70% of the cost (up to $50 million) of modernizing the Spanish aircraft control and warning network, in addition to providing military equipment and $3 million for certain non-military projects. Agreement of Friendship and Cooperation Between the United States and Spain, Chap. VIII, 21 U.S.T. 1677, (Aug. 6, 1970); Exchange of Notes, id. 1713, 1723-24. Similarly, Portugal

has granted the United States the right to station forces at Lajes Air Base in the Azores for five years. The United States promised to provide, through the Export-Import Bank, financing for $400 million of civil projects in Portugal, and to provide, subject to necessary legislation and appropriations, agricultural loans of $15 million a year for two years, a hydrographic vessel by a no-cost lease, an educational grant of $1 million, and $5 million in drawing rights for non-military excess equipment. This agreement was accomplished by an exchange of notes (Tab F).

When the United States obtains the temporary use of land or specific military bases in foreign countries, it also obtains the right to improve the land as necessary for its purposes. The Guantanamo Agreement grants the United States, for example, the right "to improve and deepen the entrances thereto and the anchorages therein, and generally to do any and all things necessary to fit the premises for use as coaling or naval stations only, and for no other purpose." Agreement Between the United States and Cuba, Art. III, supra. Congress authorized $4,192,000,000 for construction at Guantanamo last year. Military Construction Authorization Act for Fiscal Year 1973, supra, § 201 (includes construction for "Naval Air Station," "Naval Hospital," and "Naval Station"). The Lend-Lease Agreement provides similar rights, and construction of $90,000 was authorized in Bermuda last year. Id. The Azores Agreement also permits the United States

to improve the Lajes Base; the State Department's Portuguese Desk Officer told me that the United States had really built the entire base there, and had spent "in the tens of millions of dollars."*/ The Spanish Agreement grants the United States construction rights, but requires certain approvals for major work. Agreement Between the United States and Spain, supra, Chap. VIII, Art. 32.

The fact that the United States is generally prepared to enter into temporary use agreements for military bases in foreign countries shows at least that the defense objectives of the bases can be served adequately by a lease of the property -- even when the lease is for a relatively short term. This conclusion is strengthened by the fact that the United States seemed prepared to enter into leases for military bases in Micronesia when it was negotiating over a Compact of Free Association; the primary question was whether the leases could be written so as to extend beyond the termination of the Compact, not whether the land would be leased or purchased.**/ Moreover, since the United States places a large

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*/ The documents in Tab F do not show that the United States has the right to put improvements at Lajes. The notes of December 9, 1971, state that "continued use" of the facilities at Lajes "will be regulated by the mutual arrangements affirmed and described" in a letter dated December 29, 1962. I tried to get the 1962 letter from the State Department with no success. However, Tom Martin, the Portuguese desk officer who had the letter, told me that the United States could and did build needed facilities at Lajes, such as runways, hangars, towers, and housing.

**/ See The Future Political Status of the Trust Territory of the Pacific Islands, Official Records of the Fourth Round of Micronesian Future Political Status Talks, Koror, Palau, April 2-13, 1972, at 46 (Ambassador Williams agreeing that the leases should run independently of the Compact and that a mutual security pact should be negotiated in advance of the Compact to go into effect upon termination).

amount of construction on bases it holds temporarily in foreign countries, some of it surely within the definition of "permanent construction", one can argue that it should not be so hesitant to do the same in a Commonwealth, given the unusual circumstances.

III. VALUATION

One crucial aspect of the negotiations is the amount which the United States will pay for the land it takes for military purposes in the Marianas, regardless of the estate in land which it acquires. The United States' position is that it will pay the fair market value of the land it acquires; the Marianas Political Status Commission has said that "[n]o price for land can be considered fair and just unless it is arrived at after a thorough exploration of all relevant factors." MPSC Response to U.S. Position on Land, quoted in Marianas Variety News and Views, Sept. 21, 1973 at 3. In theory there is no difference between these two formulations; but obviously the parties to the negotiations had somewhat different ideas in mind about the determination of the price.

Section 108 of The Military Construction Appropriation Act for Fiscal Year 1973, supra, provides:

> "No part of the funds provided in this Act shall be used for purchase of land or land easements in excess of 100 per centum of the value as determined by the Corps of Engineers or the Naval Facilities Engineering Command, except: (a) where there is a determination of value by a Federal court, or (b) purchases negotiated by the Attorney General or his designee, or (c) where the estimated value is less than $25,000, or (d) as otherwise determined by the Secretary of Defense to be in the public interest."

Thus if the money for the land in Tinian comes through the Military Construction Appropriation Act, if the same provision continues to be carried in the Act as in the past, if the land is purchased, not leased,*/ and if the transaction is not exempted by the Secretary of Defense or otherwise by statute, then the Armed Forces could pay no more than the appraised fair market value of the land (or the price determined by a court in a condemnation suit, which would presumably also be the fair market value). If any of these conditions is not fulfilled, then there is no statutory requirement that the price be limited to the fair market value.

The Department of Defense Directives and implementing regulations do not specifically require that fair

*/ By its terms the statute applies only to purchases "of land or land easements"; a lease is not specifically included. Grant Reynolds told me the restriction does not apply to leases. However, 41 U.S.C. § 14 (1970), which by its terms prohibits purchases of land on behalf of the United States without statutory authorization has been interpreted to include acquisition of a fee or a lesser interest, 35 Op. A.G. 183 (1927). I found no such interpretation of this portion of the Military Construction Appropriation Act, and, since the section specifically refers to both purchases of land and land easements, it seems hard to argue it should also apply to leases, which are not mentioned.

market value be paid, but they quite clearly proceed on the assumption that that market value is the proper standard. For example, ¶ 1-7(b) of Army Regulation 403-10, Re: Real Estate: Acquisition of Real Property And Interests Therein (May 1970) provides that real property "generally is acquired by negotiations based on Government appraisal of its fair market value", and ¶ 2-2(e)(4) (applicable only in the United States, Puerto Rico, the Virgin Islands, and the Canal Zone) requires that the "Lease Planning Report" include "the appraised annual rental value of the real property proposed for leasing." Moreover, the Uniform Real Property Acquisition Policy Act, 42 U.S.C.A. §§ 4651 et seq., (Supp. 1973), which is applicable in the Marianas, also quite plainly looks toward appraised fair market value as the proper standard for determining compensation.

If, however, the fair market value of the fee or leasehold acquired is not the standard employed, how should compensation be determined? One way is simply to accept whatever the negotiators, acting without artificial restraint, agree upon. In a sense this is a market standard, for it reflects the reality of a willing buyer and a willing seller, but it is a standard which takes account of influences, particularly the government's peculiar need for the land, which are excluded in the determination of just compensation

in eminent domain cases. Yet it is apparently the standard which the United States is willing to use in determining what it will pay to foreign countries for base use rights. The base in the Azores, for example, is of approximately the same size as the base proposed for Tinian. In explaining the agreement to the Senate, the State and Defense Departments did not refer at all to any supposed market value of the use rights; rather they presented and defended the agreement as representing a fair bargain between the two governments involved. In discussing one part of the assistance the United States promised to Portugal, $1 million for certain education programs, Under Secretary of State U. Alexis Johnson stated that it was proper for the money to be taken from the Department of Defense budget since it "is related to their ability to have the use of the Azores base." Hearings Before The Senate Foreign Relations Committee on Executive Agreements With Portugal and Bahrain, 92d Cong., 1st Sess. 58 (Feb. 1972). At another point Johnson hinted that the amount the United States was willing to pay was influenced by the "studies" the Administration had carried out "on what it would cost if we did not have the base, that is to carry out the same mission." Id. at 52. The exact amount paid for the use of the Azores base is difficult to determine and the situations are different

in several respects, some favorable to the Marianas and others not,*/ but there seems to be no reason -- except that the Marianas is to become part of the "American Family" where the usual standard is of compensation is fair market value without consideration of the government's need for the property -- that whatever the "buyer" and "seller" agree on is not a fair way to determine what is to be paid, as it was for the Azores.

In short, the relevant policies of the United States point to the use of the fair market value standard as the test of compensation for the land to be taken in Tinian, but unless a series of conditions are met there is no legal requirement that fair market value actually be the standard. The ultimate decision whether the price to be paid is fair is up to Congress; and if the Administration agrees to a price determined in some other way (or determined in no particular way at all), but which it considers fair, then it is likely that the Congress can be persuaded to agree.

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*/ The amount paid for the use of the Azores base for five years included a grant of $1 million, drawing rights for non-military excess equipment of $5 million, the value of the free use of a hydrographic vessel and the value (probably best measured by the difference between market interest rates and rates to be charged) of $415 million in loans -- discounted by the fact that some Export-Import Bank loans might have been available anyway and that necessary authorizations and appropriations might not be made for the agricultural loans. Whatever the amount paid is, it should be increased for Tinian because that base is more important that Lajes to the United States and because the Marianas are prepared to agree to a longer term; and it should be decreased because the United States will have to start its base from scratch in Tinian while in the Azores it rented a very substantial base (which it had largely built, I am told, see p. 27 , supra).

IV. CONCLUSION

The United States has a clear and understandable preference for purchasing the land it wants on Tinian instead of leasing it. A purchase almost certainly has economic benefits to the United States considering the very long period of time that it will want to use the Island, the permanent construction to be put on it, and the rent likely to be demanded; and a purchase probably offers greater security than a lease for a period of time which would wholly satisfy the Marianas. But the United States is not bound by any statute or regulation to acquire a fee interest in the land;*/ and even if it were, an exception could be sought in the legislation which will be necessary to approve and to implement the Compact of Commonwealth.

Thus the question becomes, can the United States be persuaded that a lease rather than a purchase is in its interest? In response to its concern about the economics of a lease, one can point out that there are significant budgetary advantages to making relatively small rental payments instead of seeking from Congress the full amount of the purchase price in one year (as presumably the Marianas will demand if a purchase is agreed to). Getting an authorization and an appropriation for the full amount -- probably somewhere between $50 and $100 million, one would hope --

*/ It is not clear that the United States ever claimed it was bound to purchase the land. James M. Wilson, Jr., explained that the U. S. favored a lease until the trusteeship is terminated and then a purchase "for a lump sum," Statement of May 10, 1973, at 11.

might not be easy in view of the competing priorities for military construction in areas represented by Congressmen and Senators on the Armed Services and Appropriations Committees. In response to the United States' concern about security, one can point out that this legitimate interest seems to be adequately protected by leases in foreign countries -- and if that is so then its expressed concern about security is unpersuasive in an area which is, or is about to become, part of the "American Family". Moreover, the concern about security can be lessened if the Marianas would agree to a very long-term lease (99 years, as in the Lend-Lease arrangement, perhaps) or a shorter term lease with options to renew. Finally, one can argue that it is in the interests of the United States to agree to a lease because that will help assure the best possible relations with the people of the Marianas -- and poor public relations seem to plague the military in Japan, Guam and elsewhere -- and because a lease is more likely to lead the United Nations to approve the termination of the Trust Territory than is a purchase.

Perhaps the ball is in the other court, but if the Marianas were to make a proposal now, it might look something like this. After all public land was transferred to a public corporation, that corporation would acquire by purchase (or, if necessary, the Trust Territory Government would acquire by eminent domain and transfer to the corporation) such additional lands as the military needs (the amount

of land being a subject of further negotiation), and -- upon the approval of its membership, which would in effect be a plebiscite -- the corporation would enter into a lease of those lands to the United States either for 99 years or for, say, 30 years with two options to renew for like periods; the rental payments for the first, say, 10 years would be negotiated and included in the lease (with an escalator clause to protect against inflation); later payments would be determined at, say, 5 year intervals by negotiation between the parties, or, failing agreement, by a board of experts (one appointed by the Marianas, one by the United States, one by the other two), with provisions for the United States to remain in possession of the property and make retroactive payments with interest if that became necessary because of a lack of agreement (this protects the United States' interest in continuing to use the land and paying a fair price, while protecting the Marianas against outrageously low payments in future years, like the $2,000 the United States pays, or is supposed to pay, to Cuba for Guantanamo); the lease would terminate upon notice by the United States, or non-use of land by the United States for military purposes for one year. It ought to be made clear, perhaps in the lease itself, that the parties contemplate that the lessor-public corporation will transfer its interest in the lease to the Marianas Government for no consideration after a new political status is concluded.

One fall-back position, and there are many, would be to lease the land to the United States for as long as it is needed and used for military purposes; this fully protects the military interest, yet keeps title to the land in the hands of the local people -- said to be of symbolic importance.

If there is a lease of any sort, substantial thought and negotiation will have to be devoted to its terms. At least three points will be critical from the Marianas side, aside from the amount of land and the rental payments: the obligation on the part of the lesses to restore the property to its original condition after the lease ends and the disposition of permanent structures placed on the land (if there is no restoration requirement and if the United States is allowed to sell the structures after the lease ends, it will be easier for the United States to agree to a lease); the authority of the United States to enter into a long-term lease and the availability of funds to pay for it (the Marianas should insist that Congress specifically authorize the lease agreed upon, and then make a permanent appropriation of such sums as are needed to make payments under it); the conditions which the United States must or will place on those with whom it contracts (for example, the United States puts in all its leases several anti-discrimination

provisions binding on the private lessor;*/ any such proposal by the United States will have to be reviewed to assure that it does not impair the power of the public corporation or, later, the Marianas Government, to restrict employment to residents or citizens or to restrict land alienation or otherwise to discriminate against non-Islanders).

It has been suggested that the Defense Department may be agreeable to a use agreement covering Tinian. Presumably this means an agreement granting the military the right to use land, something short of a formal lease, with the consideration, if they have any in mind, being negotiated later, perhaps in a separate document. From the Marianas viewpoint the advantage of this procedure is that it would allow the amount paid for the use of the land to be included as part of the money flowing to the Marianas in conjunction with the new status, thereby avoiding a detailed analysis by Congress of the amount which is being paid for the land on Tinian. In short, it would allow the

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*/ The form lease requires the lessor to promise not to discriminate on racial grounds in employment or in furnishing the use of facilities such as restrooms and cafeterias. The lessor must also promise to take affirmative action to ensure that there is no discrimination in employment. Other provisions relate to examination of records, assignment of claims, covenants against contingent fees, and prohibitions on government officials benefiting from the lease. The equal employment requirements may not apply outside the United States or if national security considerations override them, see 41 C.F.R. § 60-1.5(a)(3), (c) (1973). But more research that I have done so far will be needed if the United States agrees to and presents a lease for MPSC consideration. A form lease is attached as Tab E, though I doubt the one to be negotiated will look much like it.

payment to be partially hidden, which might be desirable. But there are several disadvantages. First, a use agreement, if, as assumed, it is something short of a lease, is probably not a contract, and therefore might not be enforceable in court against the United States. Second, use agreements (unless "mere" licenses) are normally negotiated between governments, not between governments and private citizens; and, unless the agreement is concluded between the United States and the Trust Territory Government there may be no government available for sometime to grant the use rights requested. Any such agreement with the TTPI Government would, in some way, have to be approved by the people to be worthwhile or acceptable. Third, it will be hard to convince anyone in Congress who takes more than a cursory look at the agreement that a substantial portion of it is not for the use rights granted, so the arrangement may raise more questions than it answers. Fourth, even if all the other points can be handled (and they can), why would the United States be willling to enter into a use agreement and not a lease?

