

TASK FORCE REPORT  
"LEASING OF HISTORICAL PROPERTY FOR APPROPRIATE USE"

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AN ACT TO PERMIT THE LEASING OF HISTORICAL PROPERTIES OWNED BY THE NATIONAL PARK SERVICE FOR ADAPTIVE OR OTHER APPROPRIATE USE.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that Congress finds and declares:

The Secretary of the Interior is authorized to permit buildings or land of historical or architectural significance, owned by the National Park Service, to be leased to private parties for certain appropriate uses, including adaptive use, subject to controls protecting their historical and architectural integrity.

Privileges, leases, and permits granted by the Secretary of the Interior for the use of structures or land of historical or archeological significance, owned by the National Park Service, pursuant to the provisions of this Act may provide for the maintenance and repair of such structures or land by the grantee notwithstanding the provisions of the Act of June 30, 1932 (47 Stat. 41, 40 U.S.C. 303b) or any other provision of law. Any moneys derived from the rentals of such properties, or for services provided by the National Park Service in connection therewith, shall be retained by the Park in which the property is located in a specially designated account to be used for historical preservation purposes and the costs associated with the administration of both the leases and the preservation activities. These funds would be expended according to the following priorities:

1. for the long-term maintenance or restoration of the leased property or for work relating to its adaptive re-use.
2. for the long-term maintenance or restoration of adjacent or associated historical properties within the Park boundaries.
3. for the long-term maintenance or restoration of other historical properties within the Park boundaries.

Should the moneys generated by the rents be more than is required for preservation purposes within a Park, the surplus will be placed in a separate account to be used for long-term maintenance or restoration of historical properties within the appropriate National Park Service region.

Moneys placed in these accounts must be used or budgeted for use on a cyclic basis within a period of five years from the date of deposit or be returned to the Central Treasury at the end of the fiscal year in which that period ends.

As used in this act:

1. the term "historical property" means property eligible for inclusion in the National Register of Historic Places.
2. the term "park" means a field unit of the National Park Service.

## TASK FORCE REPORT

### "LEASING OF HISTORICAL PROPERTY FOR APPROPRIATE USE"

It is estimated from the List of Classified Structures that the National Park Service currently has over 4000 habitable standing historic buildings of National Register calibre under its jurisdiction. Of these, approximately 1000 are used for interpretive purposes. These are structures having a direct association with the primary purpose or theme of the park. Most of the remainder are structures of secondary or tertiary significance. The majority of these have for the most part, either been acquired in the process of land acquisition for newly authorized parks such as at Gateway or Golden Gate, or are structures initially created to serve park or visitor uses and which, with the perspective of time, have come to be viewed as having historical, architectural or scientific significance of their own.

Of the 3000 or so non-interpretive historic structures, about one-half serve utilitarian purposes, either by continuing in their original function, or by virtue of their having been adapted to other uses. This leaves approximately 1500 historic buildings which currently serve no useful purpose. These structures are all on the National Register of Historic Places, or are at least potentially eligible for inclusion thereon. Thus, they all come under the provisions of the National Historic Preservation Act of 1966 and Executive Order 11593, and consequently, the National Park Service is obligated to manage them. There are, of course, provisions within these laws for



the removal of properties from the National Register and subsequent demolition or other form of disposal, but such actions must be thoroughly justified and must receive the approval of both the appropriate State Historic Preservation Office and the Advisory Council on Historic Preservation. As a practical matter, these structures are on the National Register because they have been determined to be historically or architecturally significant by both state and federal officials. Hence, they have been deemed worthy of preservation, and any approval for disposal of historic properties is apt to be contingent on having thoroughly exhausted all other alternatives.

It is the contention of many within the preservation community that the National Park Service has not exhausted all of its alternatives and that as a consequence, many historic resources within its jurisdiction, particularly those that are unoccupied or under-utilized, are being subjected to de facto destruction through deterioration and neglect. Such structures represent a liability to the National Park Service, not only in that they constitute fire, safety and security hazards by being unoccupied, but also in that they drain money and manpower, already in scarce supply, from those historic resources that are being utilized. Furthermore, an unoccupied building deteriorates more rapidly than one that is occupied, thereby requiring more than its share of attention and money while returning little in utilitarian or interpretive value. In actual fact, funding and manpower constraints are such that many structures of primary significance do not receive the full measure of care they deserve. Under-utilized resources often

receive almost no care at all.<sup>1</sup> For the National Park Service, as one of the primary historic preservation agencies in the United States, this is hardly exemplary to the rest of the nation.

