15 FAM 340
LEASE AGREEMENTS

(CT:OBO-29; 03-29-2012)
(Office of Origin: OBO)

15 FAM 341 DRAFTING A LEASE

(CT:OBO-29; 03-29-2012)

All posts must use the model lease in 15 FAM Exhibit 341(2) and follow the instructions given in 15 FAM Exhibit 341(1).

15 FAM 342 LEASE AMENDMENTS

(CT:OBO-29; 03-29-2012)

Approvals for lease amendments are handled in the same manner as approvals for the original leases; 15 FAM Exhibit 342 provides a sample lease amendment.

15 FAM 343 RENEGOTIATION

(CT:OBO-29; 03-29-2012)

a. Renegotiation of a lease requires the execution of a new lease document. U.S. Government contracting principles prohibit the renegotiation of a valid lease unless mandated by local law or unless additional benefit accrues to the U.S. Government. One example of such benefit is additional or improved space.

b. Renegotiated leases are assigned new lease contract numbers but carry the same property identification numbers. The new lease must identify the former lease by number, and must state that it is replacing or superseding that lease.

15 FAM 344 NOTICE OF TERMINATION

(CT:OBO-29; 03-29-2012)

Termination of long-term leases (LTL) and short-term leases (STL) for functional properties requires the prior approval of the Bureau of Overseas Buildings Operations (OBO) or, for USAID leases, the Overseas Management

Division, Office of Management Services, Bureau for Management, USAID/Washington (USAID/W - M/MS/OMD) and funding agency approval. All lease termination agreements must follow the sample in 15 FAM Exhibit 344.

15 FAM 345 LOCAL RENT CONTROLS

(CT:OBO-29; 03-29-2012)

It is U.S. Government policy to invoke the protection of local rent control laws, since to do otherwise would raise the question of expending public funds in excess of the amount required. If local laws require paying rent increases, the post must investigate and retain copies of the appropriate laws or pertinent extracts and an original or certified copy of any pertinent ruling of a local rent control board or authority.

15 FAM 346 LOCAL REGISTRATION OF LEASES

(CT:OBO-29; 03-29-2012)

In many countries, lease terms are not enforceable by law unless the lease has been officially registered. The failure to register a lease can lead to the loss of valuable contract rights and/or potential embarrassment to the U.S. Government. Despite the fact that the model lease requires the landlord to register the lease, some landlords fail to do so. In those cases, a post must take it upon itself to register all leases unless the local jurisdiction does not provide a registration system or the system does not result in added protection to the rights of the U.S. Government. Registration is of utmost importance if the lease contains an option to purchase or a renewal option extending several years into the future. The lessor normally pays the registration fees; however, if this is not feasible, these costs should be split or, as a last resort, should be charged to the lease fund.

15 FAM 347 THROUGH 349 UNASSIGNED

15 FAM EXHIBIT 341(1)
MODEL LEASE EXPLANATIONS AND INSTRUCTIONS

(CT:OBO-29;   03-29-2012)
(Uniform State/USAID)

Posts must read through the model lease in its entirety and all the instructions before drafting and negotiating any lease.

I. INTRODUCTION TO PROPERTY LEASING

The process of renting space can be long and involved. Once a post has analyzed the mission's needs and found an appropriate property that meets those needs, the post must conduct due diligence before it begins negotiating a lease. Please see below for a checklist of due diligence steps. Once the due diligence is complete, the results are satisfactory, negotiations with the landlord are done, and all necessary approvals have been received, the post may sign the lease.

A post's aim in negotiation is to ensure that the final lease reflects or improves upon the model lease's terms. The article by article explanations and instructions below provide guidance to help posts understand and negotiate the model lease's terms. In some cases, the instructions will provide alternate language for a particular term if a landlord will not accept the standard version. The instructions also indicate which terms absolutely cannot be changed, which terms may be changed with permission from the State Department Bureau of Overseas Buildings Operations (OBO) or the USAID Management Bureau (M), and which terms are more flexible.

Please note that these explanations and instructions are most applicable for residential property leasing, but are also relevant for leasing functional properties. Functional properties, however, require special approvals. (See 15 FAM 312.2, 15 FAM 312.6, and 15 FAM 320.)

Please also note that the explanations and instructions often suggest that posts inform or request approvals from OBO and the Office of the Assistant Legal Adviser for Buildings and Acquisitions (L/BA) at the Department of State. In most cases, USAID missions should substitute the USAID counterparts to these offices, the M Bureau and General Counsel's Office (GC), respectively, for these references.

II. OVERVIEW OF THE MODEL LEASE

The Model Lease is designed to be flexible. While it may sometimes appear that legal jargon has been substituted for straightforward sentences, there is a legal purpose for each phrase as drafted. Posts must not edit the

document or add or subtract clauses outside of the guidelines of the explanations and instructions without prior OBO approval.

If a post has never before used a version of the model lease, has never had the model lease reviewed by local counsel, becomes aware of changes to local landlord-tenant law or is informed by a landlord of a conflict between the model lease and local law, post should follow the procedures set forth in 15 FAM 426 for retaining local legal counsel. In such cases, local legal counsel should review the model lease for sufficiency and enforceability under local law and to confirm that it does not conflict with local law. Additionally, if a particular lease deviates substantially from the model lease following negotiations with a landlord, the post should consult with OBO and L/BA regarding whether it is appropriate to retain local legal counsel to ensure that the lease is acceptable and enforceable under local law.

If local counsel is retained, the post should provide OBO and L/BA with a copy of any legal opinions that local counsel issues and/or guidance or comments that local counsel makes. Please send such materials to the OBO realty specialist handling your post in the Office of Building Acquisitions and Sales, in the Directorate of Planning and Real Estate (OBO/PRE/BAS) and to L/BA.

During lease negotiations, a post should not change or delete the negotiable clauses in the model lease just because a landlord objects or asks to have them changed or removed. The process of negotiation involves exchanging benefits and making sure the U.S. Government gains something in return for rights and benefits given up. At the end of the negotiation, the resulting lease should be at least as protective of the tenant, if not more protective, as the model lease. Post negotiators should maintain a firm position on language that favors and protects the U.S. Government and only modify that language in exchange for something valuable on other issues. If a post has any questions as to the propriety of any changes requested by a landlord during lease negotiations, post should consult with OBO and L/BA.

Once all terms of a particular lease have been agreed on by a post, a landlord and (if applicable) local counsel, the post must send the lease to OBO for approval. Once approval is received, the post must affix fiscal data to the lease and ensure that both parties sign the final page and initial all other pages of the lease and its annexes.

III. DUE DILIGENCE CHECKLIST

1. **Confirm the identity of the landlord**. Art 1—Ask for documentation. If the landlord is a company, make sure it is registered and operating legally. Local counsel can usually do this easily.

    - In some instances, the Corporate Board of Directors is required to formally authorize real property transactions. This should also

be explored by local counsel.

2. **Confirm the legal ownership of the property**. Art 2—In some countries this can be accomplished by having post staff check a central registry. In other countries, confirmation of ownership will require action by local counsel. A post should seek local legal guidance if it is unsure how to confirm ownership of a particular property.

   - If ownership is unclear or in dispute, look for other property. It is not recommended that a post spend much time on properties with title issues since they often take months or years to settle, and owners are usually highly over-optimistic on the prospects for quick resolutions.

3. **Conduct a property inspection**. Art 2—Prior to signing any lease a thorough inspection must be done. The inspection must clearly document what systems are in the building and the condition of the entire property. The inspection can be conducted by qualified staff at the post, or by a professional hired for the job. Both the landlord and tenant should sign the inspection document when it is received and it should be annexed to any lease agreement.

   - For newly built housing where an inspection cannot be done before signing some kind of agreement, a post may sign an option to lease to secure the right to lease the units in the future; in these cases, however, an inspection is still required before "settlement" —i.e., before the U.S. Government actually commits to leasing the property. Typically, a post conducts an inspection through its local contractor and then "accepts" the property. However, if the construction is found to be unsatisfactory, the post should reject the property and refuse to sign the lease.

4. **Obtain Post Occupational Safety and Health Officer and post Regional Security Officer approvals**. OBO and FAM requirements specify that post occupational safety and health officers and post regional security officers need to inspect the property, approve it for occupancy, and approve any relevant lease terms before the lease is signed. They will ensure that the premises and equipment comply, to the extent possible, with the FAM safety and security regulations.