In sum, whether or not the MPSC takes the initiative in presenting a new proposal, I believe

it can stick to its present position in opposition to a sale of land cn Tinian to the military.*/

Michael S. Helfer

cc: Mr. Lapin
Mr. Mode (without attachments)
Mr. Carter (without attachments)

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*/ I have not challenged here the basic position MPSC has taken, which, I assume, reflects the political reality in the Marianas. A challenge to the position can be made, however, based purely on the economies of the matter; a sweet enough deal, that is, might persuade rational persons to give up the symbolic quality known as "title" to land the military is plainly going to take in some form for a long time. The recent report that at least one MPSC member, Jose R. Cruz, will tie an agreement on Tinian to the reinstatement of a public defender, Pacific Daily News, Oct. 23, 1973, at 11, indicates that such an argument would not be persuasive to the client.

EXCERPTS FROM 10 U.S.C.A.

CHAPTER 159.--REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY

§ 2661

§ 2661. Planning and construction of public works projects by military departments

The Secretary of Defense shall maintain direct surveillance over the planning and construction of public works projects by the military departments. The Secretary shall keep currently and fully informed of the status, progress, and cost of, and other pertinent matters concerning, those projects. Aug. 10, 1956, c. 1041, 70A Stat. 147.

§ 2662 - a

§ 2662. Real property transactions: Reports to the Armed Services Committees

(a) The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and House of Representatives:

(1) An acquisition of fee title to any real property, if the estimated price is more than $50,000.

(2) A lease of any real property to the United States, if the estimated annual rental is more than $50,000.

(3) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than $50,000.

(4) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than $50,000.

(5) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than $50,000.

If a transaction covered by clause (1) or (2) is part of a project, the report must include a summarization of the general plan for that project, including an estimate of the total cost of the lands to be acquired or leases to be made.

§ 2662 - b,c,d,e

(b) The Secretary of each military department shall report quarterly to the Committees on Armed Services of the Senate and the House of Representatives on transactions described in subsection (a) that involve an estimated value of more than $5,000 but not more than $50,000.

(c) This section applies only to real property in the United States and Puerto Rico. It does not apply to real property for river and harbor projects or flood-control projects, or to leases of Government-owned real property for agricultural or grazing purposes.

(d) A statement in an instrument of conveyance, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive.

(e) No element of the Department of Defense shall occupy any general purpose space leased for it by the General Services Administration at an annual rental in excess of $50,000 (excluding the cost of utilities and other operation and maintenance services), if the effect of such occupancy is to increase the total amount of such leased space occupied by all elements of the Department of Defense, until the expiration of thirty days from the date upon which a report of the facts concerning the proposed occupancy is submitted to the Committees on Armed Services of the Senate and the House of Representatives.

§ 2663 - a,b,c,d

§ 2663. Acquisition

(a) The Secretary of a military department may have proceedings brought in the name of the United States, in a court of proper jurisdiction, to acquire by condemnation any interest in land, including temporary use, needed for—

(1) the site, construction, or operation of fortifications, coast defenses, or military training camps;

(2) the construction and operation of plants for the production of nitrate and other compounds, and the manufacture of explosives or other munitions of war; or

(3) the development and transmission of power for the operation of plants under clause (2).

(b) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under subsection (a), take and use the land to the extent of the interest sought to be acquired.

(c) The Secretary of the military department concerned may contract for or buy any interest in land, including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and the Secretary considers that price to be reasonable.

(d) The Secretary of the military department concerned may accept for the United States a gift of any interest in land, including temporary use, for any purpose named in subsection (a). Aug. 10, 1956, c. 1041, 70A Stat. 148; Sept. 2, 1958, Pub.L. 85-861 § 33(a)(14), 72 Stat. 1565.

§ 2664 - a,b,c,d, e,f

§ 2664. Acquisition of property for lumber production

(a) The Secretary of a military department, the Secretary of Commerce, and the Chairman of the Federal Maritime Board, or any one or more of them, may have proceedings brought in the name of the United States to acquire by condemnation any interest in property named in subsection (b), including temporary use, and needed for—

(1) the production of aircraft, vessels, dry docks, or equipment for them;

(2) the procurement of supplies for aircraft, vessels, and dry docks; or

(3) housing for persons employed by the United States in connection with functions of the Army, Navy, Air Force, or Marine Corps, or the functions transferred to the Secretary of Commerce or the Federal Maritime Board by 1950 Reorganization Plan No. 21, effective May 24, 1950 (64 Stat. 1273), as the case may be.

(b) The kinds of property that may be acquired by condemnation under subsection (a) are—

(1) standing or fallen timber;

(2) sawmills;

(3) camps;

(4) machinery;

(5) logging roads;

(6) rights-of-way;

(7) supplies; and

(8) works, property, or appliances suitable for the production of lumber and timber products.

(c) Jurisdiction over condemnation proceedings under this section is vested in the United States District Court for the district in which the property, or any part of it, sought to be condemned is located, regardless of its value.

(d) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under subsection (a), take and use the property to the extent of the interest sought to be acquired.

(e) A person named in subsection (a) may contract for or buy any interest in property named in subsection (b), including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and that person considers that price to be reasonable.

(f) A person named in subsection (a) may accept for the United States a gift of any property named in subsection (b), including temporary use, for any purpose named in subsection (a). Aug. 10, 1956, c. 1041, 70A Stat. 148; Sept. 2, 1958, Pub.L. 85-861, § 33(a)(15), 72 Stat. 1565.

§ 2666

§ 2666. Acquisition: land purchase contracts; limitation on commission

The maximum amount payable as commission on a contract for the purchase of land from funds appropriated for the Department of Defense is 2 percent of the purchase price. Aug. 10, 1956, c. 1041, 70A Stat. 149.

§ 2667 - a,b,c,d,e

§ 2667. Leases: non-excess property

(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

(1) under the control of that department;

(2) not for the time needed for public use; and

(3) not excess property, as defined by section 472 of title 40.

(b) A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) must permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) must be revocable by the Secretary during a national emergency declared by the President; and

(5) may provide, notwithstanding section 303b of title 40 or any other provision of law, for the maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as part or all of the consideration for the lease.

(c) This section does not apply to oil, mineral, or phosphate lands.

(d) Money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.

(e) The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this sec-

§ 2672

§ 2672. Acquisition: interests in land when cost is not more than $50,000

The Secretary of a military department may acquire any interest in land that—

(1) he or his designee determines is needed in the interest of national defense; and

(2) does not cost more than $50,000, exclusive of administrative costs and the amounts of any deficiency judgments.

This section does not apply to the acquisition, as a part of the same project, of more than one parcel of land unless the parcels are noncontiguous, or, if contiguous, unless the total cost is not more than $50,000. The authority to acquire an interest in land under this section includes authority to make surveys and acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise.

§ 2673 - a,b,c, d,e,f

§ 2673. Restoration or replacement of facilities damaged or destroyed

With the approval of the Secretary of Defense and after notifying the Committees on Armed Services of the Senate and the House of Representatives, the Secretary of a military department may acquire, construct, rehabilitate, and install temporary or permanent public works, including appurtenances, utilities, equipment, and the preparation of sites, to restore or replace facilities that have been damaged or destroyed. Added Pub.L. 85-861, § 1(51), Sept. 2, 1958, 72 Stat. 1459.

§ 2674. Establishment and development of military facilities and installations costing less than $300,000

(a) Under such regulations as the Secretary of Defense may prescribe, the Secretary of a military department may acquire, construct, convert, extend, and install, at military installations and facilities, urgently needed permanent or temporary public works not otherwise authorized by law, including the preparation of sites and the furnishing of appurtenances, utilities, and equipment, but excluding the construction of family quarters. However a determination that a project is urgently needed is not required for a project costing not more than $50,000 or for a project which the Secretary of a military department determines will, within three years following completion of the project, result in savings in maintenance and operation costs in excess of the cost of the project.

(b) This section does not authorize a project costing more than $300,000. A project costing more than $100,000 must be approved in advance by the Secretary of Defense, and a project costing more than $50,000 must be approved in advance by the Secretary concerned.

(c) Not more than one allotment may be made for any project authorized under this section.

(d) Not more than $50,000 may be spent under this section during a fiscal year to convert structures to family quarters at any one installation or facility.

(e) Appropriations available for military construction may be used for the purposes of this section. In addition, the Secretary concerned may spend, from appropriations available for maintenance and operations, amounts necessary for any project costing not more than $50,000 that is authorized under this section.

(f) The Secretary of each military department shall report in detail every six months to the Committees on Armed Services of the Senate and House of Representatives on the administration of this section. Added Pub.L. 85-861, § 1 (51), Sept. 2, 1958, 72 Stat. 1459.

§ 2675 - a,b,c

§ 2675. Leases: foreign countries: structures not on a military base

(a) Notwithstanding any other provision of law, the Secretary of a military department may acquire by lease, in any foreign country, structures and real property relating thereto that are not located on a military base and that are needed for military purposes. A lease under this section may not be for a period of more than five years.

(b) A lease may not be entered into under this section if the average estimated annual rental during the term of the lease is more than $250,000 until after the expiration of thirty days from the date upon which a report of the facts concerning the proposed lease is submitted to the Committees on Armed Services of the Senate and House of Representatives.

(c) A statement in a lease that the requirements of this section have been met, or that the lease is not subject to this section, is conclusive. As amended Pub.L. 91-511, Title VI, § 608, Oct. 26, 1970, 84 Stat. 1224.

§ 2676

§ 2676. Acquisition: limitation

No military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law. Added Pub.L. 85-861, § 1 (51), Sept. 2, 1958, 72 Stat. 1460.

§ 2677 - a,b,c

§ 2677. Options: property required for public works projects of military departments

(a) The Secretary of a military department may acquire an option on a parcel of real property before or after its acquisition is authorized by law, if he considers it suitable and likely to be needed for a military project of his department.

(b) As consideration for an option acquired under subsection (a), the Secretary may pay, from funds available to his department for real property activities, an amount that is not more than 5 per centum of the appraised fair market value of the property.

(c) For each six-month period ending on June 30 or December 31, during which he acquires options under subsection (a), the Secretary of each military department shall report those options to the Committees on Armed Services of the Senate and House of Representatives. Added Pub.L. 85-861, § 1(51), Sept. 2, 1958, 72 Stat. 1460.

§ 2678

§ 2678. Acquisition of mortgaged housing units

The Secretary of a military department may buy, subject to the mortgage, any housing unit that is subject to a mortgage insured under Title VI or IX of the National Housing Act (12 U.S.C. 1736 et seq. and 1750 et seq.), if the housing unit is—

(1) located near a military installation; and

(2) suitable and adequate for housing members of the armed forces and their dependents.

The Secretary may assume the obligation to make the payments on the mortgage that become due after the date of acquisition, and to make these payments he may use appropriations available for the construction of military public works. Added Pub.L. 85-861, § 1 (51), Sept. 2, 1958, 72 Stat. 1460.

§ 2679 - a,b,c,d

§ 2679. Representatives of veterans' organizations: use of space and equipment

(a) Upon certification to the Secretary concerned by the Administrator of Veterans' Affairs the Secretary shall allow accredited, paid, full-time representatives of the organizations named in section 3402 of title 38, or of other organizations recognized by the Administrator, to function on military installations under the jurisdiction of that Secretary that are on land and from which persons are discharged or released from active duty.

(b) The commanding officer of each of those military installations shall allow the representatives described in subsection (a) to use available space and equipment at that installation.

(c) The regulations prescribed to carry out this section that are in effect on January 1, 1958, remain in effect until changed by joint action of the Secretary concerned and the Administrator.

(d) This section does not authorize the violation of measures of military security. Added Pub.L. 87-651, Title I, § 112(c), Sept. 7, 1962, 76 Stat. 511

§ 2681 - a,b,c

§ 2681. Construction or acquisition of family housing and community facilities in foreign countries

(a) In addition to family housing and to community facilities that otherwise may be constructed or acquired by the Department of Defense, the Secretary of Defense may, with the approval of the Director of the Bureau of the Budget, construct, or acquire by lease or otherwise, family housing to be occupied as public quarters, and community facilities, in foreign countries by using foreign currencies that have a value of not more than $250,000,000 and that were acquired under sections 1691-1724 of title 7 or through other commodity transactions of the Commodity Credit Corporation.

(b) The Department of Defense shall pay the Commodity Credit Corporation an amount not to exceed $6,000,000 a year until the amount due for foreign currencies used for housing constructed or acquired under this section has been liquidated.

(c) The Secretary of Defense shall report to the Committees on Armed Services of the Senate and House of Representatives on the fifteenth day of January, April, July, and October of each year—

(1) the cost, number, and location of housing units constructed or acquired under this section during the three-month period covered by the report; and

(2) the cost, number, and location of housing units that are intended to be constructed or acquired under this section during the following three-month period.

§ 2682

§ 2682. Facilities for defense agencies

The construction, maintenance, rehabilitation, repair, alteration, addition, expansion, or extension of a real property facility for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense will be accomplished by or through a military department designated by the Secretary of Defense. A real property facility under the jurisdiction of the Department of Defense which is used by an activity or agency of the Department of Defense (other than a military department) shall be under the jurisdiction of a military department designated by the Secretary of Defense. Added Pub.L. 88-174, Title VI, § 609(a)(1), Nov. 7, 1963, 77 Stat. 329.

§ 2683 - a,b

§ 2683. Relinquishment of legislative jurisdiction

(a) Notwithstanding any other provision of law, the Secretary of a military department may, whenever he considers it desirable, relinquish to a State, or to a Commonwealth, territory, or possession of the United States, all or part of the legislative jurisdiction of the United States over lands or interests under his control in that State, Commonwealth, territory, or possession. Relinquishment of legislative jurisdiction under this section may be accomplished (1) by filing with the Governor (or, if none exists, with the chief executive officer) of the State, Commonwealth, territory, or possession concerned a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State, Commonwealth, territory, or possession may otherwise provide.

(b) The authority granted by this section is in addition to and not instead of that granted by any other provision of law.

September 15, 1955
NUMBER 4165.6

Department of Defense Directive

SUBJECT Real Property; Acquisition, Management and Disposal

References: (a) Department of Defense Directive 4165.16, dated ~~April 6, 1955~~ Dec. 19, 1958, entitled "Real Property; Construction on Leased Land and Release of Leaseholds"

(b) DOD Directive 5220.3, dated September 11, 1951, entitled "Industrial Dispersion Policy"

(c) DOD Directive 4275.2, dated November 24, 1954, entitled "Industrial Production Facilities (Acquisition, Construction, Rehabilitation and Major Repairs)"

(d) DOD Instruction 4100.16, dated March 8, 1954, entitled "DOD Program for Review of Commercial and Industrial-Type Facilities (DD-S&L(AR)140)"

(e) DOD Instruction 4145.3, dated October 28, 1954, entitled "Storage and Warehousing Facilities"

(f) DOD Instruction 4145.4, dated March 11, 1954, entitled "Commercial and Industrial Type Facilities (Leasing, Establishment or Diversion)"

(g) Regulations of General Services Administration, Title 2, Real Property Management, ~~dated December 15, 1953~~ as amended.