One primary means of conserving historic structures, advocated by both federal and non-federal agencies alike, is to put these buildings to some appropriate adaptive use. Of the nearly 1500 under-utilized historic buildings within the National Park Service, about half, or 750, cannot be put to any practical use, due to remote location or unsuitable nature. However, the remainder could be put to some practical and appropriate use which would, at the least, help pay for their own upkeep, and in some fortunate circumstances, perhaps generate additional revenue which could then be applied toward the cost of preserving those historic resources which are not self-supporting. This is seen as a viable alternative to destruction by neglect and one that ought to be considered prior to any attempt at deliberate disposal of that part of our national patrimony which has been entrusted to the care of the National Park Service.

In some cases, utilization of historic buildings would simply mean the resumption of the original use for which they were created. An example of this might be the "Cape Cod Houses" at Cape Cod National Seashore. These structures represent an archetypal form of dwelling indigenous to the United States and as such are an important contribution to the development of American domestic architecture. While

it is therefore important that these structures be preserved, they do not contribute to the predominantly recreational character of the park itself and are therefore currently unoccupied. These houses could be leased to private individuals for residential use under strict covenants prescribing the care and treatment they are to receive. Other structures may have to be physically adapted to new uses while yet preserving the salient features and qualities which give them their historicity. An example here might be the bathhouses at Hot Springs National Park. The City of Hot Springs grew up around these structures and the activities housed therein. As the focal point of the city, the continued preservation of these structures remains important for its visual impact as well as its historical associations. With a drastic decline in the popularity of the bathing industry in recent years, both the Park and its surrounding community have had difficulty in finding a continuing reason d'etre. However, since the exterior appearance of the individual structures and their visual relationship with one another and with the city as a whole represent their principle values, the commercial adaptive use of these structures for convention or recreational use could bring new vitality to the park and community alike. At the same time, this would make the bathhouses financially self-sufficient (or more nearly so) while preserving the principal qualities for which they have been placed on the National Register.

Other opportunities also exist. For instance, the National Park Service already leases historic battlefield sites to farming operations

compatible with the historic character of the site precisely to help maintain that historic character. If the funds generated from such leases were returned to the parks, they could be used to help defray the costs of maintaining the fences, battlements, gun emplacements, monuments, etc. used to depict or otherwise associated with the resource pertains. As desirable as such activities may be, they represent a liability to the park in that fees for such special use activities do not go to the park to cover the costs of facilitating such activities, but accrue instead to the General Fund.

Precedents for this proposal already exist. Public Law 82-212 authorizes Independence National Historic Site to lease buildings acquired in the process of establishment of the Park until such time as they are either demolished or otherwise used for Park purposes, with the funds derived therefrom deposited to a special receipt account and used for the purpose of operating, maintaining and managing the said structures. Public Law 95-625 makes similar provisions for certain structures at Golden Gate National Recreation Area, where the Secretary of the Interior is directed to "deposit all proceeds from rental to the appropriation . . . bearing cost of (their) administration, maintenance, repair and related expenses" provided that all surplus funds be deposited to the General Fund. Public Law 90-401 gives certain areas (primarily recreational areas) under NPS jurisdiction the authority to lease particular structures within their boundaries, but this does not apply to National Parks or Monuments, and the revenue derived therefrom goes to the General Fund rather than back to the

field area, thus providing little incentive on the part of the area manager to utilize this authority.

Accordingly, legislation is hereby proposed, in the form of the attached draft, whereby individual parks may, by lease or other appropriate agreement, allow under-utilized cultural resources to be put to appropriate and compatible continuing use, provided that such agreement "adequately insure the conservation, maintenance, repair, preservation and protection of such property."<sup>2</sup>

Several areas of concern regarding this proposal may be foreseen. These concerns, and the proposed measures for negating or mitigating them, are as follows:

- A. How will properties suitable for such uses be identified? What safeguards can be provided to ensure that inappropriate or incompatible uses are not allowed, or that such uses are not favored over more appropriate interpretive or operational uses, simply for the sake of providing additional revenue?

All historical properties suitable for leasing would be determined through the planning process. General parameters as to appropriate types of uses would also be identified, although specifics might vary according to the individual tenants. All planning documents containing such proposals must first receive the approval of the Advisory Council on Historic Preservation and appropriate State Historic Preservation Officer in accordance with the Programmatic Memorandum of Agreement between the National

Park Service and the Advisory Council on Historic Preservation. Thus, there is provision for unbiased outside professional review of such plans prior to any actual undertaking.

- B. How will such leases or agreements be administered? How will tenants be selected and rates established? Who will do it and what will it cost?