5. **Obtain Inter-Agency Housing Board approval**. Under FAM requirements, the Housing Board is charged with ensuring that all housing is appropriately assigned and it should, therefore, be aware of and involved in any new residential leases.

6. **Create a full inventory with condition reports**. Art 2—The

inventory must include all plumbing, mechanical, and electrical equipment, furniture, furnishings, or fixtures on the premises that are included in the leased property (or in any common areas for rentals with more than one tenant) and covered by the rent. The inventory must also include indications of each item's current state of repair. Ideally, both parties should have a representative present during the actual inventory-taking. Both parties must sign the inventory report and it should be annexed to the lease agreement.

- Inventory-taking can be done during lease negotiations. It is best completed immediately prior to the signing of the lease and the tenant taking possession of the property.

7. **Visually document the condition of the premises**. Art 2—This should be done concurrently with the inventory-taking. Photograph or take video footage of the entire leased premises. Again, ideally, the landlord will accompany the tenant during this process and should even appear in the pictures. Both parties should sign a document agreeing that the photos or video footage were taken at the time the lease was entered into. The value of these photos cannot be overstated when, years in the future, none of the original occupants is at the post and there is a dispute with the landlord about the original condition of the property.

IV. MODEL LEASE ARTICLE BY ARTICLE EXPLANATIONS AND INSTRUCTIONS

ARTICLE ONE: PARTIES. The full name and address of the landlord is recorded in the first article of the lease. Due diligence inquiries into the landlord's identity are essential. For the tenant, the lease is always executed in the name of "The United States of America, acting by (name), (title), and (post)," regardless of which agency will use the premises. The reference in a former model lease to "The Secretary of State" has been deliberately omitted due to difficulties experienced in litigation.

If the lease is executed by a third party acting on behalf of the landlord, additional inquiries into identity are necessary. Two authenticated copies of the power of attorney or other evidence of authority to act on behalf of the landlord must be furnished with the lease.

Do not delete the phrase "for itself, its heirs, executors, administrators, successors and assigns." Without this language the lease might end when the landlord dies or when the leasing company ceases to do business. Posts might also be able to use this phrase to argue for the continuation of the lease when a property that was expropriated by the foreign government is returned to its private sector owner.

ARTICLE TWO: DESCRIPTION OF PREMISES. It is important that the

leased premises be described fully and completely.

A1. Legal Description: Provide the street address, building name, apartment number, plot number and other information from the title deed. For multiple unit leases, state the data for each unit.

A2. Physical Description: State the number and types of rooms, floor and unit number if within a multi-unit building, gross floor area, servants' quarters, and garage/parking space. Include a description of all common areas, if this is a shared building, and of the land areas associated with the building(s).

A3. Size of Leased Premises: State, in square meters or feet, the rentable area as agreed with the landlord, as well as the gross and net areas as per the guidelines set forth in 15 FAM 238, Exhibits A, B, and C. For multi-tenant buildings where operating expenses are calculated based on occupancy percentage in comparison to the total rentable building area, that percentage must be noted as well. Attach a floor plan of the leased premises, with dimensions, to the lease.

A4. Additional Property: Furnishings and/or equipment provided or included with the leased space must be noted here. This includes all "extras" that might not ordinarily appear in a standard property lease, such as outdoor equipment, spa or furniture that can be removed but has been left for our use.

B. An inventory and condition report showing the condition of each room and/or item in the premises as "Good," "Fair," or "Poor," and indicating the nature of defects in each, if any, must be annexed to the lease. Furnishings and equipment included in this lease must not be removed from the property without a written agreement between the landlord and the U.S. Government, and the post must never store the landlord's property off-premises. Wherever possible, photographs and video footage documenting conditions upon lease commencement should be included in the inventory.

ARTICLE THREE: LEASE TERM. This clause establishes the legal starting date of the lease. The basic term of the lease commences on that date and ends on the date agreed upon, unless terminated early. Specific calendar dates are required. It is not uncommon for leases to start on one date with the obligation to actually pay rent starting later. This occurs when the property is just being built or if the landlord agrees to upgrade the property in advance of delivering vacant occupation.

ARTICLE FOUR: LEASE RENEWAL. Where possible, and in the U.S. Government's interest, provision should be made for options to renew the lease. The options should include definite periods and rental terms. If the landlord will not agree to the same rent for the renewal term(s), the post

should replace the text of Article Four in the Model Lease with the following language:

> The Lease is renewable by the TENANT under these same terms and conditions, except for a change in rental rate, for ___ further period(s) of ___ years, or until (date).
>
> The renewal rental rate shall be fair market, to be determined by the Parties hereto. The fair market rental shall reflect the present value of this and similar rental properties for similar leased duration but shall disregard all improvements (if any) which TENANT has made to the Premises. Not less than 6 months prior to the expiry date of the present rental period, the LANDLORD shall give notice to the TENANT in writing of the proposed rental amount for the renewal period. Unless the TENANT objects to the proposed rent within 90 days of receipt of such notice, any renewal by the TENANT will be at the LANDLORD's proposed rate. The TENANT must give notice to the LANDLORD of its intent to renew at least ___ days prior to the date the Lease term or any renewal period would otherwise expire. If the renewal option is exercised, the rental rate change will take effect on the first day of the renewal term.
>
> If fair market has not yet been ascertained when the renewal period begins, the TENANT shall continue to pay rent and operating expenses at the most recent rate until the new rate has been set, at which time the Parties will make retroactive payments to the date of commencement of the new Lease, if necessary.

The post should also include the following language if it is fiscally and practically feasible in the context of the lease's annual rent, the length of the period of the lease renewal and the local country conditions:

> If the Parties are unable to agree on fair market rental, there shall be a valuation committee of three valuers. Each valuer shall be certified by the national Board of Appraisers, the Appraiser General, the Land Valuation Department, or similar institution or entities, depending upon which services are available locally. One valuer shall be appointed by each of the Parties within 10 working days after written notice of disagreement on fair market rental is given. The two named valuers shall appoint the third valuer. If the valuers are unable to agree to a third valuer within a period of 1 month after the appointment of the second valuer, the third valuer shall be appointed by the local entity having authority over appraisers.
>
> The decision of the valuation committee shall be final and binding upon formal, written issuance thereof. There shall be no appeal.

When using this alternate language, if the landlord will not agree to a committee of valuers to establish fair market rental or if such a committee is not fiscally or practically feasible, the post can try using one of the following fall-back positions:

1. The new rental rate will be a fixed percentage escalation over the current rate; or
2. The new rental rate will be an escalated amount based on the U.S. Consumer Price Index (CPI).

Posts are cautioned that rental rates that start low and are increased by an escalating factor at intervals throughout the lease might be more costly to the U.S. Government than a lease with a fixed, albeit high, rate at its commencement. Currency exchange fluctuations, market fluctuations, and deteriorating building conditions will all affect renewal rate. Indexes such as the Consumer Price Index normally are geared to "market basket" items and not to real estate. Therefore, thorough economic analysis is sometimes called for, and posts should negotiate the best renewal terms possible.

All of Article Four should be deleted if the landlord will not agree to a lease renewal or if the post is certain its need for the leased premises will cease at the natural termination of the lease.

ARTICLE FIVE: PAYMENT. Payment terms are the heart of the lease and the area where negotiations can be most useful to the post. Posts are authorized to pay rent up to 12 months in advance. However, this provides a windfall advantage to the landlord and should not be offered unless absolutely necessary. Quarterly payments provide a reasonable financial incentive to the landlord and help to manage the post's lease administration burden.

If a landlord insists on annual payments in advance, then the post should negotiate to include a provision that the rent be discounted to its present value. In other words, paying the entire rent in advance is worth more today than the same rent paid over a year because the landlord can use that money to earn income on other investments during the year. The typical discount rate is the interest rate available in-country for deposits in local banks and financial institutions. For example, if the rent is U.S. $25,000 per year, and local banks commonly pay 8% interest on deposits, then a landlord can earn an additional U.S. $2,000 over the year on our rent payment. This is a windfall that is unnecessary. In this case, the advance payment for the year would be discounted by 8%. To calculate the adjusted payment, divide the rental amount by 1 + the interest rate. By this formula (U.S. $25,000/1.08) the adjusted payment would be approximately U.S. $23,150. In reality, this is a negotiating point to get landlords away from annual payments and to get full value for the U.S. Government when large rents are paid in advance.

For longer advance payment terms than 1 year, posts must cable OBO for approval; such approval will only be granted in exceptional circumstances.