(h) DOD Directive 4510.1, dated March 12, 1954, entitled "Policy on Transportation and Traffic Management Factors Affecting Site Selection"

Delete

I. PURPOSE

The purpose of this directive is to set forth the Department of Defense policy with respect to the acquisition, management and disposal of real property and delegate the authority necessary for the accomplishment thereof.

II. CANCELLATIONS

(a) DOD Directive 4165.6, dated July 5, 1952, entitled "Acquisition, Utilization and Disposal of Real Property"

(b) DOD Directive 4165.11, dated November 21, 1953, entitled "Delegations of Authority to Secretaries of Army, Navy, and Air Force"

(c) Memoranda to the Secretaries of the Army, Navy, and Air Force, dated July 10, 1950, entitled "Designation to Dispose of Surplus Property Pursuant to Delegation by the Administrator of General Services"

(d) Memoranda, dated July 23, 1953, to the three military departments entitled "Utilization of Real Property"

III. DELEGATIONS

Pursuant to the authorities vested in me by Section 202 (f) of the National Security Act of 1947, as amended (5 USC 171 a), Section 5 of Reorganization Plan No. 6 of 1953, and Section 202 (c) of the Federal Property and Administrative Services Act of 1949, as amended (P. L. 152, 81st Congress), there is hereby redelegated to the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, and to such individuals as they may designate for the purpose of administering real estate actions within their respective departments, the authorities which are, or may hereafter be, assigned and delegated to, or vested in, me by:

A. Sections 401 and 402 of the Federal Property and Administrative Services Act of 1949, as amended (P. L. 152, 81st Congress), and Regulations of General Services Administration promulgated thereunder.

B. The Administrator of General Services, pursuant to Section 203 (a), (b) and (c) of the Federal Property and Administrative Services Act of 1949, as amended (P. L. 152, 81st Congress).

C. The Administrator of General Services, as recited in Chapter V-201.02 and V-201.05 of Regulations of General Services Administration, Title 2, Real Property Management, dated December 15, 1953.

IV. APPLICABILITY

The policies expressed in Section V. of this directive apply to the acquisition, management and disposal of all real properties under the control and/or jurisdiction of the military departments located in:

A. The United States, its Territories and Possessions, and the Commonwealth of Puerto Rico, except:

1. Real property pertaining to river and harbor and flood control projects, the acquisition, management and disposal of which are governed by regulations of the Secretary of the Army.

2. General purpose space acquired by General Services Administration in:

   a. The metropolitan Washington area, i.e., District of Columbia, Prince Georges and Montgomery Counties in the State of Maryland, Arlington and Fairfax Counties in the State of Virginia and the Cities of Alexandria and Falls Church in the State of Virginia.

   b. Certain urban areas outside the District of Columbia and vicinity, i.e., as defined in Section 2-I-102.01, ~~subparagraph 2.22(b)~~ of reference (g) above.

B. Foreign countries to the extent possible, in accordance with international law and agreements.

V. POLICY

Policies outlined in this directive shall be subject to such procedural restrictions and qualifications as are contained in the provisions of law, regulations of the General Services Administration and instructions issued or to be issued by the Department of Defense.

A. Acquisition of real properties.

The military departments shall establish uniform site selection procedures which will adhere to the following policy:

1. No additional real property shall be acquired unless the real property currently under the control of all three military departments is inadequate to satisfy the military requirements.

2. Current requirements will, in the absence of unusual circumstances, be given preference over future needs and mobilization requirements. If the current requirement will not continue through mobilization, care must be exercised to avoid modification of the property in a manner that would prevent its timely return to the holding department to meet the mobilization requirement. If it is contemplated that the current requirement will continue through mobilization, the property may be modified as required and the mobilization plans of the military departments concerned should be changed accordingly.

3. Departmental requirements in each individual case shall be firmly determined and only the minimum amount of property necessary shall be acquired.

4. Prior to acquisition by purchase, lease or condemnation, it shall first be determined that the requirements cannot be satisfied by:

   a. Exercise of recapture of use rights,

   b. Use of property that is excess to the needs of the other military departments or to another Government agency,

   c. Use of property that is temporarily excess to the needs of the other military departments or another Government agency and which can be secured for exclusive or joint use. The current inventories of real property holdings as maintained by each military department shall be reviewed and excess properties made available for physical inspection. Inventories of other Government agencies as maintained by General Services Administration should be reviewed to determine availability of usable properties.

   d. Exercise of existing authorities for the exchange of Government-owned real property for privately-owned property that is by type or location adaptable for the military need. Available real property of the military departments and other Government agencies should also be included in such consideration.

   e. Use of the public domain,

   f. Securing title to real property from state or municipal governments by donation or use thereof by long-term nominal lease (See paragraph IV D 5 of reference (a)).

5. Real property should be acquired by whichever of the following methods will satisfy the defense requirement in the most economical manner and create the least impact on the civilian economy.

   a. Acquisition of fee title to land, inclusive of all mineral rights, and improvements shall generally be considered in the best interest of the Government when one or more of the following conditions exist:

(1) Proposed construction to be placed on the land by the Government has an estimated cost equal to or in excess of the current market value of the land (See paragraph V A 5 b herein).

(2) Calculated period of required use is of sufficient duration that the sum expended for rentals and restoration, if required, would exceed 50% of the fair market value of the fee title (See paragraph IV D of reference (a) for exceptions to this policy).

(3) Cost of acquiring an easement right exceeds 75% of the current fair market value of the fee title.

b. Acquisition of use of land and improvements by easement (permanent or so long as required for Government use), license, permit, lease contract, or condemnation of leasehold interest shall generally be considered in the best interest of the Government if the calculated period of required use is of such duration that fee acquisition under 5 a above could not be economically justified. Leaseholds should be negotiated to provide for the right of cancellation of the lease in whole or in part or upon giving the shortest notice agreed to by the lessor.

B. Management of real properties.

1. Inasmuch as current requirements will, in many instances, be minimized or completely satisfied by proper utilization of existing facilities, an active program will be maintained by each military department to insure an efficient business-like management and utilization of real property under its control. ~~The Munitions Board Field Space Manual of 1949~~, or any succeeding publication, shall be used to the extent applicable as a guide in accomplishing this responsibility.

Chapter II-501+502 of ref. (b)

a. Conversion or rehabilitation of available Government-owned structures to meet current requirements shall be undertaken in instances where comparison of the cost thereof, with either the cost of new construction or the cost of acquiring fee title or leasehold interest in similar space for the period of required use, indicates an economical saving. Cost of maintaining at an economical level will be considered in the total cost for conversion or rehabilitation of Government-owned structures, new construction and fee acquisition.

b. In the event of reduction of an activity in a leased property acquired by a military department, the availability of the leasehold will be screened with the appropriate local commands of all military departments with the objective of moving functions accommodated in high cost leased space into lower cost facilities.

C. Disposal of real properties.

1. Properties, including buildings that are considered functionally sound and which are determined to be excess to current and/or mobilization requirements of the holding department shall be screened with the other military departments for determination of requirement therefor. Buildings and other structures that have deteriorated beyond economical repair and maintenance need not be screened. Screening of foreign excess real property shall be conducted between area commands only. When it has been determined that property is excess, disposal thereof shall be in accordance with instructions of the Office, Assistant Secretary of Defense (Properties and Installations), existing law, and Regulations of the General Services Administration.

a. Government-owned real property held by a military department which by screening process is determined to be excess to current requirements of the three military departments but for which a mobilization requirement exists shall be made available for interim usage in one of the following manners, provided use thereof will not involve modifying the property in a manner that would prevent its return to the holding department for timely use in meeting its mobilization requirements:

(1) By permit or license to another Government agency.

(2) Outleasing - This should include restrictive or safety land areas wherein agricultural or other usage will not interfere with the use for which held by the department. Provisions shall be made in all outleases of Government-owned property requiring that prior approval of the controlling military department must be secured before subleasing any part of the property for direct or indirect use by another Federal Government agency.

NOTE: As to (1) and (2) above, provision for adequate maintenance will be included.

(3) By declaring it to General Services Administration as excess real property for disposal subject to adequate provisions for recapture of use in accordance with existing regulations, instructions and statutes.

b. The release of recapture rights retained by the Government may be effected in response to a petition if there is no current or mobilization requirement therefor by any of the military departments. The military departments shall review plans covering contemplated future or mobilization use of the facility in light of the current physical condition of the improvements, extent of deterioration and anticipated acceleration thereof.

c. In consideration of possible changes in mobilization requirements, disposal of excess buildings and improvements located on nonexcess land will not be undertaken where such improvements are structurally sound, are adaptable to normal operational use, will require only nominal maintenance and the physical location thereof will not interfere with approved new construction, unless such improvements are movable and are required to satisfy a current requirement of a military department.

d. Immediately upon determination that a leasehold will become excess to the needs of a military department, that department will forthwith send notice of availability to the appropriate offices of the other military departments (See paragraph V B 1 (b)) including a physical description of the property, terms of lease, date possession can be surrendered and date that renewal of the contract must be exercised. Notices of availability shall be scrutinized by the receiving department to determine if pending requirements can be satisfied by assuming the excess leasehold or an economic saving can be realized by cancelling an existing lease and moving into the excess space. It will be the responsibility of the military department having an interest in the acquisition of such excess space to continue the leasehold interest.

VI. UNIFORMITY

Subsequent to the enactment of laws concerning real estate actions that apply equally to the three military departments, the Assistant Secretary of Defense (Properties and Installations) will designate one of the military departments to develop and coordinate uniform implementation for approval by the Office, Secretary of Defense.

VII. IMPLEMENTATION

Written implementation of the policies contained in this directive shall be effected within sixty days subsequent to the effective date hereof and copies shall be furnished the Assistant Secretary of Defense (Properties and Installations).

VIII. EFFECTIVE DATE

This directive is effective on the date of issue.

Deputy Secretary of Defense

DEPARTMENT OF DEFENSE
DIRECTIVES SYSTEM TRANSMITTAL

NUMBER	DATE	DISTRIBUTION
4165.6 - Ch 1	June 12, 1964	4100

ATTACHMENTS

None

INSTRUCTIONS FOR RECIPIENTS

The following pen changes to DoD Directive 4165.6, "Real Property; Acquisition, Management and Disposal," dated September 15, 1955, have been authorized:

PEN CHANGES

1. Reference (a) - Change "April 6, 1955" to "December 19, 1958"
2. Delete ALL of references (b), (c), (d), (e), (f), and (h).
3. Reference (g) - Change to "(b)", and substitute "as amended" for "dated December 15, 1953"
4. Subparagraph IV. A. 2. a. - Insert "Fairfax," after "Arlington," on line 3.
5. Subparagraph IV. A. 2. b. - Change lines 2 and 3 to read:

   "and vicinity, i.e., as defined in Section 2-I-102.01 of reference (b) above."

6. Paragraph V. B. 1. -

   Delete: "The Munitions Board Field Space Manual of 1949"
   Insert: "Chapter II-501 and 502 of reference (b)"

IMPLEMENTATION

Two (2) copies of revised implementing documents shall be forwarded to the Assistant Secretary of Defense (Installations and Logistics) within sixty (60) days.

Maurice W. Roche

MAURICE W. ROCHE
Administrative Secretary

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

SD FORM 1 MAR 62 106-1 PREVIOUS EDITIONS ARE OBSOLETE

018742

December 19, 1958
NUMBER 4165.16

ASD(P&I)

Department of Defense Directive

SUBJECT Real Property; Construction on Leased Land and Release of Leaseholds

Ref. (a): DoD Directive 4165.16, subject as above, April 6, 1955 (cancelled herein)

I. REISSUANCE

This reissuance of Reference (a) cancels the reporting requirement, and provides a reprint of the uniform policy as set forth in the original issuance dated April 6, 1955 as amended May 20, 1955, and September 2, 1955. Reference (a) is hereby superseded and cancelled.

II. PURPOSE

To establish a uniform policy for: (a) acquiring title to lands on which permanent type Government-owned construction is currently located; (b) placing new permanent type construction on non-Government-owned real property; and (c) achieving maximum utilization of Government-owned facilities in order to permit release of real property currently held under lease contracts.

III. EXCEPTIONS

This Directive does not apply to real property actions included in: River and harbor and flood control projects (Civil Works under jurisdiction of the Secretary of the Army).

IV. SCOPE AND APPLICABILITY

This Directive applies to real property actions in the United States, its Territories, Possessions and the Commonwealth of Puerto Rico.

A. 1. Studies shall be initiated to determine the advisability of acquiring fee title to property currently held under lease or permit in those instances wherein the present estimated in place value of the permanent type buildings, permanent type improvements, together

with the non-permanent type buildings and improvements erected thereon or scheduled for erection thereon by the Government equals or exceeds the present fair market value of the leased property exclusive of such Government-owned improvements, and the continued need for military use of the land is established. Action to obtain authority and funding for fee acquisition of such properties, except as indicated hereinafter, may be undertaken on an incremental basis in accordance with Public Works Program criteria issued by the Office of the Secretary of Defense. Property currently held by lease or permit, the terms of which meet the requirements of paragraphs IV. D. 4, 5, 6, and 7 below or which by renegotiation are amended to satisfy such requirements, need not be further considered for fee acquisition.

2. Consideration of all other cases, where it clearly appears contrary to the interests of the Government to purchase or condemn fee title to the property, will include evaluation of data enumerated in "Note" at the end of paragraph IV. D. 8., below.

B. Each military department shall make continuing utilization studies of the real property under its administrative jurisdiction and prompt action shall be taken to relocate military activities accommodated in leased building space into Government-owned facilities and to dispose of excess leaseholds.

1. Such studies shall include a survey of all Government facilities, whether controlled by one of the three military departments or another Government agency, and shall include all structures that through alteration and rehabilitation could be made economically adaptable for the purpose of required use.

2. Desirability of location in an urban area, reduced travel time for employees or business representatives, nominal savings in transportation costs, environmental considerations, such as noise or traffic or desirability of single unit offices instead of split locations in close proximity will not be considered sufficient justification for acquiring or retaining leased space or facilities when Government-owned property is available.

3. No new acquisition of leasehold interest will be approved unless it is affirmatively demonstrated that the activity to be accommodated is essential to an assigned mission that cannot be performed by utilization of available Government-owned real property.