In the selection of a lessee it is important that the proper governmental property management procedures be followed. The United States Army Corps of Engineers finds it convenient to advertise in local news media concerning the availability of property for lease. The National Park Service may follow this procedure also, but it may determine that the appropriate use of the property is so narrowly defined that it would not be necessary to issue a competitive invitation. In the case of a recent acquisition, it might be wise to continue the existing tenant. If there is a significant number of properties, it could be desirable to enter into an agreement with a real estate company that specializes in rental placement.

In selecting a lessee, it is important to establish the appropriateness of the function that will take place on park property. Guidelines for appropriateness might include such items as:

1. Degree of modification required by the tenant
2. Cost benefit to the National Park Service
3. Hazards to National Park Service property
4. Impact on the resource and the visitors
5. Traffic patterns created
6. Esthetics of the operation
7. Consistency with the purpose of the park

8. Service to the visitor
9. Legal, moral, etc. considerations (this will vary with the Region).

It is necessary to establish a fair market price for the property in question. The United States Army Corps of Engineers uses their own personnel to make comparative surveys in order to establish a price. The National Park Service could have one person in each Region that would be responsible for comparative surveys and the establishment of a lease price. In some cases, it may be desirable to hire local professionals to establish a fair market price.<sup>3</sup>

The total price may include direct income to the park, care and expense provided to the property and/or rehabilitation undertaken by the lessee. For example, it would be possible to have a rental rate established by a Regional Lands Office or a contractor of \$300 per month for a specific piece of property. If the person desiring the lease agreed to provide for the operation and maintenance of the property, a value of \$100 per month could be credited for that service. Also, if the lease was for a period of five years and the lessee had made a \$3000 capital improvement (with prior approval by the NPS), then he might be given a \$50 per month credit on the payment. Therefore, the total rental payment for the property might be as follows:

Total rent	\$300
Credit for operation and maintenance	\$100
Credit for improvements	\$ 50
Monthly payment	\$150

It would be possible to formalize the lease by use of the Special Use Permit or even a special agreement, but it seems appropriate that if the National Park Service is to use this process extensively, it would be desirable to create a rental/lease form that would better suit our needs. A copy of forms used by the United States Army Corps of Engineers is attached. (See Appendix I)

C. What safeguards exist to prevent funds generated from this source to finance various and not necessarily cultural resource-related pet projects?

Any income generated by the rental/lease process for an historical property will be placed in a reimbursable account (similar to the present quarters accounts) and used to administer, maintain, operate and restore the property that has generated the income. A portion of the funds could be budgeted and placed in reserve for programmed cyclic maintenance obligations such as painting and re-roofing. If funds are generated beyond the amount required to maintain and operate the building which generates it, then the funds could be diverted to other historical properties in the same park. At the beginning of each fiscal year, an annual operating plan will be prepared by the park and approved by the Regional Director for the amount of anticipated rental income. In this manner the park, the Region, and in some cases the Advisory Council for Historic Preservation through the Section 106 clearance procedure, will have input and review into the



rental/lease process. Hopefully, the successful process will make several of the historic properties in the System self-sustaining.

D. What guarantee exists that OMB will not reduce cultural resource maintenance appropriations by a comparable amount?

None. It will be incumbent upon the National Park Service to work out with OMB appropriate agreements or understandings recognizing that we are already unable to meet our cultural resource preservation needs at current funding levels; that this program is designed to supplement current funding; and that even with such supplementary revenue, it is likely that there will still be insufficient funds to meet all our preservation needs. It should be emphasized that the priorities associated with this proposal should be in the following order:

1. Slow or eliminate the deterioration of historic structures by keeping them occupied and maintained by the occupants.
2. Make them financially self-sustaining if possible.
3. Produce excess revenue which could then be used for the preservation of non-self-sustaining resources.

It should be noted that if only priority 1 were met, without extra cost in manpower or funding to the individual park, the National Park Service would still be significantly ahead of its present level of preservation. Thus, it is believed that this is a sound and usable proposal even if OMB were to insist that all revenue generated thereby must be placed in the General Fund.

E. What provisions will be made to protect the National Park Service against liabilities for periodical injury, property damage, etc.?

The Lessee will be required "to secure and maintain from responsible companies insurance sufficient to indemnify losses connected with or occasioned by (the Lessee's) activities and operations."<sup>4</sup> Such insurance would include, but not necessarily be limited to, the following:

1. Property Insurance. This would apply to improvements, property and equipment owned both by the Lessee as well as by the Government.
2. Public Liability Insurance.
3. Other insurance as may be appropriate such as Automobile Liability, Liquor Liability, Workers Compensation, etc.