Lease contracts may be paid in U.S. dollars or in local currency, at the Contracting Officer's discretion. FAR 25.1002, 48 CFR 25.1002. (However, posts are reminded that they are not permitted to engage in black market currency transactions.) If payment is to be made in other than U.S. dollars, insert specific information concerning the fixed amount in local currency. To the extent possible, the lease contract should contain a provision that protects the U.S. Government from currency fluctuations by making it clear that **no adjustment in lease payments will be made as a result of currency revaluations**. In some instances, and where legally possible, it might be preferable to denominate the lease in U.S. dollars, payable in the equivalent local currency, with a specified method for ascertaining the applicable exchange rate. It is important to note that dollar or third-country currency payments are authorized only in those instances where such payments are permissible under local law (see 15 FAM 324).

Posts are reminded that offshore payments – i.e., where the U.S. government wires rent into an account based in a country other than in the country where the leased premises is located or sends a rental check to an address in such a country are strongly discouraged and require specific prior approval from OBO and L/BA. In addition, cash payments to offshore entities are prohibited. (See 92 State 331112.)

Separating rental payments from operating expenses where applicable saves the U.S. Government money. **Rent is market driven and negotiable**. **Operating expenses are not** – these are actual costs of keeping the property secure, fully operational, clean, safe, and in good repair. These costs are precisely quantifiable and are only minimally related to market forces that typically influence rental rates. Tying them to the market rent virtually guarantees overpaying on the lease as a whole.

The operating expenses to be included should be spelled out in the lease. Operating expenses should only be the landlord's expenses that are predictable, consistent, and required to keep the property in good physical condition. Please note, of course, that the operating expense/rent dichotomy should be removed if all allowable operating expenses will be paid by the tenant directly to third-party providers.

Common operating expenses are: utility payments made by the landlord for common area usage; salary and benefits for building staff; and routine maintenance costs, e.g., painting or repairing stairs in common areas. Operating expenses can also include the landlord's property taxes if they are specific to the property containing the leased premises. Operating expenses do NOT include: non-routine repair costs; costs incurred in making the property habitable or ensuring compliance with building or occupancy codes; wages and salaries of off-site staff, e.g., staff in a central leasing office;

capital improvements; depreciation of the property's value; the landlord's interest or principal payments on a mortgage; financing or refinancing expenses; taxes paid by the corporate landlord as a business unrelated to the leased property; or leasing fees or other brokerage fees. If the landlord strongly insists upon the inclusion of one of these typically excluded elements into the operating expenses, consult with OBO.

If payments will be made to any party other than the landlord, or at any address other than the one listed in Article 1, include such payment instructions here.

Where the annual lease payments exceed U.S. $25,000 (or the relevant rental benchmark at posts that participate in the Rental Benchmark Program), posts must send a waiver request to OBO for review and approval before signing the lease.

The language contained in Article 5(D) is very important to ensure compliance with the Anti-Deficiency Act, and may not be substantively altered without prior approval from OBO and L/BA.

ARTICLE SIX: WARRANTIES. The warranty language included here is standard language.

Part A ensures that the landlord does in fact have the ability to grant a valid lease by making it responsible for handling any claims of ownership or possession by anyone else. For example, if another party claimed to be the rightful tenant, the landlord would have a contractual obligation to defend the U.S. Government's claim of rightful tenancy. This is not a rare occurrence in countries without established and credible land registration systems and historical records. Most often, previous owners or their heirs come forward claiming that they still own the land or some interest in it, and demand that the U.S. Government pay rent to them. The landlord must fully insulate the U.S. Government against such claims.

Part B addresses the situation where the landlord fails to provide that defense. We cannot allow such claims to go completely unanswered if a landlord fails to do so, as this could result in court judgments against the U.S. Government, misinformed host government officials, and inaccurate publicity about our possession of the property. Thus the U.S. Government will handle the defense at the landlord's expense if the landlord has not properly responded to the claim. Any legal action taken in defense of such claims, however, needs to be approved in advance by L/BA and the Department of Justice's Office of Foreign Litigation.

Part C is for the landlord's protection. It ensures the U.S. Government cannot attempt to get out of lease provisions by claiming that the lease was signed by an unauthorized individual.

ARTICLE SEVEN: LANDLORD RIGHTS AND RESPONSIBILITIES.

A. Right of Entry. This article is self explanatory. Access to the property is a typical right of landlords, but in our case we must limit it to exclude landlords from areas deemed sensitive with regard to security or communications.

B. Landlord-provided Services. Insert a full description of the services to be provided by the landlord, which may include heat, light, sanitary water, drinking water, power, sewage disposal, toilet facilities, air conditioning, elevator service, telephone service, etc. The itemization of the landlord's maintenance responsibilities are not to be viewed as services for which additional costs are to be assessed, occasioning a larger rental amount. Rather, they are services that the tenant deserves from the landlord at no additional cost beyond the rent and operating expense figures stated in Article Five. These services define the value received for the rent paid.

In a multi-tenanted building, the post may wish to require the landlord to provide periodic window washing, upkeep for common areas, care of the grounds, etc. Separate utility meters for each tenant's space is essential to avoid disputes about individual responsibility for the utilities. The lease should also assign responsibility for condominium fees and services, if any.

Every effort must be made to include provisions that place the responsibility for initial make-ready improvements, renovations, alterations, repairs, and security upgrades consistent with the Department's A-32 standards (local guard program and residential security) with the landlord and at the landlord's expense. Particularly for residential properties, such preparations are considered a business expense, funded through normal rental payments, and should be maintained as landlord responsibilities. If the landlord is unwilling to undertake such repairs and improvements, negotiations should focus on reducing overall rental costs as an offset to the tenant undertaking the necessary improvements or on securing a period of time rent free while the upgrades are installed at U.S. Government expense. Such improvements are governed by regulations outlined in 15 FAM 313.1. If posts have difficulty negotiating such a provision, they should seek guidance from OBO.

C. Maintenance Responsibilities. Tenant's maintenance responsibilities should be limited to periodic cleaning of the premises, removing the trash, replacing light bulbs, and other minor maintenance and repairs necessary to meet tenant's obligation to maintain the premises in good repair and tenantable condition in accordance with Article Eight. In no case may the tenant accept responsibility for major structural repair and maintenance; this must be specified as the responsibility of the landlord.

If the building is shared with other tenants, add the following language (with amendments as necessary to reflect the contents of the particular leased premises):

> Unless hereinafter specified to the contrary, the LANDLORD shall maintain the said Premises, including any public halls, entrances to buildings, other common areas, elevators, fire systems and central electrical and mechanical systems, stairways, and public toilets, in good repair and tenantable condition.

If there are sidewalks or parking areas on or adjacent to the property, add the following language:

> The LANDLORD undertakes to maintain the sidewalks and parking areas before the entire building in proper and safe condition, and to accept all responsibility for them, including but not limited to the removal of ice and snow, sand accumulation, storm debris, etc.

D. Responsibility for Damages. This clause is critical and must not be reduced in scope or application. It maintains the landlord's responsibility for any damage to people or property that is caused by a failure to maintain or repair basic building systems and common areas, thereby providing some incentive to keep the building safe and operational. In a building shared with other tenants, this is absolutely critical for the U.S. Government because we are not in control of common areas nor can we invest in maintaining the landlord's property. This clause also acknowledges that the landlord has no responsibility for supply and delivery of utilities provided by utility companies outside of his control.

E. Emergency Repairs. If emergency conditions such as earthquakes, widespread floods, or volcanic eruptions make it unlikely that the landlord will be able to focus on making urgent repairs, then the post should not exert much effort trying to activate the landlord. The post’s priority should be to react to any emergency and repair damage to the extent possible for temporary safety and security until conditions calm down.

   However, in many cases, the emergency is localized, e.g., burst internal water pipes, collapsed roof, or storm damage to our specific building. Notice to the landlord is always important, if feasible, for potential assistance and to establish a record for settling damages later on, and should definitely be pursued in these situations.

   In severe scenarios, the Department may not be able to provide logistical support for days or weeks. The post must rely on self-help measures whenever appropriate to protect people and property, which may include abandoning a property temporarily. Each case must be decided on its own merits, but posts must do whatever is feasible and reasonable to mitigate damages and losses for the U.S. Government first.

F. Taxes, Fees, and Assessments. Taxes, assessments and other charges of a public nature must be borne by the landlord. If prevailing circumstances require that the tenant pay these charges directly or

reimburse the landlord separately, the post must consult with OBO beforehand and in no event may these costs exceed the landlord's actual costs.