C. Acquiring or retaining use of leased real property may be justified in the following instances:

1. Where it is demonstrated that the function to be accommodated is an essential activity and the geographic location thereof in other than Government-owned space is vital to the accomplishment

of the assigned mission. Examples that may fall in this group are, recruiting stations (exclusive of kindred examining and induction units), units of the Ground Observer Corps, airbases, NIKE sites, sites for construction of facilities for civilian components of the armed forces and aircraft warning stations.

2. Where comparison of costs of necessary repairs, alterations and rehabilitation of a Government-owned facility plus moving costs, with savings of rental and other related expenditures in the leased space that could be effected during the period of anticipated future use, clearly demonstrates the economic propriety of remaining in the leased area.

D. No expenditure of Government funds will be made for construction of buildings or improvements of permanent type on land in which the rights of the Government are less than fee title or permanent easement, with the following exceptions:

1. Property including land or buildings over which the Government currently holds the right of re-use by exercise of the National Security Clause.

2. Property including land or buildings over which the Government holds the right of re-use by exercise of a national emergency use provision. Inasmuch as such rights inure to the Government only during the period or periods of national emergency as may be declared by The President or The Congress and are extinguished by the termination thereof, every effort shall be made to negotiate a lease covering such property under terms that would provide for the right of continuous possession by the Government for a minimum of 25 years.

3. Property used for industrial production and related purposes pursuant to existing law and procurement regulations.

4. Property required as a site for installation of utility lines and necessary appurtenances thereto, provided a long-term easement or lease can be secured at a consideration of $1.00 per term or per annum.

5. Property required for airbases of the armed forces, provided such property can be acquired by lease containing provisions for:

   a. Right of continuous use by the Government under firm term or right of renewal, for a minimum of 50 years.

   b. A rental consideration of $1.00 per term or per annum.

   c. Reserving to the Government title to all improvements to be placed on the land and the right to dispose of such improvements by sale or abandonment.

d. Waiver by the lessor of any and all claims for restoration of the leased premises.

e. Use of the property for "Government purposes" rather than for a specific purpose.

6. Property required for facilities for civilian components of the armed forces, provided such property can be acquired by lease containing provisions detailed in IV. D. 5. a., b., c., and d., above. Although not mandatory, every effort shall be made to avoid inserting in the lease a provision restricting the use of the land to a specific purpose; use of a term such as "for Government purposes" should be employed whenever possible.

7. Property required for NIKE sites or aircraft warning stations, provided such property can be acquired by lease containing provisions detailed in IV. D. 5. b., c., and d., above and in addition thereto a right of continuous use by the Government under firm term or right of renewal, for a minimum of 25 years.

8. Construction projects performed with funds appropriated by the Department of Defense Appropriation Act, 1956, and subsequent years, not in excess of $25,000 will not be considered as permanent construction for the purposes of this Directive.

NOTE: Consideration of exceptions to the above will be on a case by case basis and shall include evaluation of a summary of lease terms to which the proposed lessor will agree; a proximity map depicting sites surveyed with details on each as to availability for purchase, estimated value and disqualifying factors; estimated fee value of the property proposed for lease; estimated cost of existing and/or proposed construction by the Government; estimated period of time use of leased space will be required, and estimated net cost of ultimate restoration thereof.

V. ABROGATION

This Directive does not abrogate or qualify the obligation of the military departments to:

A. Secure certification or approval of real estate projects from the Office, Assistant Secretary of Defense (Properties and Installations) when so required by other directives or instructions.

B. Make requests for funds according to established procedures, necessary to accomplish construction, replacement or reactivation of pertinent facilities that have been administratively approved or certified by the Office of Assistant Secretary of Defense (Properties and Installations).

C. Secure approval of the Committees of The Congress on projects in compliance with the requirements of existing statutes or agreements.

VI. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective on date of issuance. Two copies of revised military department regulations implementing this amended Directive shall be forwarded to the Assistant Secretary of Defense (Properties and Installations) within sixty (60) days.

Donald A Quarles

Deputy Secretary of Defense

Filed 6/20/

CHAPTER 2

Authority to Acquire Real Property

TABLE OF CONTENTS

CHAPTER 2

AUTHORITY TO ACQUIRE REAL PROPERTY

1. SCOPE.

This Chapter sets forth the authority for the acquisition of real property and interests therein applicable to the Deparment of the Navy.

2. LEGISLATIVE AUTHORIZATION REQUIRED.

No real estate or interest therein will be acquired until there is legislative authorization for the acquisition and an appropriation available for that purpose. (41 U.S.C. 14).

3. EXPRESS AUTHORIZATION REQUIRED.

No military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law. (10 U.S.C. 2676).

4. LEGISLATIVE AUTHORIZATION FOR MILITARY CONSTRUCTION PROJECTS.

Navy Department land acquisitions usually are provided for in an annual Military Construction Authorization Act (MCON). Specific projects are usually authorized based upon the justifications and limitations contained in the DD Form 1391 submitted as a part of the Navy's MILCON Program. There are also instances in which the authorization is a sum total for projects including land acquisition at "various locations" or where real estate acquisition is a part of a construction project. In those cases where the value of the land to be acquired is $50,000 or less, it is generally not included in the MCON Program as Congress has granted general authority to acquire such land. (10 U.S.C. 2672).

5. LEGISLATIVE AUTHORIZATION FOR RESERVE FACILITIES.

The authority to acquire land for reserve facilities is derived in all instances from 10 U.S.C. 2233. While this authority is vested in the Secretary of Defense, the authority to acquire approved facilities has been successively redelegated to the Secretary of the Navy and to the Assistant Secretary of the Navy (Installations and Logistics). The general authority of 10 U.S.C. 2233 is limited by 10 U.S.C. 2233a, which provides that no expenditure that is more than $50,000 may be made under that section for any facility until after the expiration of thirty days from the date upon which the Secretary of Defense or his designee notifies the Senate and the House of Representatives of the location, nature, and estimated cost of such facility. Any project authorized pursuant to Section 2233a which does not cost more than $25,000 may be accomplished from appropriations available for maintenance and operations. (10 U.S.C. 2233a (2)).

6. ACQUISITION NOT EXCEEDING $50,000.

The Secretary of the Navy may acquire, without further legislative authorization, any interest in land that he or his designee has determined is needed in the interest of national defense that does not cost more than $50,000 (exclusive of administrative costs and the amounts of any deficiency judgments). This authority may not be used to acquire, as part of the same project, two or more parcels of land that together cost more than $50,000. The authority to acquire an interest in land under 10 U.S.C. 2672 includes authority to make surveys and acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise.

7. TRANSFERS OF REAL PROPERTY FROM OTHER MILITARY SERVICES.

If either of the Military Secretaries concerned requests it and the other approves, real property may be transferred, without compensation, from one armed force to another. (10 U.S.C. 2571(a)).

8. TRANSFERS OF EXCESS REAL PROPERTY BY AUTHORITY OF THE ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION.

Section 202(a), Act of 30 June 1949 (Public Law 152, 81st Congress; 63 Stat. 384) as amended by Section 1(f), Act of 12 July 1952 (Public Law 522, 82d Congress; 66 Stat. 593) (40 U.S.C. 483(a)) provides for transfer of excess real property among Government agencies through the medium of the General Services Administration. Federal Property Management Regulations, Sub-chapter H, Part 101-47 (41 CFR 101-47), implements this law and prescribes policies relative to transfer of excess real property, including the circumstances under which reimbursement is required and the circumstances under which transfer may be made without reimbursement.

9. REASSIGNMENT FROM THE DEPARTMENTS OF THE ARMY AND THE AIR FORCE.

Section 202(c), of the Act of 30 June 1949 (Public Law 152, 81st Congress; 63 Stat. 384) as amended by the Act of 12 July 1952 (Public Law 522, 82nd Congress; 66 Stat. 593; 30 U.S.C. 483) authorizes reassignment of property among the military departments of the Department of Defense without reimbursement.

10. OTHER LEGISLATIVE AUTHORIZATIONS.

The authorities cited above are those ordinarily used for the acquisition of land by the Department of the Navy. Other authorities exist by which land is occasionally acquired. For a number of years, the annual Department of Defense Appropriation Act has included authority to acquire the land necessary for the expansion of industrial facilities. The Secretary of the Navy may accept gifts and bequests of real property under annual Military Construction Authorization Acts and for certain specified purposes, such as, schools, hospitals and other purposes. (10 U.S.C. 2601). The latter authority has been implemented by SECNAV

INSTRUCTION 4001.2B of 5 December 1967. Besides these authorizations, Congress, from time to time, authorizes acqusiition by special legislation, usually for an exchange of lands for which general authorization is lacking.

11. AUTHORITY TO LEASE.

Except as noted in paragraph 12 below, no one single Act of Congress can be cited as the overall authority for the leasing of real property for naval use. The leasing or renting of real property for naval purposes is customarily provided for in annual Department of Defense Appropriation Acts. Military Construction Acts include special provisions that authorize the acquisition of lesser interests than the fee, including leaseholds.

12. AUTHORITY TO LEASE GENERAL PURPOSE SPACE.

Under Presidential Reorganization Plan No. 18 of 1950 (64 Stat. 1270), all functions in connection with the leasing of general purpose space were transferred to the General Services Administration. The Administrator delegated back this authority as to areas outside of General Services Administration defined urban centers listed in the Federal Property Management Regulations. Therefore, the exercise of the authority to lease is limited to the leasing of special purpose space and to the leasing of general purpose space outside of the listed urban centers.

13. FOREIGN LEASING.

10 U.S.C. 2675 provides that notwithstanding any other provision of law, the Secretary of a military department may acquire by lease, in any foreign country, structures and real property relating thereto that are not located on a military base and that are needed for military purposes. A lease under this section may not be for a period of more than five years. Further, a lease may not be entered into under this section if the average estimated annual rental during the term of the lease is more than $250,000 until after the expiration of thirty days from the date upon which a report of the facts concerning the proposed lease is submitted to the Committees on Armed Services of the Senate and House of Representatives. Pursuant to authority contained in Section 602 of the Act of 13 July 1955 (69 Stat. 301; 31 U.S.C. 529i), rentals may be paid in advance in foreign countries for such periods as may be necessary to follow local custom.

14. AUTHORITY TO ACCEPT PERMITS.

The authority to acquire the use of real property by permit and/or license may be implied if the use or occupancy of real property is necessary to an authorized project or function.

15. REPORTS TO THE ARMED SERVICES COMMITTEES OF CONGRESS.

Title 10, U.S.C. Section 2662 provides, in part, that with respect to real estate in the United States and Puerto Rico, the Secretary of the

Navy, or his designee, may not enter into any of the following listed transactions by or for the use of the Department of the Navy until 30 days have expired from the date on which a report of the facts concerning the proposed action was submitted to the Armed Services Committees of the Congress:

(a) Fee title is to be acquired for an amount in excess of $50,000;

(b) The estimated annual fair market rental value of leasehold interests to be acquired is in excess of $50,000;

(c) Real estate is to be acquired by transfer from the Departments of the Army or Air Force with an estimated value in excess of $50,000. Clearance action required for transfer of real estate between military departments normally will be initiated by the department acquiring the real estate.

Chap. 13 revised by change 6 (1965) by only instruction sheet received SEE: Instr. Sheet dated 2/18/65

CHAPTER 13

LEASE OF REAL PROPERTY FOR USE BY THE DEPARTMENT OF THE NAVY

13-1. Bureau Responsibility. The Bureau of Yards and Docks is responsible for all action with respect to the acquisition by lease of real property for use by the Department of the Navy in the continental United States and its Possessions, except (a) Marine Corps inleases, and (b) real property leased for the Department of the Navy by the General Services Administration. The Bureau is also responsible for obtaining from General Services Administration general purpose space leased by it in designated urban areas in which it has retained responsibility for leasing such space, and for obtaining the use of space under the control of either the General Services Administration or the Post Office Department.

13-2. Reorganization Plan No. 18. Prior to July 1, 1950, the Navy Department had exclusive responsibility for the leasing of all real property required for naval uses. However, the President of the United States, acting pursuant to the provisions of the Reorganization Act of June 20, 1949 (63 Stat. 203), promulgated Reorganization Plan Number 18 of 1950, effective July 1, 1950 (64 Stat. 1270), Section 1 of which, in effect, transferred to the Administrator of General Services all functions of the Navy Department with respect to the acquisition of space in buildings by lease, except such space as may fall within the following categories which are expressly excluded from such transfer:

(1) space in buildings located in any foreign country;

(2) space in buildings which are located on the grounds of any fort, camp, post, arsenal, Navy yard, naval training station, air-field, proving ground, military supply depot, or school, or of any similar facility, of the Department of Defense, unless and to such extent as a permit for its use shall have been issued by the Secretary of Defense or his duly authorized representative;

(3) space occupied by the Post Office Department in post-office buildings and space acquired by lease for post-office purposes; and

(4) space in other Government-owned buildings which the Administrator of General Services finds are wholly or predominately utilized for the special purposes of the agency having the custody thereof and are not generally suitable for the use of other agencies (including but not limited to hospitals, housing, laboratories, mints, manufacturing plants, and penal institutions), and space acquired by lease for any such purpose.

In addition to the functions expressly excluded from those transferred to the General Services Administrator by Section 1 of Reorganization Plan Number 18, supra, the Administrator, acting pursuant to Section 3 thereof, may delegate to the heads of other departments or agencies of the Government the authority to perform any of the functions transferred to him by the Plan, Sections 3(b) and (c) thereof, reading as follows:

"(b) When authorized by the Administrator of General Services, any function transferred to him by the provisions of this Reorganization Plan may be performed by the head of any agency of the Executive Branch of the Government, or, subject to the direction and control of any such agency head by such officers, employees and organizational units under the jurisdiction of such agency head as such agency head may designate.

"(c) The Administrator of General Services shall prescribe such regulations as he may deem desirable for economical and effective performance of the functions transferred by the provisions of this Reorganization Plan."

Acting pursuant to the authority vested in him by Sections 3(b) and 3(c) or Reorganization Plan Number 18, supra, the Administrator of General Services, by letter of November 22, 1950, advised the Secretary of Defense that the General Services Administration on and after December 1, 1950, will perform all functions with respect to acquiring "general purpose space" in buildings by lease within the metropolitan areas of each of 128 selected cities therein enumerated and that the Department of Defense will perform all functions with respect to the acquiring of general purpose space in certain other buildings.

13-3. Limitation on Navy Authority to Lease. Reorganization Plan No. 18 had the effect of assigning the responsibility for the procurement of all general purpose space to the General Services Administration, except space falling within the categories which are expressly excluded from such transfer. The responsibility and authority for procuring space expressly excluded from the Plan remains in the Navy.

(a) Situated outside the metropolitan area of the urban centers; or

(b) When such space is required for use incidental to and in conjunction with special purpose space as defined in paragraph 13-7; or

(c) Leased for no rental, or for a nominal consideration of $1.00 per annum;

(4) Direct leasing by the Navy of all other real property generally referred to as "special purpose space" which is excluded from the provisions of Reorganization Plan No. 18.