All such insurance would "provide that the (Lessee) and the United States of America are jointly insured as their interest may appear."<sup>5</sup>

The Lessee would further be requested to "save, hold harmless, and indemnify the United States of America, its agents and employees for losses, damages, or judgments and expenses on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made, arising out of the activities of the (lessee), his employees, subcontractors, or agents under the contract."<sup>6</sup>

To summarize, the primary objective of this proposal is to slow or halt the rate of deterioration of unoccupied or under-utilized historic buildings by ensuring that they are utilized, thereby receiving a measure of care and attention that they do not now receive. Secondly, it is hoped that the revenues from such utilization would make these buildings self-sustaining, thus making funds currently expended on their upkeep available for those resources that are not self-sustaining. Thirdly, if in some cases more revenue is generated than is required for self-sustenance, these excess funds could also be applied toward the upkeep of resources that are not self-sustaining.

Authority for such utilization already exists, but little incentive exists for implementation, because the cost of administering such a program is not recoverable by the park incurring such costs. However, precedents exist for the responsible administration of such a program at the park level, and adequate safeguards exist to protect the resource and prevent abuses. The ability to ensure the continued preservation of such under-utilized historic buildings would do much to set standards for such use by other agencies and to encourage by example this method of preservation by both public and private sectors alike. More importantly, it would give the National Park Service the flexibility to make every reasonable effort to protect all the cultural resources entrusted to its care.

## FOOTNOTES:

1. It is estimated that the maximum amount for all underutilized historic buildings in F.Y. 1980 would be approximately \$750,000. It is also estimated from figures derived from the List of Classified Structures (LCS) that these same structures require approximately \$75,000,000 to bring them to maintenance standard. Thus, we will meet only 1% of our total needs in F.Y. 1980. It should also be noted that these figures represent treatment costs only. No figures are included here for cyclic or annual maintenance, but it is probable that these funds are equally deficient.
2. H.R. 5496, "A Bill to Amend the Historic Preservation Act of 1966, and for other Purposes," September 28, 1979, p. 53.
3. Until recently the National Park Service had an office in the Denver Service Center whose function was to establish fair market values for those structures occupied by NPS employees throughout the Service. Prior to its being disbanded, Betsy Cookson of that office indicated that this represented approximately 4700 units. It had been suggested that office might have been attempted to establish a fair market value for these properties as well. She indicated that they probably could have, and that since that office had been slightly over-staffed, they could probably have handled the additional 750 or so structures at no additional cost to the Park Service. It is estimated by the Office of the Associate Director for Administration that the cost of handling this function by contract will be \$250,000. If an additional 750 structures were added to such a contract, it would result in an additional 17% to that cost, or \$42,500. If handled in this manner, the parks with a large number of such structures (i.e., Gateway and Golden Gate) might require an additional position to handle these accounts, but most parks should be able to handle them with existing staff.
4. "Standard Language for Concession Contracts," National Park Service, September 1, 1979, p. 40.
5. Ibid, p. 41.
6. Ibid, p. 44.

## DEPARTMENT OF THE ARMY

## LEASE

## RIVER AND HARBOR OR FLOOD CONTROL PROPERTY

ON

No.

*THIS LEASE, made between the Secretary of the Army, of the first part, and*

*of the second part, WITNESSETH:*

*That the Secretary of the Army, by virtue of the authority contained in Title 10, United States Code, section 2667, and for the consideration hereinafter set forth, hereby leases to the party of the second part, hereinafter designated as the lessee, for a term of beginning , 19 , and ending , 19 but revocable at will by the Secretary of the Army, the following described property for purposes:*

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

- 1. That the lessee shall pay to the United States rental in the amount of (\$ ) per annum, payable in advance, and the lessee shall also pay to the United States on demand any sum which may have to be expended after the expiration, revocation, or termination of this lease in restoring the premises to the condition required by Condition No. 23 hereof. Compensation shall be made payable to the Treasurer of the United States and forwarded by the lessee direct to*

2. That in addition to the land-use regulations to which reference is made in Condition No. 20 of this lease, the use and occupation of the property leased hereby shall be subject to the general supervision and approval of the officer having immediate jurisdiction over said property, hereinafter referred to as "said officer", and to such rules and regulations regarding ingress, egress, safety, sanitation, and security as may be prescribed by him from time to time.

3. That, as of the commencement date of this lease, an inventory and condition report of all personal property and improvements of the Government included in this lease shall be made by a representative of the Government and a representative of the lessee to reflect the then present condition of said property. A copy of said inventory and condition report shall be attached hereto and become a part hereof, as fully as if originally incorporated herein. Upon the expiration, revocation, or termination of this lease a similar inventory and condition report shall be prepared and submitted to the said officer, said inventory and condition report to constitute the basis for settlement by the lessee with said officer for leased property shown to be lost, damaged, or destroyed, any such property to be either replaced or restored to the condition required by Condition No. 23 hereof, or at the election of the Government reimbursement made therefor by the lessee at the then current market value thereof.