G. Registration. Registration is highly recommended in countries where a registration system exists and has meaning. Registered leases protect the U.S. Government's legal rights under the lease in most cases, but for short-term leases of 2 years or less, the cost and effort to register may exceed the value of registration, and may be waived where appropriate.

H. Claims. In some ways this clause duplicates some of part D, and is just as important if not more so. Part H reiterates that landlords are responsible for damage to personal property (landlord, U.S. Government, or third party property) and for personal injuries suffered because of their failure to maintain or their provision of improper maintenance with respect to the property. It goes further, however, and specifies that the landlord, and not the U.S. Government, is the proper legal defendant in a lawsuit brought by a plaintiff who wants to sue because of such property damage or personal injury. While it cannot prevent lawsuits from being filed against the U.S. Government, it provides potential legal protection to the U.S. Government by affording us the right to bring in the landlord as the proper defendant. This clause also imposes responsibility on the landlord for the acts and omissions of its own employees, contractors, agents, and others under its control or direction.

This clause highlights the importance of liability insurance, and is the reason we require landlords to carry such insurance and why posts should inspect those policies every year.

ARTICLE EIGHT: TENANT RIGHTS AND RESPONSIBILITIES. All leases should provide that the tenant has the right to make minor alterations, attach fixtures, etc.

If the landlord is determined to resist this provision, the lease terms could require prior written permission of the landlord before any such undertaking; ideally, if landlord permission is required, the lease should provide that such permission cannot be "unreasonably withheld." If such permission is required, the post must comply with the lease and obtain written permission before making alterations.

Alternatively, the following language can be added if part of the landlord's resistance is due to a concern for other tenants:

> The TENANT's alterations, additions, structures, or signs will be placed such that they are not detrimental to or inconsistent with the rights granted to other tenants.

For residential leases, posts should not raise the issue of restoration responsibilities with the landlord. If the landlord requires it however, the post may, with prior OBO approval, use the following language:

> The TENANT, if required by the LANDLORD, shall restore the Premises to the same condition as that existing at the time of entering upon the Premises under this Lease, except for reasonable and ordinary wear and tear, damage by the elements, or other circumstances not under the TENANT's control. However, if the LANDLORD requires such restoration, the LANDLORD shall give written notice thereof to the TENANT at least 90 days before the termination of the Lease.

Even if this clause is used, before making any alterations (including security upgrades) to the property, the post should request from the landlord a waiver from the restoration requirement.

When leasing functional properties to which the U.S. Government will be making significant alterations, renovations, or improvements, post should consider addressing the issue of restoration responsibilities in negotiations with the landlord. In some countries, the U.S. Government may be responsible for the cost of removing any such constructions at the end of the lease, unless the lease provides otherwise. Post should therefore attempt to explicitly exclude or limit the U.S. Government's responsibility for restoring the leased premises to their original condition. Post must consult with OBO and L/BA prior to initiating discussions with the landlord regarding restoration responsibilities.

At the termination of any lease that includes a restoration clause, the landlord and tenant will rely on the condition report prepared at the time the premises were leased and on the photographic file that the post has developed to document the building's condition. The importance of the post's documentation cannot be overstated.

The parties should negotiate the estimated cost of restoration. The tenant may agree to perform the required services, pay a contractor or the landlord to perform them, or pay the landlord a one-time fee to cover the restoration costs. The tenant may also sell excess U.S. Government property to the landlord that would be difficult to remove from the premises, using the purchase price as an offset to the costs of restoration. Post property control offices, leasing offices, and certifying offices must ensure that these types of transactions are fully justified and documented due to the obvious high risk of waste, loss, and abuse which can occur in such settlements. Posts should develop clear internal control procedures to prevent property and financial losses, and the appearance of misappropriation.

If, during lease negotiations, a landlord demands additional tenant responsibilities or liabilities be included in the Lease, the post must consider whether such responsibilities will result in additional costs to the U.S. Government or (more usually) in the risk of such costs. **It is vital to remember that under no circumstances can the U.S. Government agree to provide an unlimited indemnity to the landlord – i.e., to**

"indemnify" or "hold harmless" the landlord against the undefined future losses or damages – with respect to risks associated with our tenancy. This has become a common request in light of attacks and perceived threats against the United States around the world. Be advised that this issue is a deal-breaker. The U.S. Government will not give anyone an unlimited indemnity against losses as this violates the Anti-Deficiency Act by exposing the U.S. Government to unknown and unlimited financial liability that cannot be appropriated for in advance.

If a landlord requests language that appears to impose additional liability on the U.S. Government or a post has any question as to whether landlord-requested language is legally acceptable, it must consult with OBO and L/BA.

ARTICLE NINE: ASSIGNMENT AND SUBLEASE.

A. The U.S. Government, as tenant, prefers to be able to make an assignment of the lease to a third party rather than enter into a sublease with such party, because an assignment allows the U.S. Government to minimize its contractual involvement with the landlord. Under an assignment, the U.S. Government, as tenant, has far less liability to the landlord because more of its obligations are assumed by the new tenant. Under a sublease, the U.S. Government still has a full and primary contractual relationship with the landlord, even if the entire premises have been sublet. When subleasing, posts must attempt to recover maintenance costs to the extent possible under the circumstances. The U.S. Government in turn becomes a landlord, and this is not recommended by OBO.

   Posts should be aware that it may be difficult to get a landlord to agree to an absolute and unrestricted right to assign or sublease. Accordingly, if a landlord refuses to include such a provision, the post should then attempt to negotiate both:

   1. The right to assign or sublease at any time with the landlord's consent, which consent shall not be unreasonably withheld; and

   2. The right to assign or sublease at any time without consent where the tenant, in its sole discretion, determines that, for essential security or foreign policy reasons, it can no longer occupy the premises.

   In sum, an absolute right to assign or sublet is preferable. The right to assign or sublet with approval, in conjunction with the absolute right to assign or sublet without approval where U.S. Government security or foreign policy concerns make it necessary, is acceptable.

B. This paragraph, restricting the landlord's ability to transfer its interests, is intended to give the U.S. Government some protection in the event that the building that the post is leasing is transferred to a foreign government hostile to U.S. Government interests or to a landlord with a background

inimical to U.S. Government interests.

ARTICLE TEN: PURCHASE OPTION. Posts should always ask for "fee simple absolute" title or its local equivalent. If the title will not be fee simple absolute, posts must amend the language of the clause and send it to OBO/PRE/BAS for approval. There is a minimum "bundle of rights" that we must be able to acquire to consider the purchase to be worthwhile.

The purchase price should be an amount equal to fair market value. Record that amount in the Article if it is known. Otherwise, the fair market value may be stated as a multiple of the rental amount (e.g., six times the rental amount). Posts are advised that an option to buy "at a mutually agreeable price to be determined" is not the preferred language as the option has limited value. Although such language may be included, if the landlord insists in negotiations, it is not to be considered a true option; nor can it justify any concessions or monetary consideration from the leasing officer.

This Article can be indicated as "nonapplicable" in the event that a landlord refuses to grant the U.S. Government a purchase option. However, in such case (or in case a landlord refuses to agree to a specific sale price), it may be worth negotiating for the U.S. Government to have "a right of first refusal" with respect to the leased premises; such a right would require the landlord to offer the property for sale to the U.S. Government at a given price before he or she or it could sell the premises to a third-party at that (or a lower) price.

ARTICLE ELEVEN: INSURANCE. If insurance is not available at a post, the post must negotiate language exempting the tenant from responsibility for repairing damages resulting from ordinary wear and tear, fire, earthquake, flood, storm, war, civil disturbance and other conditions beyond the tenant's control, including intentional and/or negligent acts of the landlord, landlord's agents, servants, or employees.

As described in the instructions for Article Eight, **under no circumstances can the U.S. Government indemnify the landlord, i.e., hold the landlord harmless, against unlimited future losses or damages**. It is against U.S. Government policy to acquire insurance. The U.S. Government will only purchase third-party insurance under extraordinary circumstances, and a post may only agree to do so with prior approval from OBO and L/BA. If a landlord demands that the post (as tenant) purchase insurance, posts should explain to the landlord the U.S. Government policy of self-insuring. If absolutely necessary, a post can agree to include language to the effect that the landlord shall not be responsible for specific losses and damages that are the fault of the U.S. Government and that a tenant would normally insure against the risk of. Before accepting any such language, however, the post must consult with OBO and L/BA.