13-10. Delegation to Chief, Bureau of Yards and Docks. Secretary of the Navy Instruction (11011.20B of 18 September 1959) delegates authority to the Chief, Bureau of Yards and Docks to acquire general purpose space from General Services Administration or the Post Office Department as follows:

> The Chief of the Bureau of Yards and Docks, or his designated representative, is authorized and directed to take all necessary action to acquire, administer and release general purpose space, except Departmental space in the metropolitan area of Washington, D. C., in buildings controlled by the General Services Administration or the Post Office Department or required to be leased by the General Services Administration, in accordance with the provisions of the letter of the Assistant Post Master General dated 27 July 1955, (Appendix 21) and General Services Administration regulations Title 2, Chapters II and III provided:
>
> (1) The commanding officer requesting the space has certified as to the need for the property.
>
> (2) The approval of the Department of Defense has been obtained if the space to be acquired involves an estimated annual rental in excess of $25,000 and the requirements of 10 U.S.C. 2662, as amended,..... have been met even though the rent is paid by the General Services Administration.
>
> (3) In those instances where an acquisition requires a transfer of appropriations to the General Services Administration, the head of the activity concerned has advised that the bureau, office or headquarters having management control has agreed that funds to cover the cost of the space will be transferred to the General Services Administration. In the event the annual rental of the space exceeds $25,000, the approval of the Department of Defense will be requested via the Office of the Assistant Secretary of the Navy (Installations and Logistics).

The ~~Chief of Yards and Docks~~ is also authorized by this delegated redelegate authority and responsibility to Naval Public Works Officers and other officials as appropriate.

13-11. Redelegation to Directors. The authority delegated to the Chief of the Bureau of Yards and Docks stated in paragraph 13-10 is hereby redelegated to Directors, Bureau of Yards and Docks Field Divisions, subject to the requirements stated in paragraphs 13-12 through 13-17. The term "all necessary action" includes authority to execute all forms and instruments necessary to acquire, administer, and release general purpose space covered by this delegation. The Directors shall be responsible for determining that all required approvals have been obtained prior to final execution of requests for the assignment, renewal of assignment, or release of space. The authority delegated herein may be redelegated but not below the Director, Real Estate Division. The authority delegated herein may be redelegated.

13-12. Policy. It is the policy of the Department of the Navy to obtain the use of real property pursuant to the provisions of Reorganization Plan No. 18 or enter into leases for the use of real property by the Navy only when the following conditions exist:

(1) Property is required to meet a valid military need created by the assigned mission of an activity;

(2) There is no Government-owned real property available which will adequately meet the military needs;

(3) It is more advantageous to the Government to lease the property than to acquire fee title or other permanent interests;

(4) Funds are available for the payment of rentals. (This does not apply to space made available to the Navy by General Services Administration unless made available on a reimbursable basis); and

(5) Condemnation proceedings to acquire a leasehold interest shall be initiated only after all practical efforts to consummate an agreement with the property owner have proved unsuccessful.

13-13. Limitations on Rent, Repairs, Alterations and Improvements. The Economy Act of June 30, 1932, as amended (47 Stat. 412, as amended by 47 Stat. 1570 and 56 Stat. 247; 40 U.S.C. 278a, 278b), limits the rental consideration which may be paid for "any building or part of a building" to 15 percent of the fair market value of the rented premises on the date of the lease

where the consideration exceeds $2,000 per annum. It also limits the amount which may be paid for alterations, improvements, and repairs of "any building or part of a building" rented by the Government to "twenty-five percentum of the amount of the rent for the first year of the rental term, or for the rental term if less than one year." However, this limitation is not applicable to leases executed during war or a national emergency. (Paragraph 13-14).

The rental limitation imposed by the Economy Act is not applicable to leasehold interests acquired by condemnation.

13-14. Exception to the Economy Act. The provisions of the Economy Act (47 Stat. 412 as amended by 47 Stat. 1517; 40 U.S.C. 278a) do not apply during war or national emergency declared by Congress or by the President to leases or renewals of existing leases of privately or publicly owned property as are certified by the Secretary of the Navy or his designee as covering premises for military, naval or civilian purposes necessary for the prosecution of the war or vital in the national emergency. (56 Stat. 247; 40 U.S.C. 278b).

13-15. Delegation of Authority to Chief of Bureau. The Secretary of the Navy, on 10 January 1946, delegated to the Chief, Bureau of Yards and Docks authority to execute the Certificates of Necessity authorized by 40 U.S.C. 278b.

13-16. Department of Defense Criteria. The Department of the Navy uses, wherever practicable, Government-owned property rather than leased property. Therefore, all suitable and available Government-owned real property, including property of the Departments of the Navy, Army and Air Force and other Government agencies, shall be surveyed in order to determine whether such property can be used rather than leased property.

Real property shall not be acquired by lease because of:

(1) Desirability of locating activities in an urban area;

(2) Reduced travel time for employees or business representatives;

(3) Nominal savings in transportation costs;

(4) Environmental considerations such as noise or traffic;

(5) Desirability of having single offices instead of activities in split locations in close proximity to one another.

Real property may be acquired by lease if:

(1) The geographical location of an activity is vital to the performance of an activity's mission and there is no suitable Government-owned real property available at the location. Examples of activities for which the geographical location is of particular importance are recruiting stations (exclusive of kindred examining and induction units), air facilities, and facilities of the Navy and Marine Corps Air Reserve.

(2) The cost of altering, renovating, rehabilitating and repairing available Government-owned real property, together with moving costs, is out of proportion to the cost of acquiring or remaining in leased real property.

13-17. Approvals and Determinations Required. Prior to accepting the assignment of new space or a renewal of an assignment of space the Director will:

(1) Determine that the certifications and approvals required by paragraph 13-10 have been obtained;

(2) Obtain the approval of the Director of the Marine Corps Recruitment District concerned for Marine Corps Recruiting space;

(3) Determine that the procurement and proposed use of space acquired is in keeping with the standards set forth in Part 101-20 of the Federal Property Management Regulations of the General Services Administration;

(4) Determine that the procurement or continued use of GSA leased space is in keeping with the policy and criteria stated in paragraphs 13-12 and 13-16; and

(5) Submit the data required by paragraph 13-31. Such data should be submitted to the Bureau four to six months in advance of the requirement for new space or for the renewal of space assignments to allow sufficient time for the procurement of the requisite approvals and sufficient time thereafter for appropriate action by GSA to provide the space.

13-18. Release of Assigned Space. Prior to releasing assigned space the Director shall obtain the approvals of:

(1) The Commanding Officer of the using activity; or

(2) The Director of the Marine Corps Recruiting District concerned for Marine Corps Recruiting space.

13-19. Action by the Director. The Director shall request the assignment of space from General Services Administration on G.S.A. Form 81 in accordance with the Regulations of G.S.A. Title 2. Immediately upon receipt of G.S.A. Form 65 showing assignment or release of general purpose space a copy thereof shall be forwarded to the Bureau of Yards and Docks (Code 61).

The District Public Works Officer shall request the assignment of space under the control of the Post Office Department from the Regional Real Estate Managers of that Department in accordance with the letter of the Assistant Postmaster General dated July 27, 1955. (Appendix 21). Upon the obtaining of an assignment of post office space or the termination thereof, the District Public Works Officer will inform the Bureau by copy of the letter or other communication effecting such action.

13-20. Reports. The District Public Works Officer shall prepare and forward the following reports:

(1) Standard Form 123, Report of Space Used by Building, shall be furnished annually to the appropriate Regional Office of General Services Administration pursuant to GSA Regulations 2-II-503.

(2) The Department of Defense requires within 15 days following the end of each quarter a report covering the Navy's requirements for general-purpose field space. Accordingly, the District Public Works Officer will forward to the Bureau, within 10 days following the end of each quarter, a report on NAVDOCKS Form 1770, (Appendix 30), showing the following information for each of the urban centers listed in Appendixes 19 and 20, except the District of Columbia and vicinity:

(a) The total square footage requested from the Public Buildings Service during the reporting period;

(b) The total square footage provided by the Public Buildings Service during the reporting period;

(c) The total requests for square footage pending at the end of the reporting period; and

(d) The additional square feet estimated to be required during the succeeding quarter.

The names of the activities will be listed under the urban center with a breakdown of the space in each column of the report. If an activity is located in an adjoining city, town or village included within an urban center such locations will be shown in parenthesis immediately following the activity name. This report has been assigned Report Control Symbol DD-P&I(Q)373(5910).

(3) An annual report as of 1 July of each year shall be furnished the Bureau of Yards and Docks (Code R-100) indicating all space occupied by the Navy and controlled by GSA and the Post Office Department. The report shall be submitted by August 15th of each year and shall indicate:

(a) The activity occupying the space;

(b) The address of the space;

(c) The square footage and room numbers or brief description of the space;

(d) The cost to the Government of the space;

(e) Whether reimbursable by Navy or not;

(f) Number of persons occupying space; and

(g) Probable duration of requirement.

Report Symbol BuDocks 5910-1 applies to this Report.

Direct Leasing by the Department of the Navy

13-21. General. Paragraph 13-9 states that there are four distinct types of action arising from Reorganization Plan No. 18 with which the Bureau and the District Public Works Offices are concerned. The first two of these actions i.e. (1) the procurement of general purpose space from GSA in 131 urban areas and (2) the procurement of space under the control of the Post Office Department in post-office buildings and space acquired by lease for post-office purposes are governed by the provisions of paragraphs 13-1 to 13-20 inclusive. The last two types of action relate to direct leasing by the Navy. Although authority for each of these two types of action is derived from different sources, i.e., the one by delegation of authority from GSA as stated in paragraphs 13-5, 13-8, 13-10, and 13-11 and the other from authority granted to the Secretary of the Navy, the procedures for this accomplishment are identical.

13-22. Definition of "Lease". "Lease" is an agreement by which the Department of the Navy obtains possession of real property, not owned by the Federal Government, for a stated period of time and for a stated consideration.

13-23. Department of Defense Prohibition Against Permanent Construction on Leased Land. The Secretary of Defense has directed that no expenditure of Government funds will be made for construction of buildings or improvements of permanent type on land in which the rights of the Government are less than fee title or permanent easement, with the following exceptions:

(1) Property, including land or buildings, over which the Government currently holds the right of re-use by exercise of the National Security Clause;

(2) Property, including land or buildings, over which the Government holds the right of re-use by exercise of a national emergency use provision. Inasmuch as such rights inure to the Government only during the period or periods of national emergency as may be declared by the President or the Congress and are

extinguished by the termination thereof, every effort shall be made to negotiate a lease covering such property under terms that would provide for the right of continuous possession by the Government for a minimum of 25 years;

(3) Property used for industrial production and related purposes pursuant to existing law and procurement regulations;

(4) Property required as a site for installation of utility lines and necessary appurtenances thereto, provided a long term easement or lease can be secured at a consideration of $1.00 per term or per annum;

(5) Property required for airbases of the armed forces, provided such property can be acquired by lease containing provisions for:

a. Right of continuous use by the Government under firm term or right of renewal, for a minimum of 50 years;

b. A rental consideration of $1.00 per term or per annum;

c. Reserving to the Government title to all improvements to be placed on the land and the right to dispose of such improvements by sale or abandonment;

d. Waiver by the lessor of any and all claims for restoration of the leased premises; and

e. Use of the property for "Government purposes" rather than for a specific purpose.

(6) Property required for facilities for civilian components of the armed forces, provided such property can be acquired by lease containing provisions detailed in a., b., c., and d. of subparagraph (5) above. Although not mandatory, every effort shall be made to avoid inserting in the lease a provision restricting the use of the land to a specific purpose; use of a term such as "for Government purposes" should be employed whenever possible;

(7) Property required for NIKE sites or aircraft warning stations, provided such property can be acquired by lease containing provisions detailed in b., c., and d. of subparagraph (5) above, and in addition thereto a right of continuous use by the Government under firm term or right of renewal, for a minimum of 25 years; and

(8) Construction projects performed with funds appropriated by the Department of Defense Appropriation Act, 1956, and subsequent years, not in excess of $25,000 will not be considered as permanent construction for the purposes of the Directives of the Secretary of Defense.

Consideration of exceptions to the above will be on a case by case basis and will include evaluation of a summary of lease terms to which the proposed lessor will agree; a proximity map depicting sites surveyed with details on each as to availability for purchase, estimated value and disqualifying factors; estimated fee value of the property proposed for lease; estimated cost of existing and/or proposed construction by the Government; estimated period of time use of leased space will be required, and estimated net cost of ultimate restoration thereof. This data will be used to obtain the waiver provided for in paragraph 13-33.

13-24. Use of Formal Advertising. 10 U.S.C. 2304(a) requires the advertisement for bids for leases unless negotiation of the lease is authorized under one of the exceptions set out therein. Under the exceptions most frequently applicable, a lease may be negotiated without advertising if:

(1) it is determined that such action is necessary in the public interest during a national emergency declared by Congress or the President;

(2) the public exigency will not permit the delay incident to advertising;

(3) the aggregate amount involved is not more than $2,500;

(4) the lessor is a university, college, or other educational institution;

(5) the property is located outside the United States, and its possessions;

(6) it is impracticable to obtain competition;

(7) it is for property determined to be for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research; or

(8) negotiation of the lease is otherwise authorized by law.

The determination that formal advertising is not necessary under any of the exceptions of 10 U.S.C. 2304(a) must be in strict conformance with Section III of "Navy Procurement Directives" and Section III of "Armed Services Procurement Regulations". 10 U.S.C. 2303(b) provides that the above requirements are not applicable to land but to all other property including, among others, public works, buildings and facilities. The term "land" as used in this section is interpreted to mean unimproved real property.

13-25. Advance Rental Payments. Payment of rental in advance is prohibited by R.S. 3648 (31 U.S.C. 529) which states in part "No advance

of public money shall be made in any case unless authorized by the appropriation concerned or other law." Specific exception is made to this provision of law by 31 U.S.C. 529i (69 Stat. 314) which provides for payment of rent in foreign countries for such periods as may be necessary to accord with local custom. (Paragraph 13.74)

13-26. Prohibition Against Obligation of Future Appropriations. Title 31 U.S.C. 665 (16 Stat. 251) provides in part that no officer or employee of the United States shall "involve the Government in any contract or other obligation, for payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law." Rental payments are made from annual appropriations. Therefore, this prohibition together with the prohibition against advance payments (paragraph 13-25) limit the term of a lease to the current fiscal year for which appropriations have been made unless a longer term is specifically authorized by law. This limitation does not prohibit including a provision in the lease granting to the Government the option to renew for additional one year terms.

13-27. Delegation of Authority to Directors. The Directors, Bureau of Yards and Docks Field Divisions, are authorized within the limitations of this publication, to take all necessary action to consummate, modify, amend, renew, administer and terminate leases of real property for use by the Department of the Navy except Marine Corps leases. The authority delegated herein may be redelegated but not below the Assistant Director for Facilities Management, except that the authority to renew and administer leases may be redelegated to the Director, Real Estate Division. The authority delegated herein may be redelegated.