4. That the lessee has inspected and knows the condition of the leased property and it is understood that the same is hereby leased without any representation or warranty by the Government whatsoever, and without obligation on the part of the Government to make any alterations, repairs, or additions thereto.

5. That, subject to the limitations of Condition No. 23 hereof with respect to the restoration of the leased property, all portions of the leased property shall at all times be protected and maintained in good order and condition by and at the expense of the lessee.

6. That the lessee shall neither transfer nor assign this lease or any property on the demised premises, nor sublet the demised premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this lease without permission in writing from the said officer.

7. That the right is hereby reserved to the United States, its officers, agents, and employees, to enter upon the said premises at any time and for any purpose necessary or convenient in connection with river and harbor and flood-control work, to remove timber therefrom, and to flood the leased premises whenever necessary, and the lessee shall have no claim for damages of any character on account thereof against the United States or any officer, agent, or employee thereof.

8. That the United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the use and occupation of the said premises, or for damages to the property of the lessee, or for injuries to the person of the lessee (if an individual), or for damages to the property or injuries to the person of the lessee's officers, agents, servants, or employees, or others who may be on said premises at their invitation or the invitation of any one of them, arising from or incident to the flooding of the said premises by the Government or flooding from any other cause, or arising from or incident to any other Governmental activities; and the lessee shall hold the United States harmless from any and all such claims.

9. That the lessee shall at all times exercise due diligence in the protection of the demised premises against damage or destruction by fire and other causes.

10. That any property of the United States damaged or destroyed by the lessee incident to the lessee's use and occupation of the said property shall be promptly repaired or replaced by the lessee to the satisfaction of the said officer, or in lieu of such repair or replacement the lessee shall, if so required by the said officer, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason of damages to or destruction of Government property.

11. That the lessee shall cut no timber, conduct no mining or drilling operations, remove no sand, gravel, or kindred substances from the ground, except in the exercise of mineral rights here-



tofore reserved to the record owner thereof, commit no waste of any kind, or in any manner substantially change the contour or condition of the property hereby leased, except changes required in carrying out soil and water conservation measures; but the lessee may salvage fallen or dead timber as may be required for use as firewood.

12. That the lessee shall comply with all applicable laws, ordinances, and regulations of the State, county, and municipality wherein the said demised premises are located, with regard to construction, sanitation, licenses or permits to do business, and all other matters.

13. That the lessee shall not construct any permanent structure on the said demised premises, and shall not construct any temporary structure or advertising sign thereon without the prior written consent of the said officer.

14. That the lessee shall pay to the proper authority, when and as the same becomes due and payable, all taxes, assessments, and similar charges, which, at any time during the term of this lease, may be taxed, assessed, or imposed upon the Government or upon the lessee with respect to or upon the leased premises. In the event any taxes, assessments, or similar charges are imposed with the consent of the Congress upon property owned by the Government and included in this lease (as opposed to the leasehold interest of the lessee therein), this lease shall be renegotiated so as to accomplish an equitable reduction in the rental provided above, which shall not be greater than the difference between the amount of such taxes, assessments, or similar charges and the amount of any taxes, assessments, or similar charges which were imposed upon such lessee with respect to his leasehold interest in the premises prior to the granting of such consent by the Congress; provided that, in the event that the parties hereto are unable to agree, within ninety (90) days from the date of imposition of such taxes, assessments, or similar charges, on a rental which, in the opinion of the said officer constitutes a reasonable return to the Government on the leased property, then, in such event, the said officer shall have the right to determine the amount of the rental, which determination shall be binding on the lessee subject to appeal in accordance with Condition No. 15 of this lease.

15. (a) That, except as otherwise provided in this lease, any dispute concerning a question of fact arising under this lease which is not disposed of by agreement shall be decided by the said officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the lessee. The decision of the said officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the lessee mails or otherwise furnishes to the said officer a written appeal addressed to the Secretary of the Army. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the lessee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the lessee shall proceed diligently with the performance of the contract and in accordance with the said officer's decision.

(b) This Condition does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, that nothing in this Condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

16. That this lease may be terminated by the lessee at any time by giving to the Secretary of the Army, through the said officer, at least ten (10) days' notice in writing provided that, in case of such termination, no refund by the United States of any rental theretofore paid shall be made, and provided further, that in the event the said notice is not given at least ten (10) days prior to the rental due date, the lessee shall be required to pay the rental for the period or term shown in Condition No. 1 hereof.