ARTICLE TWELVE: DESTRUCTION OF PREMISES. This Article gives the

U.S. Government the right to immediately – i.e., with no notice – terminate the Lease (in whole or in part) in the event that the leased premises is rendered uninhabitable. It also requires the landlord to refund the money in such event.

This Article is usually accepted by landlords without alteration, though occasionally they ask for the right to terminate in the event that the premises in rendered uninhabitable or resist the U.S. Government's right to terminate "in part." In theory, either or both of these requests may be acceptable to the U.S. Government depending on the particular circumstances; however, post should consult with OBO to ensure that the proposed wording adequately protects the U.S. Government's interests.

ARTICLE THIRTEEN: LANDLORD'S DEFAULT. Note that this is not fashioned as a bilateral right for the parties; rather it is intended as the right of the tenant to elect between terminating the lease and making itself whole and deducting the costs of such remedy from the rent in the event of a landlord default. It is worth noting that this Article's escape clause is not limited to a landlord's failure to repair. It can be used if the landlord fails to fulfill any lease obligation, such as the obligation to obtain insurance.

It is essential that before using either of its rights under this Article, a post must have clearly documented the lease violations to the landlord in writing and given the landlord a chance to cure such violations within a reasonable deadline. The definition of "reasonable" will depend on the circumstances and may be quite short in certain cases. If a post then determines that either termination of the lease or remedy of the outstanding default is in the best interests of the U.S. Government, it must notify OBO/PRE/BAS and L/BA of the circumstances surrounding its wish to do so. Once approval is given, the post may then terminate the lease or remedy the default without prior notice to the landlord.

ARTICLES FOURTEEN: TERMINATION.

A. In negotiating for termination rights, posts must try to obtain the best possible terms for the U.S. Government. If possible, the lease should provide for termination or cancellation of the lease "for the convenience" of the tenant. In particular, leases executed within the framework of the delegation of authority contained in 15 FAM 312.7, and whose basic term exceeds 1 year, should include the tenant's unilateral right to terminate the lease pursuant to written notice to the landlord required no more than 90 days in advance.

If a post is unable to negotiate a unilateral right to terminate for convenience, it must notify OBO of the circumstances surrounding the negotiation of this clause immediately. OBO will work with the post to fashion an acceptable alternative based on the landlord's objections to the clause, e.g., increasing the period of notice, particularly in the case of a

long-term lease. . Another though less desirable alternative would be for the post (with OBO's advanced consent)to use the following termination clause:

> If the TENANT decides to remove its diplomatic establishment from [city], or to change the grade thereof, or acquires its own property in [city], or to substantially reduce its personnel from the present level, or if the employee assigned to the leased premises is transferred, the TENANT shall be at liberty to terminate this Lease upon giving the LANDLORD 90 days' written notice. The LANDLORD is entitled to receive rental payments through the termination date when the TENANT shall surrender the Premises, but has no right to any other payment related to the termination.

Please be sure to note that this termination for convenience provision is not a reciprocal provision. If OBO were to agree that the landlord has this same right of termination, then any lease containing such right would essentially be enforceable only for the length of the notice period.

If a landlord requests an explicit right to terminate, a post may only agree to language giving the landlord such right in the event that the tenant commits a material breach of the lease, is given notice and has a reasonable opportunity to correct such breach. Posts should consult with OBO before accepting any such language.

B. The rebate clause, requiring a pro rata refund for rent payments made for periods after the premises are surrendered, should be included in all leases and is required for leases where the rent is paid more than 3 months in advance.

For functional space where large advance payments are required, effort must be made to obtain a bank guarantee, surety bond, or the first lien on realty to assure a pro rata rebate in case the lease is terminated before its rent is earned. If a guarantee cannot be obtained, the reasons for its absence must be explained and retained in the post's lease files.

ARTICLE FIFTEEN: DISPUTES RESOLUTION.

A. Often times a landlord will insist, or local law will require, that a local language version of the lease be executed. This is acceptable; however, post should **always** insist that an English language version of the lease also be executed. This lease provision ensures that, in the event that a non-English language version of the lease is signed, the English language version will prevail in the event of a conflict between the two. If local law requires (or a landlord demands) that the non-English version of the lease prevail in the event of conflict (or that the English and non-English versions be given equal weight), post must obtain a certified translation of the non-English version of the lease before executing the lease.

B. The Contract Disputes Act (CDA), set out in relevant part in Article Fifteen, must, by law, be included in all U.S. Government leases, unless the other party is a foreign government, governmental agency or international organization, or the post receives a special waiver from the OBO Director. **Thus, Posts must do their very best to negotiate the CDA language into all leases.**

If a post has difficulty including this clause, it must notify OBO/PRE/BAS immediately of the full circumstances involved in negotiating this particular clause. It is possible for the OBO Director to waive this clause where necessary, but such waiver should only be requested after post has presented the language to the landlord and vigorously argued for its inclusion in the lease and, even then, only if the totality of circumstances warrant it. The disputes resolution procedure mandated by the CDA is very cost-effective when compared to alternatives, so waiver of the clause should be regarded as a major step not to be undertaken solely because the lease terms are otherwise advantageous. If leases for suitable alternative properties are available at reasonable prices with landlords who will accept the standard CDA clause, then negotiating with those landlords is the recommended course of action.

If the circumstances do warrant requesting a waiver of the CDA clause, OBO can assist post in drafting alternative disputes resolution language and appropriate waiver documentation for evaluation and signature by the OBO Director.

In the event that this clause is not acceptable under local law, a post must obtain a full legal opinion from local legal counsel and submit that to OBO and L/BA along with the request for a blanket waiver from use of this clause. If such a blanket waiver is granted, with the approval of the OBO Director, then the post will not have to apply for CDA waivers for individual properties going forward.

If the clause does not apply (as in the case of a contract with a foreign government) or if it has been waived, for an essential property, L/BA recommends the inclusion of the following language in place of the model Article 15(B):

Any disputes arising between the Parties hereto concerning this Lease that cannot be resolved in negotiations between the LANDLORD and TENANT shall be referred to a court of competent jurisdiction.

Other alternatives such as referring disputes to an arbitral body or deleting the disputes resolution clause in its entirety may be acceptable in certain circumstances. However, posts should consult with OBO and L/BA before suggesting any particular nonstandard formulation as there are substantial costs associated with arbitration and the lack of a specified disputes resolution mechanism can cause confusion in lease administration.

Under NO circumstances may a lease include language that submits the United States to the jurisdiction of a particular foreign court. Indeed, the Department of State has no authority to submit the U.S. Government to the jurisdiction of a particular local court as such submission is tantamount to waiving the U.S. Government's sovereign immunity. Posts should make potential landlords aware that the inclusion of such language (e.g., "All disputes hereunder will be resolved by the courts of Country X") is an absolute deal-breaker.

ARTICLE SIXTEEN: CHOICE OF LAW. The purpose of this clause is to state which substantive law will be used in construing the terms of the lease. Keep in mind that agreeing to have local law govern the interpretation of the terms of the lease is NOT the same as submitting to the jurisdiction of the local courts in case of a dispute (see instructions to Article 15).

While the law governing the terms of the lease is typically the law of the country and local area in which the property is located (the "situs" of the property), there may be valid reasons for selecting the law of an alternative country, or for leaving the Article out entirely. Before deleting or replacing the model lease provision, posts must consult with OBO and L/BA.

ARTICLE SEVENTEEN: SCOPE OF AGREEMENT AND LEGAL CONSTRUCTION. These provisions are important to the legal interpretation of the lease and must not be modified without approval from L/BA.

ARTICLE EIGHTEEN: NOTICES. If there are registered, certified mail, or return receipt requested procedures available at a post, the post should specify the type of mail service required. If there is no adequate mail service, posts must specify hand delivery.

Article 18(B) is legally required. A post cannot agree to receive legal service of process other than through the Ministry of Foreign Affairs in accordance with customary international law. For any legal service of process received by a post, the post must immediately notify the Office of the Assistant Legal Adviser for Diplomatic Law and Litigation (L/DL) of the circumstances involved that occasioned the notice so that L/DL can instruct posts on appropriate procedures to be followed.

ARTICLE NINETEEN: CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. Recent legislation requires that this "anti-lobbying" article be included in all real estate contracts (other than deeds) whose value exceeds U.S. $100,000. For leases, post should look to the annual payments, including rent, operating expenses, and all other costs, to determine whether the U.S. $100,000 threshold has been met. Thus, if the annual payment is greater than U.S. $100,000, this clause must be included. The article may be deleted for contracts with a value less than U.S. $100,000.