13-28. Approvals Required for All Leases. The Director will take action to consummate, modify, amend or renew a lease on receipt of a request for such action from the Commanding Officer or head of the activity concerned and of a written recommendation from the District Commandant of the need for the specified property. He will also, prior to taking such action, ascertain that funds required under the lease are or will be available for payment of rental.

13-29. Additional Approvals Required for Leases of More than $1,000 Annual Rental. The Director will obtain the approval of the Chief or head of the Bureau or Office having management control and the approval of the Chief of Naval Operations for leases requiring the payments of an annual rental of more than $1,000. These approvals are required prior to the consummation of a lease and in cases of modifications or amendments imposing significant additional obligations on the Government.

These approvals are not required to renew a lease with an annual rental of $25,000 or less.

13-30. Additional Approvals Required for Leases of more than $25,000 Annual Rental. The approval of the Department of Defense is required prior to entering into a lease if the estimated annual rental is more than $25,000. Such approval is not necessary to renew a lease.

Title 10 U.S.C. 2662 as amended, requires the submission of a report of the facts to the Armed Services Committees concerning a proposed lease of any real property to the United States if the estimated annual rental is more than $50,000. The submission is not necessary to renew such a lease.

The approval of the Department of Defense will be obtained and the report of facts to the Armed Services Committees will be submitted by the Bureau of Yards and Docks.

Significant modifications of the leases mentioned above, which place substantial additional obligations on the Government or extend the term during which such leases may be renewed, will be forwarded to the Bureau for determination as to whether further approvals or action are required.

13-31. Data Required for Submission to Department of Defense and the Armed Services Committees. To obtain the approval of the Department of Defense for leases involving an estimated annual rental payment of more than $25,000 required by paragraph 13-30, the Director will forward to the Bureau data to show that the criteria stated in paragraph 13-16 have been met and compliance with the Department of Defense directive concerning construction on leased land (paragraph 13-23), and will provide appraisals and title evidence required by paragraphs 13-35 and 13-36, together with any other information which may be of assistance to justify the leasing.

If the estimated annual rental to be paid is more than $50,000 a completed Acquisition Report following the form provided as Appendix 24 will be forwarded to the Bureau.

The above data is required even though the rental is to be paid by General Services Administration, except that title evidence and appraisals are not required.

13-32. Termination Provision. It is beneficial to the Government to include a provision in a lease giving to the Government the right to terminate when the property is no longer needed. The usual period for providing notice of termination by the Government is thrity (30) days. If a lease provides for a period in excess of ninety (90) days for giving notice of termination by the Government, the approval of the Assistant Secretary of the Navy (Installations and Logistics) must be obtained prior to its consummation. To obtain this approval full justification for such a lease must be submitted to the Bureau.

13-33. Construction on Leased Land - Waiver. Paragraph 13-23 states the Department of Defense policy concerning permanent construction on leased land and the data required by the Department of Defense for consideration of an exception thereto. This data will be submitted to the Bureau via the District Commandant. After obtaining the approval of the management bureau or the Commandant of the Marine Corps, the Bureau will submit a request via the Assistant Secretary of the Navy (Installations and Logistics) for an exception by the Department of Defense.

13-34. Responsibility of the Director. It is the responsibility of the Director to ascertain that the approvals required by paragraphs 13-28 through 13-33, as are appropriate, have been obtained prior to execution of a lease or taking possession of the property to be leased.

13-35. Determination of Prospective Lessor's Interest. Whenever real property is to be leased the Director is responsible for determining, before negotiations are commenced, that the prospective lessor has such an interest in the property as will insure the validity of the lease. This determination will ordinarily be made after record searches by qualified personnel in the BUDOCKS Field Division, or when considered necessary or advisable, from title evidence obtained from title companies or abstractors.

In all cases in which the estimated annual rental exceeds $25,000, or when the estimated cost of planned construction on the land exceeds $25,000, title evidence will be obtained.

13-36. Estimated Rentals. Before negotiations for a lease of real property are commenced the Director will obtain an estimate of the fair annual rental value of the property. Ordinarily, a staff appraisal is suitable for this purpose except in cases where the indicated annual rental is in excess of $25,000. In all cases where the indicated fair annual rental is in excess of $25,000 an appraisal will be obtained from a contract appraiser.

13-37. Purpose of Negotiations. The purpose of negotiations is to reach an agreement for the fair rental to be paid for the use of the property to be leased and to establish the terms and conditions under which such use will be exercised. This agreement is only an offer until accepted by the contracting officer; this acceptance converts the agreement to a contract binding on both the Government and the lessor.

13-38. Designation of a Negotiator. The Director, or his Deputy, will designate a Negotiator, or Negotiators, to conduct negotiations for a lease with prospective lessors and other parties in interest. No person will be designated as a Negotiator who holds an interest in the property or bears any relationship to the prospective lessor or other party in interest. A person holding any interest in a corporation owning or holding an interest in the property to be leased is also disqualified as a Negotiator.

13-39. Instructions to Negotiator. The Director of the Real Estate Division will instruct the Negotiator on the maximum amount which the Negotiator may not exceed in discussing rental payment with an owner and the terms and conditions which must be included in the agreement to meet the requirements of the Government. He will instruct the Negotiator on the limitations of his authority, particularly that he has no authority to state or indicate that the use of the property will or will not be acquired through condemnation proceedings, that his authority is limited to making all reasonable efforts to negotiate a satisfactory agreement and to submit the results of his negotiations to his supervisors. The Negotiator should understand that he is under no compulsion to reach an agreement with the owner.

13-40. Preparation by Negotiator. It is the responsibility of the Director of the Real Estate Division to review, with the Negotiator and with such other personnel as he considers necessary, all pertinent data relating to the ownership of the property, its value, fair rental value, the Government's requirement for the property, including the use to which it will be put, and the date possession will be required by the Government. Potential restoration problems will be reviewed with relation to the use to which the property will be put and to contemplated changes or improvements in order that claims therefor may be avoided or held to a minimum. The Negotiator will, prior to negotiations, make a physical inspection of the property to acquaint himself with any unusual features and its general condition. Where construction is involved, the Negotiator will coordinate his action with the construction division to the end that construction schedules may be met and the date of possession established.

13-41. Conduct of Negotiations. As the Negotiator has no authority to obligate the Government he will inform the owner that his authority is limited to the conduct of negotiations and to report the results of the negotiations to his supervisor. He must refrain from oral promises, understandings or commitments and must include all terms and conditions in the lease. The amount of the appraisals and the details of their preparation will not be disclosed. Statements will not be made which would indicate, by inference or otherwise, that the Navy will have its appraisals revised or new ones obtained.

Negotiations will be conducted in a fair and courteous manner and coercion or threats of condemnation proceedings will not be resorted to. Offers will be obtained from the prospective

ITEM 7. EXECUTION FOR AND ON BEHALF OF THE GOVERNMENT: Execution of a lease on behalf of the United States is to be by the Secretary of the Navy or by a contracting officer acting for him under an appropriate delegation of authority. District Public Works Officers and their Deputies are so authorized by paragraph 13-27. The execution on behalf of the Government shall be witnessed, or acknowledged if required by local law, and the date of execution shown.

ITEM 8. NAVY IDENTIFICATION AND ACCOUNTING DATA: An NOy(R) Contract number will be assigned by the District Public Works Office and the appropriation accounting data will be inserted as furnished by the activity providing funds for the payment of the rent.

ITEM 9. GENERAL PROVISIONS: No changes will be made to the General Provisions without prior Bureau approval, except that subparagraph (a)(Assignments) may be deleted when to the advantage of the Government, subparagraph (d)(Maintenance) may be deleted when the lessor is not to maintain the premises, and subparagraph (g) (Termination) may be changed to provide for the giving of not more than 90 days notice of termination.

As subparagraph (h) through (l) are based on statutory requirements, no requests for changes therein shall be made.

ADDITIONAL PROVISIONS: Any additional provisions to be incorporated by insertion or otherwise in order to form a part of the agreement, must be listed under paragraph "M" of the General Provisions. Any such additional provisions must be approved by the District Public Works Office counsel as to legal form and a copy of the proposed lease submitted to the Bureau for approval prior to its execution.

13-43. Preparation of Lease - Annual Rental of $1000 or More. Leases providing for annual rental of $1000 or more will be prepared on U. S. Standard Form No. 2 (Revised), Approved by the Secretary of the Treasury May 6, 1935 (Appendix 26). The lease will be prepared in accordance with the following instructions which are an adaptation for Navy use of the 'Instructions To Be Observed In Executing Lease' printed on the last page of U. S. Standard Form No. 2.

1. Paragraph 1 will have inserted the date of execution and the full names and addresses of all lessors.

2. Paragraph 2 will contain a complete and accurate description of the property being leased. The language to be inserted at the end of Paragraph 2 of the lease will be 'Government Use', or if the lessor refuses to agree to the use of such language, then the use specified should be stated in the broadest language possible. This rule will not be followed where substantial Government improvements are made and such improvements are of a type which could be utilized by private interests. Paragraph 4 of Lease, Standard Form No. 2, permits subletting to a desirable tenant for a similar purpose. If the use specified is 'Government Use' obviously subletting would not be possible to a private sublessee. Therefore, in order to recoup Government expenditures where the Government's use may end prior to the termination of the lease or any renewal thereof, the language inserted at the end of Paragraph 2 should state a use in language which will permit utilization by a private sublessee.

3. Paragraph 3 will contain the date of commencement of the term which ordinarily will be the date upon which possession of the property is to be taken. The date upon which the original term shall end cannot extend beyond the end of the fiscal year for which an appropriation is made unless otherwise expressly authorized by statute.

4. The right of the Government to sublet as provided in paragraph 4 will not be deleted or amended without prior Bureau approval in those cases where substantial Government expenditures for improvements are planned or anticipated.

5. The rental for renewal periods, the number of days prior to termination that notice of renewal must be given, and the date upon which occupancy must terminate will be stated in paragraph 5 as agreed to in negotiations. Ordinarily, the time prescribed for notice of renewal will be 30, 60 or 90 days, with the shorter period preferred. The District Public Works Officer will determine from the Management Bureau the maximum period of time the property will be required and will negotiate to obtain rights of renewal for such period or the maximum lesser period possible. If the right of renewal is not desired or cannot be secured, paragraph 5 may be deleted.

6. Paragraph 6 should contain notations as to the services, such as janitor, heat, light, water, gas, etc., which are to be provided under the lease rather than set out in a separate contract. The lease will also specify whether services are to be provided during usual business hours or on a 24-hour basis, including Sundays. If no utilities or services are to be provided by the lessor under the lease, the word 'none' should be inserted.

7. Paragraph 7 should be completed by stating the annual rental agreed unless the full term is less than a year. The time specified for payments shall be monthly, quarterly, semi-annually or annually, the longer term being preferred in order to reduce administrative costs.

8. The first portion of paragraph 8 will be retained in all leases and is quoted as follows: "The Government shall have the right, during the existence of this lease, to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased (provided such alterations, additions, structures, or signs shall not be detrimental to or inconsistent with the rights granted to other tenants on the property or in the building in which said premises are located); which fixtures, additions, or structures so placed in or upon or attached to the said premises shall be and remain the property of the Government and may be removed therefrom by the Government prior to the termination of this lease." With respect to the remainder of paragraph 8 which deals with the restoration obligation of the Government, such provisions should be stricken from all leases of vacant land for which there are no plans for construction. Whenever possible the remainder of paragraph 8 will be stricken and replaced with a provision fully releasing the Government from any obligation to restore the premises. If a release of the restoration obligations cannot be obtained such obligations shall be minimized by adding the following: "The Government shall have the option of making a cash settlement with the lessor and abandon such fixtures, additions or structures in lieu of an obligation to restore. Should a mutually acceptable settlement be made, the parties shall enter into a supplemental agreement effecting such settlement."

In the event restoration is required the number of days for notice of restoration to be given by the lessor will be inserted and will be 10 days less than the number of days required to be given by the Government to terminate the lease.

9. Paragraph 9 provides that the lessor will maintain the premises unless specified to the contrary in the lease. Wherever possible, the obligation to maintain the property should be placed upon the lessor. If that is not possible, ... the lease should, as a rule, require him to maintain the exterior of buildings, including roofs, and repair structural defects which is a normal covenant of the landlord.. Where a lease does not expressly relieve the lessor from any obligation to maintain the premises, funds may be expended for repairs by the Government without an express provision. Lease agreements should contain a clause permitting the Government to terminate the lease at its option and upon reasonable notice to the lessor.

10. In case the premises consist of unimproved land paragraph 10 may be deleted.

11. Standard Form No. 2 contains the "Officials Not to Benefit Clause". This is required by statute in all leases. Certain other clauses are also required by law or Executive Order. These are "Covenant Against Contingent Fees", "Gratuities" and "Nondiscrimination in Employment" and must be made a part of each lease. They appear as sub-items i, j and k in the General Provisions of NavDocks 2393 (Appendix 25).

In addition to the above there must be included in all negotiated leases an "Examination of Records" clause and a clause stating that any necessary determinations and findings required by 10 U. S. C.. 2304 have been made. These two clauses appear as sub-item l in the General Provisions of NavDocks 2393.

12. SecNavInst 11011.17 of 2 July 1956, requires that leases provide for termination by the Government on notice not to exceed 90 days unless otherwise approved by the Assistant Secretary of the Navy (Material). Therefore, the following clause will be inserted in each lease "The Government may terminate this lease at any time by giving thirty (30) days notice in writing to the lessor, and no rental shall accrue after the effective date of termination." The 30 day period may, if necessary, be increased up to 90 days.

13. Any additional provisions to be added by insertion or otherwise must be approved by the District Public Works Office counsel as to legal form and a copy of the proposed lease submitted to the Bureau for approval prior to its execution.

14. Execution by Lessor. Leases will be executed in triplicate. Execution of the lease on behalf of the lessor will be by the parties whose names appear in the opening paragraph, except in the case of a corporation or partnership authorized by statute to hold and convey title to real property. Execution for corporations, and partnerships authorized by statute to hold and convey title to real property, will be by the official duly authorized to do so and will be in the following manner:

XYZ Corporation		XYZ Partnership
By_____	or	By_____
Name and Title		Name and Title

In the case of a private corporation the authority of the corporate official to execute the lease will be certified by the Secretary or Assistant Secretary of the corporation in the place provided in the lease. In the case of public and private corporations, a certified copy of the resolution of the proper corporate body authorizing the lease to the Government is to be obtained; and in the case of a partnership similar proof of authorization, as well as proof of authority of the partnership official in its behalf, is to be obtained. The execution by or on behalf of the lessor shall be witnessed, or acknowledged if

require as detailed a report as would be needed for hotels, apartments, industrial facilities, warehouses, docks, piers and similar complex properties. In all instances sufficient factual information should be obtained and included in the report so as to avoid future controversies as to condition. Controversies are most apt to develop from the leasing of complex types of properties. Therefore, the inspection of such properties and the preparation of Condition Reports thereon will be made and prepared in a manner so as to resolve any question concerning the condition of the property at the time the Government takes possession. One word descriptions such as excellent, good, fair or poor unsupported by descriptive remarks, detailing the facts supporting such conclusion, are not acceptable.