17. That the lessee shall pay the cost, as determined by the said officer, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the lessee, including the lessee's proportionate share of the cost of

operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the said officer upon bills rendered monthly.

18. That for such period as the lessee is in possession of the leased property pursuant to the provisions and conditions of this lease the lessee shall procure and maintain at the lessee's cost a standard fire and extended coverage insurance policy or policies on the leased property to the full insurable value thereof. The lessee shall procure such insurance from any responsible company or companies. The policy or policies evidencing such insurance shall provide that in the event of loss thereunder the proceeds of the policy or policies, at the election of the Government, shall be payable to the lessee to be used solely for the repair, restoration, or replacement of the property damaged or destroyed, any balance of the proceeds not required for the repair, restoration, or replacement of the property damaged or destroyed to be paid to the Government, and that in the event the Government does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the Government, provided however, that the insurer, after payment of any proceeds to the lessee in accordance with the provisions of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the lessee. Nothing herein contained shall be construed as an obligation upon the Government to repair, restore, or replace the leased property or any part thereof.

19. That no Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company, if the lease be for the general benefit of such corporation or company.

20. That the lessee shall maintain, in a manner satisfactory to the said officer, terraces and other soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed during the term of this lease, and the use of the said leased premises by the lessee shall be in accordance with good soil conservation practices and with the land-use regulations attached hereto and made a part of this lease.

21. That the lessee shall not sell or deal in beer, wine, or any intoxicating liquors on the said leased premises, or permit on the said premises any gambling or games of chance, or install and operate or permit to be installed or operated any device or conduct any activities thereon which in the opinion of the said officer are contrary to good morals or are otherwise objectionable.

22. That the lessee will cooperate in programs for the management and improvement of fish and wildlife and in furtherance thereof the leased premises will be subject to free public use for fishing and hunting. Hunting and fishing are permitted in accordance with all applicable Federal, State and local laws for the protection of fish and game, except in prohibited areas designated by the said officer.

23. That, on or before the date of expiration of this lease or its termination by the lessee, the lessee shall at the lessee's cost vacate the leased property, remove the property of the lessee therefrom, and restore the leased property to as good order and condition as that existing upon the date of commencement of the term of this lease, less ordinary wear and tear and damage to the leased property covered by insurance and for which the Government shall receive or has received insurance funds in lieu of having the damaged property repaired, replaced, or restored. If, however, this lease is revoked, the lessee shall vacate the leased property, remove the property of the lessee therefrom, and restore the leased property to the condition aforesaid within such time as the Secretary of the Army may designate except as otherwise provided in Condition No. 28 hereof. In either event, and except as otherwise provided in Condition No. 28 hereof, if the lessee shall fail or neglect to remove the property of the lessee and so restore the leased property, then, at the option of the Secretary of the Army, the property of the lessee shall either become the property of the United States without compensation therefor, or the Secretary of the Army may cause it to be removed and the leased property to be so restored at the expense of the lessee, and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.



23. (ALTERNATE). That, on or before the date of expiration of this lease, or its termination by the lessee, the lessee shall at the lessee's cost vacate the leased property, remove the property of the lessee therefrom, and restore the premises to as good order and condition as that existing upon the date of commencement of the term of this lease, damages beyond the control of the lessee and due to fair wear and tear excepted. If, however, this lease is revoked, the lessee shall vacate the leased property, remove the property of the lessee therefrom, and restore the leased property to the condition aforesaid within such time as the Secretary of the Army may designate except as otherwise provided in Condition No. 28 hereof. In either event, and except as otherwise provided in Condition No. 28 hereof, if the lessee shall fail or neglect to remove the property of the lessee and so restore the leased property, then, at the option of the Secretary of the Army, the property of the lessee shall either become the property of the United States without compensation therefor, or the Secretary of the Army may cause it to be removed and the leased property so to be restored at the expense of the lessee, and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

24. That if more than one lessee is named in this lease the obligations of said lessees herein contained shall be joint and several obligations.

25. That, except as otherwise specifically provided, any reference herein to "Division Engineer," "District Engineer," or "said officer" shall include his duly appointed successors and his authorized representatives.

26. That all notices to be given pursuant to this lease shall be addressed, if to the lessee, to  
if to the Government, to the

or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when inclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited postage prepaid (or, if mailed by the Government, deposited under its franking privilege) in a post office or branch post office regularly maintained by the United States Government.