If a post encounters resistance to the inclusion of this clause, it must notify

the OBO/PRE/BAS immediately of the full circumstances, and OBO will provide further explanation for the post to pass on to the prospective landlord. In certain unusual circumstances, the OBO Director may be able to waive the inclusion of this clause; a post should consult L/BA about this possibility only if there are absolutely no alternatives and the property is essential.

SIGNATURES: If local law and custom so suggest, the post may wish to have two witnesses sign the lease document. Witness signatures are not required.

15 FAM EXHIBIT 341(2)
MODEL STANDARD LEASE

(CT:OBO-29; 03-29-2012)

Posts must read through the model standard lease in its entirety and all the instructions before drafting and negotiating any lease.

MODEL STANDARD LEASE

Lease No.: _________________

Fiscal Data: __________________

LEASE AGREEMENT

between

____

and

THE UNITED STATES OF AMERICA

ARTICLE ONE: PARTIES

This lease (hereinafter the "Lease") is entered into this _____ day of _________________, 20__, by [name and address of Lessor], for himself/herself/itself, his/her/its heirs, executors, administrators, successors and assigns, hereinafter referred to as "the LANDLORD," and the United States of America, acting by _________________of the Embassy/Consulate General/Consulate/USAID Mission of the United States of America at _________________, hereinafter referred to as "the TENANT" and, together with the LANDLORD, as "the Parties."

ARTICLE TWO: DESCRIPTION OF PREMISES

A. The LANDLORD hereby leases to the TENANT the following described Premises and their appurtenances (hereinafter the "Premises") to be used as a United States diplomatic establishment and for such other purposes as the TENANT may desire:

1. Legal Description: [Official title/deed description]
2. Physical Description: [Actual structures]
3. Size of leased Premises: [in square meters or feet - rentable area as agreed with the LANDLORD, gross area as per FAM, and net area as per FAM, as well as percentage of total rentable building area if relevant]
4. Additional Property: [Nonstructural property, e.g., generators or water tanks]

B. A floor plan of the leased Premises with dimensions, as well as inventories and condition reports of the Premises, including any mechanical or electrical equipment, furniture, and furnishings provided by the LANDLORD, as they now exist, signed by both Parties, are attached to and made part of this Lease.

ARTICLE THREE: LEASE TERM

The term of this Lease shall be for ____ months/years, beginning ____________, 20__, and ending ________________, 20__.

ARTICLE FOUR: LEASE RENEWAL

The Lease is renewable by the TENANT under these same terms and conditions for ___ further period[s] of ___ years, or until [date]. Written notice of the TENANT's intent to renew must be given to the LANDLORD at least ___ days prior to the date the Lease term or any renewal period would otherwise expire.

ARTICLE FIVE: PAYMENT

The TENANT shall pay the LANDLORD for the Premises rented, the operating expenses thereof, and for other services or improvements as follows:

A. The basic annual rent for the leased Premises is _____. It will be paid in annual/monthly/quarterly/semi-annual installments of ____ [choose currency].

B. The initial estimate for annual operating expenses for the leased Premises is ____, and will cover the following services: [see instructions for allowable operating expenses]. It will be paid monthly in equal amounts. In January of each calendar year, the LANDLORD will submit operating expense receipts to an independent accounting firm for auditing, to be completed before the end of February. If the audit reveals that the LANDLORD justifiably paid more in operating expenses than the TENANT remitted during the year, the TENANT will pay the difference. If the audit reveals that the LANDLORD paid less in legitimate operating expenses than it collected from the TENANT, the LANDLORD will refund any excess operating expense funds to the TENANT.

The actual operating expenses of each year, confirmed by the audit, will be the basis for the estimate of operating costs for the subsequent year. These expenses are not subject to any rental escalation.

C. The Parties agree that in exchange for the LANDLORD providing the following improvements:

1. ; and

2. ;

the TENANT agrees to pay the total sum of $____ . This sum will be paid to the LANDLORD over the life of the original Lease term in the amount of $

per month/quarter in addition to and at the same time as the rent payment. These payments are not subject to any rental escalation.

D. All financial obligations of the TENANT resulting from this Lease are subject to the availability of funds appropriated annually by the Congress of the United States of America.

ARTICLE SIX: WARRANTIES

A. The LANDLORD warrants that he/she/it is the sole and lawful owner of the Premises and that he/she/it is duly authorized and able to enter into this Lease and perform its obligations hereunder, and that this Lease and the TENANT's rights hereunder do not and will not conflict with any rights of LANDLORD or any third party or governmental entity. The LANDLORD also warrants that the TENANT shall peaceably enjoy possession of the Premises for the Lease term (and any extensions thereof) without any interruption or disturbance from the LANDLORD or any other person claiming by, from, through, or under the LANDLORD or otherwise. The LANDLORD further warrants that he/she/it will hold the TENANT free and harmless from any and all demands, claims, actions or proceedings by any other party in regard to the leased Premises.

B. The LANDLORD will handle and settle or otherwise dispose of all demands, claims, actions, or proceedings by others in respect of the TENANT's right of quiet possession. If the TENANT has notified the LANDLORD in writing of the demand, claim, action or proceeding, and the LANDLORD has failed to take timely action to handle, settle or otherwise dispose of such demand, claim, action or proceeding, then the TENANT may defend its right to quiet possession, and the LANDLORD agrees to reimburse the TENANT for any and all costs incurred thereby (including, without limitation, all attorney's fees and costs) as soon as practicable after the TENANT's presentation of its claim for such expenses.

C. The TENANT warrants that the person executing this Lease on its behalf has all requisite power and authority to enter into this Lease on behalf of the United States of America.

ARTICLE SEVEN: LANDLORD RIGHTS AND RESPONSIBILITIES

A. Right of Entry. For the purpose of maintaining the Premises, the LANDLORD reserves the right to enter the Premises to inspect and make any necessary repairs, so long as such entry is at prearranged times, with the consent of the TENANT, and, at the TENANT's discretion, in the presence of a TENANT employee. The TENANT's consent shall not be unreasonably withheld. The LANDLORD may not, however, gain access to sensitive or secured areas, as determined by the TENANT in its sole discretion.

B. LANDLORD-provided services. The LANDLORD shall furnish or otherwise provide to the TENANT the following services during the Lease term: _________________. These services will be provided at no additional cost to

the TENANT.

C. Maintenance Responsibilities. The LANDLORD shall, at his/her/its own cost and expense, be responsible for all significant maintenance, structural work, and repairs to the Premises, including, but not limited to, maintenance and repair of structural elements and systems such as walls, ceilings, roofs, floors, foundations, heat, ventilating and air-conditioning systems, elevators, escalators, plumbing and related fixtures, LANDLORD-supplied generators, water filtration systems, and fire protection systems. (As per Article 8(B), the TENANT is only responsible for such minor maintenance as trash removal and light bulb replacement, as required to fulfill its obligation to keep the Premises in good repair and tenantable condition.) The LANDLORD acknowledges that fulfillment of all of its obligations hereunder, including keeping the building, its systems, and all common and external areas thereof in good repair and tenantable condition, are essential to making the Premises appropriate for use by the United States of America.

[If the Premises are within a multi-tenant unit, or bordered by sidewalks and/or parking spaces, see instructions for additional language.]

D. Responsibility for Damages. The LANDLORD will be responsible for any damages caused by the breakdown of any building systems or any failure to maintain the common areas of the Premises. The LANDLORD accepts full and sole responsibility for any claim arising in connection with damage or injury sustained through the use of public entrances, stairways, elevators, hallways and conveniences. The LANDLORD shall not be responsible for interruptions in utilities, beyond LANDLORD's control, supplied by municipal sources.

E. Emergency Repairs. The LANDLORD agrees to commence, carry out, and complete, at its sole expense, emergency repairs within 48 hours after receiving oral or written notice from the TENANT of the need for repairs. For repairs that cannot be completed within 48 hours, the LANDLORD agrees to present a completion schedule for acceptance by the TENANT. For any emergency repairs that the LANDLORD does not handle in this manner, the TENANT may undertake the repair at the LANDLORD's sole expense. Any funds expended by the TENANT in this regard shall be deemed prepaid rent toward the next rental payment and such rental payment shall be reduced by the same amount. If all rental payments have been made, or the amount expended exceeds the rental payment, the LANDLORD will make a direct refund to the TENANT.