13-49. Photographs. In every case photographs will be made a part of the Condition Report. Unless a lease covers an entire structure, general interior and exterior views thereof are not required. In such cases detailed photographs of the actual space to be occupied are required. In cases where entire structures are leased a few general interior and exterior views are sufficient. Pictures which are most helpful in depicting the condition of a structure are close-up photographs showing the details, especially defects in the improvements such as cracks, broken doors and windows, faulty or defective plumbing, evidence of overloading and all other defects which can be shown by photography. In cases where numerous defects of a single type are present, pictures of several of the typical ones will be taken and full data relative to the number of such defects, their character and extent will be placed in the written report.

13-50. Identification of Photographs. Each photograph will be identified by showing the following on the reverse side thereof:

(1) Name of building and location;

(2) Date taken;

(3) Identification of the view; and

(4) Name, home and office addresses of the photographer. If military personnel, his rating and serial number will also be shown.

Whenever possible, photographers who permanently reside in the area will be used. This is desirable so that they will be conveniently available to assist in resolving restoration or other claims.

13-51. Signing of Condition Reports. Condition Reports prepared completely by the representative of the District Public Works Officer and agreed to by the owner or his representative after a joint inspection of the property, will be certified as to accuracy by the dating and signing of the report in triplicate. Condition Reports prepared in part by individuals assisting the representative of the District Public Works Officer or the owner or his representative will certify as to the accuracy of those portions of the reports prepared by them.

If there is a difference of opinion between the representative of the District Public Works Officer and the owner, as to the condition of any portion of the property a written statement of the objections of the owner or his representative should be obtained and made a part of the report. If the owner or his representative refuses to sign the report or provide such written statement, the report will so state.

13-52. Distribution. Condition reports will be distributed as follows:

(1) The original will be retained in the files of the District Public Works Office;

(2). One signed copy will be provided to the owner, except that no copy of the report will be furnished the owner if he or his representative refuse to join in the inspection of the property, sign the report or provide written objections thereon;

(3) One signed copy will be forwarded to the Bureau; and

(4) A conformed copy will be provided to the Commanding Officer or Head of the using activity.

13-53. Recordation of Leases. The Navy Department does not record all of its leases. Leases wherein the Government is granted an option to purchase the leased premises will be recorded. It may be desirable to record leases where failure to do so might prejudice the Government's rights under the lease. The District Public Works Officer, in his discretion, will, in such cases, cause the leases to be recorded. In every case in which it is determined that a lease will be recorded, it must be executed, witnessed and/or acknowledged in accordance with State law to make it eligible for recordation.

13-54. Payment of Rental. All invoices or claims for rent arising under a consummated lease should be submitted to the Commanding Officer or head of the using activity for approval and forwarding to the Navy Regional Accounts Office of the District in which the leased property is situated. Payment of rental will be made by the Navy Regional Accounts Office in accordance with Navy Comptroller Manual, Volume 4, Chapter 6. Payment of recurring rental charges may be made in accordance with Section 046366 of said Chapter.

13-55. Renewal of Leases. To renew a lease, with an annual rental not in excess of $25,000, the District Public Works Officer will obtain a written recommendation from the

District Commandant of the need for the property for the renewal term, and will obtain from the Commanding Officer or head of the activity concerned a certification that funds are available for the payment of rental or will be made available upon appropriation and allotment thereof.

To renew a lease with an annual rental in excess of $25,000, the District Public Works Officer will obtain the recommendation and certification required above. These will be submitted so as to reach the Bureau not later than 1 February of each year via the Bureau or Office having management control and the Chief of Naval Operations for their approvals. Advance copies of each submission will be provided the Bureau.

The District Public Works Officer is responsible for determining that the certification as to funds and all required approvals have been obtained. When this determination has been made, timely "Notice of Renewal of Government Lease" NAVDOCKS 211, Appendix 28, will be prepared and issued. This form will be used for the renewal of all leases.

As failure to renew a lease in accordance with its provisions will result in its termination at the end of the current lease term and may otherwise prejudice the rights of the Government, it may, in some cases, be necessary to issue renewal notices before all approvals are obtained. If the annual rental involved is $25,000 or less, responsibility for the determination as to whether renewal notices will be issued rests with the District Public Works Officer. If the annual rental involved is in excess of $25,000, responsibility for such determination rests with the Bureau and the District Public Works Officer will obtain the approval of the Bureau before issuing notices of renewal in these cases.

13-56. Distribution of Notice of Renewal. Notice of Renewal of Government Leases will be distributed in the same manner as the original leases. (Paragraph 13-44).

13-57. Modification or Amendment of Leases. The District Public Works Officer may, without further approval, modify or amend a lease provided such modification or amendment does not change the substance of the lease, detract from the rights of the Government thereunder or increase its obligations. However, prior to the modification or amendment of a lease which changes the substance thereof, detracts from the rights of the Government or increases its obligations thereunder, the District Public Works Officer will obtain the certification of the Commanding Officer or head of the activity concerned as to the availability of funds to meet any increased cost, and the approval of the District Commandant. If the annual rental provided for in the lease being modified or amended is more than $1,000, but not in excess of $25,000, the District Public Works Officer will in addition to obtaining the approval and certification required above, obtain the approval of the Bureau or Office having management control and the approval of the Chief of Naval Operations as to military features.

If the annual rental is in excess of $25,000, in addition to obtaining the above approvals, the District Public Works Officer will submit the proposed modification or amendment to the Bureau for its approval and determination as to whether any further approvals are required. Modifications or amendments of leases receive the same distribution as required for original leases (Paragraph 13-44).

13-58. Necessity for Filing Condemnation Proceedings. Where it has been determined to acquire the use of real property by lease, it is the policy of the Department of the Navy to do so by conducting negotiations with the owner of such property and to enter into a lease with him. Circumstances sometimes require the acquisition of a leasehold interest by the filing of condemnation proceedings. Occasions where this action is necessary are stated in paragraph 11-1. These statements are equally applicable to the acquisition of leasehold estates through condemnation, except subparagraph (3) thereof.

13-59. Authority to Condemn under 40 U.S.C. 257. The Department of the Navy's basic authority to acquire real property by condemnation is the Act of August 1, 1888 (25 Stat. 357; 40 U.S.C. 257). (Appendix 9). This Act does not contain a provision authorizing the taking of possession of real property upon the filing of the complaint in condemnation.

13-60. Authority to Condemn in Time or Imminence of War. 10 U.S.C. 2663 authorizes the Secretary of the Navy to cause proceedings to be instituted for the acquisition by condemnation of any interests in land, temporary use thereof or interests therein expressly enumerated in the Act. It also authorizes the acceptance of donations of land or interests therein or rights pertaining thereto for such purposes. It contains a provision that in time of war or when war is imminent the United States may, immediately upon the filing of a petition for condemnation, under the provisions of Subsection "A" of the Act, take and use the land to the extent of the interest sought to be acquired. In condemnation proceedings instituted pursuant to this Act of Congress, the Courts usually will enter Orders granting immediate possession of the property or interests therein to be used for military purposes. (Appendix 10).

13-61. Limitations on Authority. The Acts cited in paragraphs 13-59 and 13-60 are not authority to acquire lands but are procedural.

No one single Act of Congress can be cited as the overall authority for the leasing of real property for naval uses. The leasing or renting of land for naval purposes is customarily provided for in annual Department of Defense Appropriation Acts in specific authorization under the heading "Department of the Navy". Military Construction Acts include special provisions which, although varying as to the language used provide in express terms for the acquisition of lesser interests than the fee, including leaseholds.

13-62. Procedure for Condemnation of Leasehold. The legal authority for condemnation and the judicial rules of procedure relating thereto cover all interests in real property. Therefore, the procedure to be followed in the condemnation of a leasehold estate is basically the same as the procedure for the condemnation of fee. The procedure set forth in paragraphs 11-7 through 11-33, with the exception of paragraph 11-19, is applicable to leasehold condemnations and will be followed in these cases.

13-63. Termination of Leases. The procedures for the termination of leases will be covered in the disposal portion of this Instruction.

13.63 MANAGEMENT RESPONSIBILITY FOR FAMILY HOUSING FOR PUBLIC QUARTERS. The Chief, Bureau of Yards and Docks exercises management control over all Department of the Navy family housing. The Chief of Naval Operations determines housing requirements. NAVDOCKS P-352 promulgated Department of Defense policies and procedures for "Leasing of Family Housing". Particular reference is made to that Publication inasmuch as the criteria for the leasing of housing for public quarters will not be incorporated in this Publication.

13.64 LIMITATIONS OF NAVDOCKS P-352. NAVDOCKS P-352 is applicable to all family housing leased by the Government for Department of the Navy personnel, with the exception of housing units leased for Military Assistance Advisory Group personnel and military mission and Naval Attache personnel in foreign countries. The leasing of housing for such excepted personnel, as well as space for other activities, in foreign countries will be covered in subsequent paragraphs of this Chapter.

13.65 STATUTORY AUTHORITY FOR LEASING IN FOREIGN COUNTRIES. Statutory authority for leasing in foreign countries is contained in 10 .U.S.C. 2675 which provides "That, notwithstanding any other law, the Secretary of a military department may lease, for terms of not more than five years, offbase structures including real property relating thereto, in foreign countries, needed for military purposes".

13.66 SECNAVINST 11011.33 OF 1 AUGUST 1962.

This Instruction establishes policy for the leasing of real property in foreign countries by the Department of the Navy and delegates authority and responsibility to the Chief, Bureau of Yards and Docks, or his designated representative, and to the Commandant of the Marine Corps, or his designated representative, with respect to leases for Marine Corps activities, to carry out that policy within the limitations of the Instruction.

13.67 SCOPE OF AUTHORITY FOR FOREIGN LEASES. The following paragraphs of this chapter apply only to the leasing of real property in foreign countries pursuant to the delegation of authority contained in the SECNAV Instruction mentioned in paragraph 13.66. This Chapter does not apply to an agreement for use of real property in foreign countries acquired by and through the State Department or through an agency of a foreign government pursuant to treaties, executive agreements, or other diplomatic arrangements.

13.68 DEFINITIONS. As used in this Chapter "Real Property" means any right, title, or interest in land and buildings, fixed improvements, utilities, and other permanent additions to land.

13.69 POLICIES. Real property shall be acquired by lease in foreign countries only when the following conditions exist:

(1) The property is required to meet a valid military need created by an assigned mission of an activity.

(2) There is no United States Government controlled real property available which will adequately meet the military need.

(3) The lease is for a period of one year, except that leases for offbase structures, including real property related thereto, may provide for an initial term of up to but not in excess of five years, in accordance with 10 U.S.C. 2675, and in either case, the lease may provide for annual renewals at the option of the Government.

(4) Funds are available for payment of the rental.

13.70 DELEGATION OF AUTHORITY. The Director and the Deputy Director, Atlantic Division, Bureau of Yards and Docks; the Director and the Deputy Director, Pacific Division, Bureau of Yards and Docks; the Director and the Deputy Director, European Mid-East Division, Bureau of Yards and Docks; the Area Public Works Officer and the Deputy Area Public Works Officer, Caribbean; the Officer in Charge of Construction and the Deputy Officer in Charge of Construction, Marianas; are delegated authority to take all necessary action to acquire, renew, modify, and administer leases in foreign countries, except for Marine Corps activities, within their respective areas of responsibility, provided:

(1) Approval of the Chief of the cognizant bureau or office has been obtained for any new lease.

(2) Approval of the Chief of Naval Operations as to military features has been obtained for any new lease if the annual rental is more than $2000.

(3) Approval of the Assistant Secretary of the Navy (Installations and Logistics) of the proposal to lease has been obtained for any new lease if the annual rental is in excess of $25,000.

(4) Approval by the Assistant Secretary of Defense (Installations and Logistics) of the proposal to lease has been obtained for any new lease if the annual rental is in excess of $25,000 and the initial term of the lease is more than one year.

(5) The head of the activity concerned or the Management Bureau or Office has made funds available for payment of the rental.

See the following paragraph for any lease proposal involving a rental in excess of $25,000 per annum.

13.71 PROCUREMENT OF APPROVALS FOR LEASES OF MORE THAN $25,000 ANNUAL RENTAL. Any new lease proposal involving an annual rental in excess of $25,000 shall be submitted to the Bureau of Yards and Docks with a complete justification for the requirement and a detailed statement of facts concerning the property. The Bureau of Yards and Docks will obtain the approval of the Management Bureau; the Chief of Naval Operations; the Assistant Secretary of the Navy (Installations and Logistics); and the Assistant Secretary of Defense (Installations and Logistics) if required.

13.72 PREPARATION OF LEASES COVERING PROPERTY IN FOREIGN COUNTRIES. Leases providing for annual rental of less than $1000 should be prepared on NAVDOCKS 2393 (Appendix 25). Leases providing for annual rental of $1000 or more should be prepared on U.S. Standard Form Number 2 (Appendix 26). Instructions for the preparation and execution of these forms and assignment of a contract number are contained in Paragraphs 13.42 and 13.43 of this Chapter. In the event a satisfactory lease agreement cannot be consummated by using these forms such modification as may be required by local practice may be used provided the United States is fully protected.

13.73 LEASE CONSTRUCTION AGREEMENTS. In certain foreign countries it may be found that the procurement of appropriate facilities will require the construction of additions to existing improvements for the construction of new buildings. In some instances it has been necessary to enter into Lease - Construction Agreements in order to procure such facilities. In order to assure to the owner the early amortization of a substantial portion of the construction cost, the Lease - Construction Agreements generally provide for larger advance payments annually during the initial five-year term of the lease. The format of a typical Lease - Construction Agreement is attached as Exhibit 13-A to this Chapter.

13.74 ADVANCE RENTAL PAYMENTS. Advance rental payments in foreign countries may be necessary in accordance with local custom. The statutory authority for making advance rental payments is 31 U.S.C. 529i (69 Stat 314).

13.75 DISTRIBUTION OF LEASES. Distribution of leases in foreign countries and Lease - Construction Agreements shall be made as set forth in Paragraph 13.44 of this Chapter.

13.76 CONDITION REPORTS. Paragraphs 13.45 through 13.52 of this Chapter apply to the requirement for, preparation of, and distribution of condition reports on leased properties. Those paragraphs were intended primarily for leased properties in the United States of America and its possessions. However, similar procedures will be followed with respect to leases made in foreign countries.

13.77 PAYMENT OF RENTAL. The applicable provisions of Paragraph 13.54 of this chapter apply to the payment of rental under leases in foreign countries.

13.78 RENEWAL OF LEASES. The provisions of Paragraph 13.55 apply to the renewal of all leases procured in foreign countries. Distribution of Notices of Renewal (Appendix 28) shall be handled as provided for in Paragraph 13.56 of this Chapter.