27. The lessee 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 lessee for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to require the lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

28. That in the event the United States revokes this lease or in any other manner materially reduces the area covered thereby or materially affects its use by the lessee prior to the date of expiration thereof, an equitable adjustment in the rental paid or thereafter to be paid under this lease shall be made. If the leased premises are used for agricultural purposes, the lessee shall have the right to harvest, gather, and remove from said land such crops as may have been planted or grown on said land, or, in the alternative, the said officer may require the lessee to vacate immediately and, if funds are available, compensation will be made to the lessee for the value of the crops remaining upon said land. Such adjustment of rental or right to harvest, gather, and remove said crops shall be evidenced by a supplemental agreement, in writing, executed by the said officer and the lessee: PROVIDED, HOWEVER, That none of the provisions of this paragraph shall apply in the event of revocation because of a breach by the lessee of any of the terms and conditions of this lease and the crops remaining upon said land shall become the property of the United States upon the effective date of such revocation.

*Before the execution of this lease, conditions were deleted, revised and added in the following manner:*

*IN WITNESS WHEREOF I have hereunto set my hand by authority of the Secretary of the Army this                      day of                      , 19*

*THIS LEASE is also executed by the lessee this                      day of                      , 19*

*Signed and sealed in the presence of:*

_____	_____ [SEAL]
_____	_____ (Post-Office Address)
	_____

DEPARTMENT OF THE ARMY

LEASE

OF PROPERTY ON

MILITARY RESERVATION

No.

*THIS LEASE, made between the Secretary of the Army, of the first part and*

*of the second part, WITNESSETH:*

*That the Secretary of the Army, by virtue of the authority contained in Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the party of the second part, hereinafter designated as the lessee, for a term of*  
*, beginning , 19 ,*  
*and ending , 19 , but revocable at will by the Secretary*  
*of the Army, the following described property for*

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

- 1. That the lessee shall pay to the United States rental in the amount of (\$ ) per annum, payable in advance, and the lessee shall also pay to the United States on demand any sum which may have to be expended after the expiration, revocation, or termination of this lease in restoring the premises to the condition required by Condition No. 20 hereof. Compensation shall be made payable to the Treasurer of the United States and forwarded by the lessee direct to*
- 2. That, as of the commencement date of this lease, an inventory and condition report of all personal property and improvements of the Government included in this lease shall be made by a representative of the Government and a representative of the lessee to reflect the then present condition of said property. A copy of said inventory and condition report shall be attached hereto and become a part hereof, as fully as if originally incorporated herein. At the expiration, revocation, or termination of this lease a similar inventory and condition report shall be prepared and submitted to the Engineer, hereinafter designated as "said officer," said inventory and condition report to constitute the basis for settlement by the lessee with said officer for leased property shown to be lost, damaged, or destroyed, any such property to be either replaced or restored to the condition required by Condition No. 20 hereof, or at the election of the Government reimbursement made therefor by the lessee at the then current market value thereof.*
- 3. That the lessee has inspected and knows the condition of the leased property, and it is understood that the same is hereby leased without any representation or warranty by the Government whatsoever, and without obligation on the part of the Government to make any alterations, repairs, or additions thereto.*
- 4. That, subject to the limitations of Condition No. 20 hereof with respect to the restoration of the property, all portions of the leased property shall at all times be protected and maintained in good order and condition by and at the expense of the lessee.*
- 5. That the lessee shall neither transfer nor assign this lease or any property on the demised premises, nor sublet the demised premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this lease without permission in writing from the said officer.*
- 6. That the right is hereby reserved to the United States, its officers, agents, and employees to enter upon the said premises at any time for the purpose of inspection and inventory and when otherwise deemed necessary for the protection of the interests of the Government, and the lessee shall have no claim of any character on account thereof against the United States or any officer, agent, or employee thereof.*
- 7. That the United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the use and occupation of the said premises, or for damages to the property of the lessee, or for injuries to the person of the lessee (if an individual), or for damages to the property or injuries to the person of the lessee's officers, agents, servants, or employees, or others who may be on said premises at their invitation or the invitation of any one of them, arising from governmental activities, and the lessee shall hold the United States harmless from any and all such claims.*
- 8. That the lessee shall at all times exercise due diligence in the protection of the demised premises against damage or destruction by fire and other causes.*
- 9. That any property of the United States damaged or destroyed by the lessee incident to the lessee's use and occupation of the said property shall be promptly repaired or replaced by the lessee to the satisfaction of the said officer, or in lieu of such repair or replacement the lessee shall, if so required by the said officer, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason of damages to or destruction of Government property.*
- 10. That the lessee shall cut no timber, conduct no mining or drilling operations, remove no sand, gravel, or kindred substances from the ground, except in the exercise of mineral rights heretofore reserved to the record owner thereof, commit no waste of any kind, or in any manner substantially change the contour or condition of the property hereby leased, except changes required in carrying out soil and water conservation measures.*

11. That the lessee shall comply with all applicable laws, ordinances, and regulations of the State, county, and municipality wherein the said demised premises are located, with regard to construction, sanitation, licenses or permits to do business, and all other matters.