F. Taxes, Fees, and Assessments. The LANDLORD accepts full and sole responsibility for the payment of all fees, taxes, levies, duties and other charges of a public nature that are or may be assessed against the property, including all use, ownership, and property taxes. Further, all expenses, if any, incurred in connection with the execution or registration of this Lease, including without limitation, notarial charges, registration charges,

transaction taxes, stamp duties or other fiscal charges shall be paid by the LANDLORD.

G. Registration. If local law permits the LANDLORD to register this Lease, he/she/it warrants that he/she/it will do so at his/her/its sole expense, and, if so required by the TENANT in writing, he/she/it will provide the TENANT proof of registration within a reasonable time following the execution of this Lease or extensions thereof.

H. Claims. The LANDLORD accepts full and sole responsibility for any claims arising from the TENANT or from third parties for damage or injury sustained when the LANDLORD has failed to maintain or repair the Premises or any systems or common areas as required by this Lease. The LANDLORD also accepts responsibility for damage or injury sustained by TENANT or third parties and resulting from the negligence or willful acts of the LANDLORD, LANDLORD's agents, or employees.

ARTICLE EIGHT: TENANT RIGHTS AND RESPONSIBILITIES

A. The TENANT shall have the right, during the existence of this Lease, to erect structures, additions and signs, to make alterations, and to attach fixtures in or upon the Premises. This includes the right to affix a flagstaff, a U.S. flag, a U.S. seal, and office signs and insignia on the Premises leased. Such fixtures, additions, or structures placed in or upon or attached to the said Premises shall be and remain the property of the TENANT and may be removed before, at the time of, or within a reasonable time after the Lease or any extension thereof expires or is terminated.

B. The TENANT shall, unless specified to the contrary, maintain the said Premises in good repair and tenantable condition, including minor maintenance such as trash removal and light bulb replacement, during the continuance of this Lease, except for reasonable and ordinary wear and tear, damage by the elements, or other circumstances not under the TENANT's control. Any damage arising from the intentional acts or negligence of the LANDLORD, its agents or employees, or any other third parties not under LANDLORD's or TENANT's control, is similarly excepted.

ARTICLE NINE: ASSIGNMENT AND SUBLEASE

A. The TENANT may at any time assign its interest in the Premises or any portion thereof or sublet the Premises or any portion thereof to any party without the prior consent of the LANDLORD.

B. If the LANDLORD intends to assign its rights and responsibilities under the Lease to a third party, or if the LANDLORD intends to transfer its interest in the property to a third party by any method, the LANDLORD shall give to the TENANT written notice of the identity of such third party at least 90 days before to the transfer or assignment. The TENANT agrees to keep this information confidential until after the transfer is complete. The TENANT may, within 90 days of receipt of the notice, terminate the Lease.

ARTICLE TEN: PURCHASE OPTION

A. The LANDLORD hereby grants to the TENANT, in consideration of this Lease and the rental rates agreed to above, a firm option to purchase, in fee simple absolute and free of all encumbrances, the Premises covered by this Lease, including land, improvements and all appurtenances. The entire purchase price is ________.

B. The decision to exercise the option to purchase is at the sole discretion of the TENANT, and shall not be construed to create any obligation by the TENANT to purchase the property under any circumstances, or to create any right in the LANDLORD to compel a sale.

C. This option to purchase shall continue open and in full force for the Lease term and any renewals thereof. If and when the TENANT exercises the said option to purchase, the LANDLORD covenants and agrees to convey to the United States of America an unencumbered fee simple absolute title (complete and perpetual ownership) to the Premises covered by this Lease, including the land, improvements and all appurtenances, by deed with covenant of warranty and covenant against encumbrances.

ARTICLE ELEVEN: INSURANCE

A. The LANDLORD shall bear responsibility for all risk of loss of or damage to the Premises for the entire term of this Lease arising from any causes whatsoever, other than TENANT fault, including but not limited to: fire; lightning; storm; tempest; explosion; riot; civil commotion; malicious or criminal acts of destruction; bursting or overflowing of water tanks, apparatus or pipes, boiler or machinery; flood; labor disturbance; earthquake; and any other casualty or Act of God.

B. The LANDLORD shall adequately insure the property against all risks enumerated above and all risks normally covered under standard property insurance. The LANDLORD shall also carry adequate personal injury and liability insurance to cover all risks for which he/she/it is responsible hereunder. Evidence of the LANDLORD’s insurance coverage shall be furnished to the TENANT within 21 days after the parties sign the Lease, and the TENANT reserves the right to ask in intervals thereafter for proof that the policy remains in force; the TENANT may withhold rent until the LANDLORD provides such proof.

C. Each party, respectively, shall be liable for damages to the leased Premises caused by its own fault or negligence, or that of its agents or employees.

ARTICLE TWELVE: DESTRUCTION OF PREMISES

A. Whenever the Premises or any essential part thereof shall be destroyed or rendered unfit for further tenancy through fire, vandalism, earthquake, flood, storm, war, civil disturbance, Act of God, or other similar casualty, this

Lease shall, at the option of the TENANT, immediately terminate upon provision of written notice to the LANDLORD. In the event of such termination, no rent shall accrue to the LANDLORD after he/she/it receives the TENANT's written notice.

B. If the Lease is terminated, the LANDLORD shall within 45 days of termination refund any advance rental payments in excess of rental liabilities accrued to the date of termination.

C. In case of partial destruction or damage to the Premises from the above-described causes, the TENANT may terminate this Lease only in part at its option and remain in the portion of the Premises that remains tenantable. Should the TENANT elect to remain in Premises rendered partially untenantable, a proportionate rebate or reduction of prevailing rental payments will be allowed and will be reflected in an amendment to this Lease to be signed within 2 months after the damage occurs.

ARTICLE THIRTEEN: LANDLORD's DEFAULT

In the event the LANDLORD fails to fulfill any of its obligations under this Lease ("default"), and where this Lease specifically provides no other remedy for such failure, the TENANT is entitled either to terminate this Lease, or, at its option, to take any measures which it deems necessary to establish the conditions contemplated by this Lease at the entire expense of the LANDLORD, including offsetting rental payments against any cost incurred by the TENANT due to LANDLORD default. The TENANT will provide written advance notice to the LANDLORD of its intention to take action in accordance with this Article.

ARTICLE FOURTEEN: TERMINATION

A. The TENANT may, for its convenience, terminate this Lease in whole or in part at any time, if it determines that such termination is in the best interests of the TENANT, by giving written notice to the LANDLORD 30 days in advance. If the TENANT terminates this Lease in accordance with this clause, the TENANT shall not be liable for any charges additional to those normally incurred up to the date the Lease is terminated.

B. The LANDLORD further agrees to make a pro rata refund of any rent payments made for periods beyond the date the TENANT surrenders the Premises in pursuance of any of the TENANT's termination rights as contained in this Lease.

ARTICLE FIFTEEN: DISPUTES RESOLUTION

A. In the event that any disputes arise concerning the text of this Lease, the English language version controls.

B. Any disputes arising between the Parties hereto concerning this Lease that cannot be resolved in negotiations between the LANDLORD and TENANT, shall be settled in accordance with the dispute settlement

provisions that follow:

1. This Lease is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 7101 et seq.) (the "Act"). Except as provided in the Act, all disputes arising under or relating to this Lease shall be resolved exclusively under this Article; the Parties hereby waive any right they might have to bring suit in respect of any disputes or claims arising under or relating to this Lease.

2. "Claim," as used in this Article, means a written demand or written assertion by the LANDLORD or TENANT seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of the Lease terms, or other relief arising under or relating to this Lease. A "claim arising under the Lease," unlike a claim relating to the Lease, is a claim that can be resolved under an article of this Lease that provides for the relief sought by the claimant. However, a written demand or written assertion by the LANDLORD seeking the payment of money exceeding U.S. $100,000 is not a claim until certified as required by subparagraphs 4(A) through 4(D) of this Article. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this Article, if it is disputed either as to liability or amount or is not acted upon within a reasonable time.

3. A claim by the LANDLORD shall be made in writing and submitted within 6 years after accrual of the claim to the TENANT's Contracting Officer for a written decision. A claim by the TENANT against the LANDLORD shall be subject to a written decision by the TENANT's Contracting Officer.