13.79 MODIFICATION OR AMENDMENT OF LEASES IN FOREIGN COUNTRIES. See Paragraphs 13.30 and 13.57 of this Chapter with respect to the modification or amendment of leases in the United States and its possessions. These procedures will apply to all leases entered in foreign countries.

13.80 LEASING OF HOUSING OR OTHER SPACE FOR NAVAL ATTACHE PERSONNEL. Procedures for the consummation, modification, amendment, administration, and renewal of leases of real property for use and occupancy by Naval Attache personnel in foreign countries including office space or other facilities are set forth as Paragraphs 13.81 through 13.89 of this Chapter.

13.81 CRITERIA FOR LEASING FOR NAVAL ATTACHE PERSONNEL IN FOREIGN COUNTRIES. Naval Attache personnel are frequently required to rent housing in foreign countries. This type of quarters is difficult to

STANDARD FORM 2
FEBRUARY 1965 EDITION
GENERAL SERVICES
ADMINISTRATION
FPR (41 CFR) 1-16.601

U.S. GOVERNMENT
LEASE FOR REAL PROPERTY

DATE OF LEASE	LEASE NO.

THIS LEASE, made and entered into this date by and between

whose address is

and whose interest in the property hereinafter described is that of

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the considerations hereinafter mentioned, covenant and agree as follows:

1. The Lessor hereby leases to the Government the following described premises:

to be used for

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on

..... through ....., subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor annual rent of $.....

at the rate of $..... per ..... in arrears. Rent for a lesser period shall be prorated. Rent checks shall be made payable to:

4. The Government may terminate this lease at any time by giving at least ..... days' notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

5. This lease may be renewed at the option of the Government, for the following terms and at the following rentals:

provided notice be given in writing to the Lessor at least ..... days before the end of the original lease term or any renewal term; all other terms and conditions of this lease shall remain the same during any renewal term. Said notice shall be computed commencing with the day after the date of mailing.

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6. The Lessor shall furnish to the Government, as part of the rental consideration, the following:

7. The following are attached and made a part hereof:
The General Provisions and Instructions (Standard Form 2-A, ... edition).

8. The following changes were made in this lease prior to its execution:

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

LESSOR

BY _____ (Signature) _____ (Signature)

IN PRESENCE OF:

_____ (Signature) _____ (Address)

UNITED STATES OF AMERICA

BY _____ (Signature) _____ (Official title)

A-13677

STANDARD FORM 2-A
FEBRUARY 1965 EDITION
GENERAL SERVICES
ADMINISTRATION
FPR (41 CFR) 1-16.601

GENERAL PROVISIONS AND INSTRUCTIONS

U.S. Government Lease for Real Property

1. SUBLETTING THE PREMISES.

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting.

2. MAINTENANCE OF PREMISES.

The Lessor shall maintain the demised premises, including the building and any and all equipment, fixtures, and appurtenances, furnished by the Lessor under this lease in good repair and tenantable condition, except in case of damage arising from the act or the negligence of the Government's agents or employees. For the purpose of so maintaining said premises and property, the Lessor may at reasonable times, and with the approval of the authorized Government representative in charge, enter and inspect the same and make any necessary repairs thereto.

3. DAMAGE BY FIRE OR OTHER CASUALTY.

If the said premises be destroyed by fire or other casualty this lease shall immediately terminate. In case of partial destruction or damage, so as to render the premises untenantable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within fifteen (15) days thereafter; if so terminated no rent shall accrue to the Lessor after such partial destruction or damage; and if not so terminated the rent shall be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage.

4. ALTERATIONS.

The Government shall have the right during the existence of this lease to make alterations, attach fixtures and erect additions, structures or signs in or upon the premises hereby leased, which fixtures, additions or structures so placed in, upon or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government.

5. CONDITION REPORT.

A joint physical survey and inspection report of the demised premises shall be made as of the effective date of this lease, reflecting the then present condition, and will be signed on behalf of the parties hereto.

6. COVENANT AGAINST CONTINGENT FEES.

The Lessor warrants that no person or selling 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, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to deduct from the rental price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee. (Licensed real estate agents or brokers having listings on property for rent, in accordance with general business practice, and who have not obtained such licenses for the sole purpose of effecting this lease, may be considered as bona fide employees or agencies within the exception contained in this clause.)

7. OFFICIALS NOT TO BENEFIT.

No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this lease contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this lease contract if made with a corporation for its general benefit.

8. ASSIGNMENT OF CLAIMS.

Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this lease provides for payments aggregating $1,000 or more, claims for monies due or to become due the Lessor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned or reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any provisions of this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

9. EQUAL OPPORTUNITY CLAUSE.

(The following clause is applicable unless this contract is exempt under the rules and regulations of the President's Committee on Equal Employment Opportunity (41 CFR, Chapter 60).)

During the performance of this contract (Lease), the Contractor (Lessor) agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under this nondiscrimination clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The Contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, as amended, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clause of this contract or with any of

the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

10. FACILITIES NONDISCRIMINATION.

(a) As used in this section, the term "facility" means stores, shops, restaurants, cafeterias, restrooms, and any other facility of a public nature in the building in which the space covered by this lease is located.

(b) The Lessor agrees that he will not discriminate by segregation or otherwise against any person or persons because of race, creed, color, 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 thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by the Lessor solely to tenants, their employees, customers, patients, clients, guests and invitees.

(c) It is agreed that the Lessor's noncompliance with the provisions of this section shall constitute a material breach of this lease. In the event of such noncompliance, the Government may take appropriate action to enforce compliance, may terminate this lease, or may pursue such other remedies as may be provided by law. In the event of termination, the Lessor shall be liable for all excess costs of the Government in acquiring substitute space, including but not limited to the cost of moving to such space. Substitute space shall be obtained in as close proximity to the Lessor's building as is feasible and moving costs will be limited to the actual expenses thereof as incurred.

(d) It is further agreed that from and after the date hereof the Lessor will, at such time as any agreement is to be entered into or a concession is to be permitted to operate, include or require the inclusion of the foregoing provisions of this section in every such agreement or concession pursuant to which any person other than the Lessor operates or has the right to operate any facility. Nothing herein contained, however, shall be deemed to require the Lessor to include or require the inclusion of the foregoing provisions of this section in any existing agreement or concession arrangement or one in which the contracting party other than the Lessor has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and the unilateral right to renew or extend. The Lessor also agrees that it will take any and all lawful actions as expeditiously as possible, with respect to any such agreement as the contracting agency may direct, as a means of enforcing the intent of this section, including, but not limited to, termination of the agreement or concession and institution of court action.

11. EXAMINATION OF RECORDS.

(NOTE.—This provision is applicable if this lease was negotiated without advertising.)

(a) The Lessor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this lease, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Lessor involving transactions related to this lease.

(b) The Lessor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or his representatives shall, until the expiration of 3 years after final payment under this lease with the Government, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract.

12. APPLICABLE CODES AND ORDINANCES.

The Lessor, as part of the rental consideration, agrees to comply with all codes and ordinances applicable to the ownership and operation of the building in which the leased space is situated and, at his own expense, to obtain all necessary permits and related items.

13. INSPECTION.

At all times after receipt of Bids, prior to or after acceptance of any Bid or during any construction, remodeling or renovation work, the premises and the building or any parts thereof, upon reasonable and proper notice, shall be accessible for inspection by the Contracting Officer, or by architects, engineers, or other technicians representing him, to determine whether the essential requirements of the solicitation or the lease requirements are met.

14. ECONOMY ACT LIMITATION.

If the rental specified in this lease exceeds $2,000 per annum, the limitation of Section 322 of the Economy Act of 1932, as amended (40 U.S.C. 278a), shall apply.

15. FAILURE IN PERFORMANCE.

In the event of failure by the Lessor to provide any service, utility, maintenance or repairs required under this lease, the Government shall have the right to secure said services, utilities, maintenance or repairs and to deduct the cost thereof from rental payments.

16. LESSOR'S SUCCESSORS.

The terms and provisions of this lease and the conditions herein shall bind the Lessor, and the Lessor's heirs, executors, administrators, successors, and assigns.

17. INSTRUCTIONS.

(a) Whenever the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, two authenticated copies of his power of attorney, or other evidence to act on behalf of the Lessor, shall accompany the lease.

(b) When the Lessor is a partnership, the names of the partners composing the firm shall be stated in the body of the lease. The lease shall be signed with the partnership name, followed by the name of the partner signing the same.

(c) Where the Lessor is a corporation, the lease shall be signed with the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government evidence of this authority so to act shall be furnished.

(d) When deletions or other alterations are made specific notation thereof shall be entered under clause 9 of the lease before signing.

(e) If the property leased is located in a State requiring the recording of leases, the Lessor shall comply with all such statutory requirements at Lessor's expense.

Azores

Lajes Air Base

US rights to station forces at Lajes Air Base, Azores during peacetime stem from the US Portuguese Defense Agreement concluded in 1951 pursuant to Article 3 of the North Atlantic Treaty. These rights, last extended on December 9, 1971, will expire on February 3, 1974 unless further extended or renewed. Because of a strategic geographical location and favorable prevailing weather, Lajes Air Base is important for anti-submarine warfare and ocean surveillance, aerial staging and overflight, and military communications purposes.

Costs

The five-year cost for these Azores facilities is reflected in the December 9, 1971 exchange of notes extending US base rights in the Azores until 1974 (Attachment 1)

Personnel

There are roughly 2,000 US military, 200 US civilians, and 900 foreign nationals employed under DOD auspices in the Azores.

Payment for Land

With one minor exception, land in the Azores is neither leased or purchased but is provided for US use in accordance with the terms of the December 1971 exchange of notes.

Note exchange re treaty with Portugal

December 9, 1971

Excellency:

I have the honor to acknowledge receipt of Your Excellency's Note dated December 9, 1971, which reads as follows:

"I have the honor to refer to the letter of the Foreign Minister of Portugal to the Ambassador of the United States of America, dated December 29, 1962, and to the notes of this Ministry and of your Embassy, dated January 6, 1969, and February 3, 1969, respectively, relating to the conversations regarding the continued stationing of American forces and personnel at Lajes Base in the Azores and its use by the same.

"I have the honor to propose that the continued use by American forces of the facilities at Lajes Base be authorized by the Government of Portugal for a period of five years dating from February 3, 1969.

The continued use of such facilities will be regulated by the mutual arrangements affirmed and described in the letter of the Foreign Minister of Portugal dated December 29, 1962. Either party may propose the commencement of conversations regarding use of such facilities beyond the period described in this note six months before the expiration of such period, but no determination that a negative result has arisen in such conversations shall be made for at least six months following the expiration of such period. In the event neither party proposes the commencement of further conversations, a negative result shall be deemed to have arisen upon the expiration of the period described in this note.

"I should like to propose that, if agreeable to your Government, this note, together with your reply, shall constitute an agreement between our two Governments."

I confirm to you that the above quoted proposal is acceptable to the Government of the United States, and that Your Excellency's note and this reply shall be regarded as constituting a formal agreement between the two Governments.

Accept, Excellency, the assurances of my highest consideration.

Secretary of State of the
United States of America

THE SECRETARY OF STATE

WASHINGTON

December 9, 1971

Dear Mr. Minister:

With further reference to my letter of this date concerning United States assistance to Portugal for its development efforts, I am pleased to advise you that the United States agrees to a waiver of the annual contribution of $175,000 by the Government of Portugal to the support of the United States Military Assistance Advisory Group for a period of two years.

Sincerely yours,

William P. Rogers

His Excellency
Rui Patricio,
Minister of Foreign Affairs
of Portugal.

018775

THE SECRETARY OF STATE

WASHINGTON

December 9, 1971

Dear Mr. Minister:

During the recent discussions between our two Governments regarding possible participation by my Government in the plans which your Government has drawn up for the economic and social development of your country, Portuguese and American technicians have reviewed various Portuguese proposals with a total value of some $400 million. These included, inter alia, projects for airport construction, railway modernization, bridge-building, electric power generation, mechanization of agriculture, harbor construction and town planning, and the supplying of equipment for schools and hospitals.

I am pleased to inform you that the United States Government is willing to provide, through the Export-Import Bank of the United States, financing for U.S. goods and services to be used in these projects, in accordance with the usual loan criteria and practices of the Bank. Applications for loans or preliminary commitments covering specific projects may be submitted to the Bank through the Portuguese Embassy in Washington or directly at any time and will receive expeditious handling.

Sincerely yours,

William P. Rogers

His Excellency
Rui Patricio,
Minister of Foreign Affairs
of Portugal.

018776

THE SECRETARY OF STATE

WASHINGTON

December 9, 1971

Dear Mr. Minister:

I refer to the series of discussions that have taken place between our two Governments designed to enhance our political, economic, and cultural relations and in particular to the discussions that have centered on Portugal's development programs in the fields of education, health, agriculture, transportation, and science.

As a result of these discussions, the United States agrees, within the limitations of applicable United States legislation and appropriations, to help Portugal in its development efforts by providing the following economic assistance:

1. A PL-480 program that will make available agricultural commodities valued at up to $15 million during fiscal year 1972 and the same amount during fiscal year 1973. The terms of the agreements under PL-480 will be 15 years at 4-1/2 percent interest, with an initial payment of 5 percent and currency use payment of 10 percent.

2. Financing for certain projects of the Government of Portugal, as follows: The two Governments have reviewed development projects in Portugal valued at $400 million and the United States Government declares its willingness to provide, in accordance with the usual loan criteria and practices of the Eximbank, financing for these projects.

3. The hydrographic vessel USNS Kellar on a no cost basis, subject to the terms of a lease to be negotiated.

His Excellency
Rui Patricio,
Minister of Foreign Affairs
of Portugal.

018777

4. A grant of $1 million to fund educational development projects selected by the Government of Portugal.

5. Five million dollars in "drawing rights" at new acquisition value of any non-military excess equipment which may be found to meet Portuguese requirements over a period of two years. The figure of five million dollars is to be considered illustrative and not a maximum ceiling so that we may be free to exceed this figure if desired.

As soon as the Government of Portugal replies to this letter, discussions shall be initiated to implement the details of each of the individual items listed herein.

Sincerely yours,

William P. Rogers

3. Congress of Micronesia.

The Congress of Micronesia has appropriated for its operating expenses for the period from July 1, 1973, to March 31, 1974, the sum of about $1,268,659. This is apparently for the regular 50-day session, since the usual practice in the past has been to seek a supplemental appropriation when there is a special session. The Congress has 12 Senators and 20 Representatives.[1/]

The detailed budget is as follows:

A.	House of Representatives	$395,419
B.	Senate	256,287
C.	Office of the Legislative Counsel .	377,683
D.	Joint Committee	139,270
E.	Special Session	80,000
F.	Outside Travel	20,000
	Total	$1,268,659

1/ The present size of the Congressional staff when the Congress is not in session is 28. When in session there are 73 staff members, including clerks and pages.