4. (A) The LANDLORD shall provide the certification specified in subparagraph 4(C) of this Article when submitting any claim exceeding U.S. $100,000; or regardless of the amount claimed, when using Arbitration conducted pursuant to 5 U.S.C. 575-580 or any other alternative means of dispute resolution ("ADR") technique that the TENANT elects to handle in accordance with the Administrative Dispute Resolution Act ("ADRA") (5 U.S.C. 571 et seq).

   (B) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

   (C) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and

belief; that the amount requested accurately reflects the Lease adjustment for which the LANDLORD believes the TENANT is liable; and that I am duly authorized to certify the claim on behalf of the LANDLORD."

(D) The certification may be executed by any person duly authorized to bind the LANDLORD with respect to the claim.

5. For LANDLORD claims of U.S. $100,000 or less, the TENANT's Contracting Officer must, if requested in writing by the LANDLORD, render a decision within 60 days of the request. For LANDLORD-certified claims over U.S. $100,000, the TENANT's Contracting Officer must, within 60 days, decide the claim or notify the LANDLORD of the date by which the decision will be made.

6. The TENANT's Contracting Officer's decision shall be final unless the LANDLORD appeals or files a suit as provided in the Act.

7. If the claim by the LANDLORD is submitted to the TENANT's Contracting Officer or a claim by the TENANT is presented to the LANDLORD, the Parties, by mutual consent, may agree to use Alternate Dispute Resolution (ADR). If the LANDLORD refuses an offer for Alternate Dispute Resolution, the LANDLORD shall inform the TENANT's Contracting Officer, in writing, of the LANDLORD's specific reasons for rejecting the request. When using arbitration is conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph 4(C) of this Article, and executed in accordance with subparagraph 4(D) of this Article.

8. The TENANT shall pay interest on the amount found due and unpaid from:

(A) The date the TENANT's Contracting Officer receives the claim (certified if required); or

(B) The date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the TENANT's Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, as fixed by the U.S. Secretary of the Treasury as provided in the Act, which is applicable to the period during which the TENANT's Contracting Officer receives the claim, and then at the rate applicable for each 6-month period as fixed by the U.S. Secretary of the Treasury during the pendency of the claim.

9. The LANDLORD shall proceed diligently with performance of this

Lease, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Lease, and comply with any decision from the TENANT's Contracting Officer.

10. In the event that both Parties have complied fully with all the provisions of this Article, but one of the Parties is dissatisfied with the final decision, the aggrieved Party may, at its option, either appeal the decision to the U.S. Civilian Board of Contract Appeals, or file a suit in the U.S. Court of Federal Claims.

ARTICLE SIXTEEN: CHOICE OF LAW

The terms of this Lease shall be construed in accordance with the local laws governing the situs of the Premises leased hereunder.

ARTICLE SEVENTEEN: SCOPE OF AGREEMENT AND LEGAL CONSTRUCTION

A. This Lease cancels all other agreements that the Parties may have previously entered into which relate to the Premises, and this written agreement constitutes the entire understanding of the Parties.

B. Oral discussions and representations made during negotiation of this Lease shall not be construed to be terms of this Lease.

C. Any changes, additions, variations, or modifications of the terms of this Lease shall not be valid unless made in writing and signed by both Parties hereto. For the purposes of this paragraph, only the signature of the *(*Principal Officer, General Services Officer, Management Officer, USAID EXO, or Mission Director) at the U.S.Embassy/USAID Mission in ______________ shall be deemed valid and binding as against the TENANT.

D. Neither failure of either Party to insist upon strict performance of any agreement, term, covenant, or condition hereof, nor failure of either Party to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any breach or a waiver of such agreement, term, covenant, or condition in the future.

E. An invalidation of one of the clauses of this Lease agreement shall not be grounds for invalidation of any other clauses.

ARTICLE EIGHTEEN: NOTICES

A. All notices under this Lease agreement, other than legal service of process, shall be delivered to the persons at the addresses set forth below:

For the LANDLORD: For the TENANT:

________________ ________________

Address (Title, i.e., General Services Officer,

Management Officer, Executive
Officer, Mission Director) at U.S.
Embassy/Consulate General/
Consulate/USAID Mission
Address

B. Legal service of process upon the TENANT shall be made through the Ministry of Foreign Affairs in accordance with customary international law.

ARTICLE NINETEEN: CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(A) The LANDLORD, by signing this Lease, hereby certifies to the best of his/her/its knowledge and belief that on or after December 23, 1989:

(1) No appropriated funds of the United States Government have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a member of the United States Congress, an officer or employee of the United States Congress, or an employee of a Member of the United States Congress on the LANDLORD’s behalf, in connection with the award of any United States Government contract (including this Lease), the making of any United States Government loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any such contract, grant, loan, or cooperative agreement.

(2) If any funds other than United States Government appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a member of the United States Congress, an officer or employee of the United States Congress, or an employee of a Member of the United States Congress, on the LANDLORD’s behalf in connection with this Lease, the LANDLORD shall complete and submit to the Contracting Officer, prior to the execution of this Lease, OMB Standard Form LLL, Disclosure of Lobbying Activities.

(3) The LANDLORD will include the language of this certification in any contract awarded by LANDLORD to fulfill LANDLORD’s obligations under this Lease that exceeds U.S. $100,000, and will require that all recipients of such contract awards shall certify and disclose accordingly.

(B) Submission of this certification and disclosure is a prerequisite for

making and entering into this Lease imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than U.S. $10,000, and not more than U.S. $100,000, for each such failure.

SIGNATURES

IN WITNESS WHEREOF, the Parties have affixed their signatures this ______day of ________________, 20__.

LANDLORD: TENANT:
(Typed Name) United States of America

By ________________ By ________________
(Typed Name) (Typed Name)
(Title, i.e., General Services Officer, Management Officer, Executive Officer,

Mission Director) at U.S. Embassy/

Consulate General/Consulate/USAID

Mission

15 FAM EXHIBIT 342
LEASE AMENDMENT

(CT:OBO-29; 03-29-2012)

(**Amend, as appropriate, for use with USAID leases**.)

Amendment No. __________to
Lease No.
Date
Post
PropID

(1) Reference is made to Lease Number ____________ entered into on (Date) , (Year)_ between (Name of LANDLORD) __ , LANDLORD, and the United States of America, acting by (Name and Title of Officer) , TENANT, for (Type of Space) ________ at (Address) , and amendments to such Lease if any.

(2) In consideration of the LANDLORD providing ________ square feet of additional space, the TENANT hereby agrees to pay additional rent in the amount of ___________(quarterly, annually) commencing on (Date), (Year).

(or)

The LANDLORD hereby grants permission to the TENANT to install (air-conditioning, grill bars, shelving, kitchen sink, sanitary facilities, etc.) in the above-mentioned Premises, such installations to remain the property of the TENANT, subject to removal upon termination of the said Lease without obligation to restore the Premises to original condition.

(or)

Article of said Lease is hereby amended to provide for maintenance of the Premises by the TENANT for which the rent shall be reduced to ____________ annually, effective (Date), (Year).

(or)

Whereas, Article ________ of said Lease now reads " _________________," it is deemed in the best interest of both Parties that it be changed to read " __________________________" as of the date of signing this Agreement.

(3) Therefore, it is agreed by and between the LANDLORD and the TENANT that the referenced Lease is hereby amended as indicated in (2) above, all other provisions of the said Lease remaining the same and

unchanged.

In witness thereof, the Parties have hereunto subscribed their names this __day of (Month), (Year).

The United States of America, Acting By:

(Name and Title) TENANT

(Name, Title, and Address) LANDLORD

15 FAM EXHIBIT 344 TERMINATION AND ACQUITTANCE AGREEMENT

(CT:OBO-29; 03-29-2012)

Date ___________________________________
Post ___________________________________
Lease No. ______________________________
PropID _________________________________

(1) Reference is hereby made to Lease number _____________ dated (Date), (Year) and Amendments, between (Name of LANDLORD) ___ as LANDLORD and the United States of America as TENANT, providing for the Lease of the following described Premises:

(Brief description of Premises with street address)

(2) The Lease on the above Premises is considered cancelled and terminated effective (Date), and the LANDLORD hereby acknowledges that the Premises (and furnishings) were returned by the TENANT to the LANDLORD on (Date) __, in a condition acceptable to the LANDLORD, free of any and all claims against the United States Government or any agency, agent, or employee thereof.

(3) In witness thereof both the Parties have hereunto signed as of the date given below:

DATED AT (Post) this day of (Month) , (Year).

The United States of America, Acting By:

(Name and Title) TENANT

(Name, Title, and Address) LANDLORD