12. That the lessee shall not construct any permanent structure on the said demised premises, and shall not construct any temporary structure or advertising sign thereon without the prior written consent of the said officer.

13. That the lessee shall pay to the proper authority, when and as the same becomes due and payable, all taxes, assessments, and similar charges, which at any time during the term of this lease, may be taxed, assessed or imposed upon the Government or upon the lessee with respect to or upon the leased premises. In the event any taxes, assessments, or similar charges are imposed with the consent of the Congress upon property owned by the Government and included in this lease (as opposed to the leasehold interest of the lessee therein), this lease shall be renegotiated so as to accomplish an equitable reduction in the rental provided above, which shall not be greater than the difference between the amount of such taxes, assessments, or similar charges and the amount of any taxes, assessments or similar charges which were imposed upon such lessee with respect to his leasehold interest in the premises prior to the granting of such consent by the Congress; provided that in the event that the parties thereto are unable to agree within 90 days from the date of the imposition of such taxes, assessments, or similar charges, on a rental which in the opinion of the said officer, constitutes a reasonable return to the Government on the leased property, then in such event, the said officer shall have the right to determine the amount of the rental, which determination shall be binding on the lessee subject to appeal in accordance with Condition No. 14 of this lease.

14. (a) That, except as otherwise provided in this lease, any dispute concerning a question of fact arising under this lease which is not disposed of by agreement shall be decided by the said officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Lessee. The decision of the said officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Lessee mails or otherwise furnishes to the said officer a written appeal addressed to the Secretary of the Army. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the Lessee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Lessee shall proceed diligently with the performance of the contract and in accordance with the said officer's decision.

(b) This Condition does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, that nothing in this Condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

15. That this lease may be terminated by the lessee at any time by giving to the Secretary of the Army, through the said officer, at least ten (10) days' notice thereof in writing; provided that, in case of such termination, no refund by the United States of any rental theretofore paid shall be made, and provided further, that in the event the said notice is not given at least ten (10) days prior to the rental due date, the lessee shall be required to pay the rental for the period or term shown in Condition No. 1 hereof.

16. That the use and occupation of the premises leased hereby shall be subject to the general supervision and approval of the officer having immediate jurisdiction over the property and to such rules and regulations as may be prescribed by him from time to time.

17. That the lessee shall pay the cost, as determined by the officer having immediate jurisdiction over the property, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the lessee, including the lessee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the method prescribed by the officer having immediate jurisdiction over the property, upon bills rendered monthly.



18. That for such period as the lessee is in possession of the leased property pursuant to the provisions and conditions of this lease the lessee shall procure and maintain at its cost a standard fire and extended coverage insurance policy or policies on the leased property to the full insurable value thereof. The lessee shall procure such insurance from any responsible company or companies, and furnish either the original policy or policies or certificate of insurance or certificates of insurance to the District Engineer. The policy or policies evidencing such insurance shall provide that in the event of loss thereunder the proceeds of the policy or policies, at the election of the Government, shall be payable to the lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, any balance of the proceeds not required for the repair, restoration, or replacement of the property damaged or destroyed to be paid to the Government, and that in the event the Government does not elect by notice in writing to the insurer within 60 days after the damage or destruction occurs to have the proceeds paid to the lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the Government, provided, however, that the insurer, after payment of any proceeds to the lessee in accordance with the provisions of the policy or policies shall have no obligation or liability with respect to the use or disposition of the proceeds by the lessee. Nothing herein contained shall be construed as an obligation upon the Government to repair, restore, or replace the leased property, or any part thereof.

19. That no Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company, if the lease be for the general benefit of such corporation or company.

20. That, on or before the date of expiration of this lease or its termination by the lessee, the lessee shall at its cost vacate the leased property, remove the property of the lessee therefrom, and restore the leased property to as good order and condition as that existing upon the date of commencement of the term of this lease, less ordinary wear and tear and damage to the leased property covered by insurance and for which the Government shall receive or has received insurance funds in lieu of having the damaged property repaired, replaced, or restored. If, however, this lease is revoked, the lessee shall vacate the leased property, remove the property of the lessee therefrom, and restore the leased property to the condition aforesaid within such time as the Secretary of the Army may designate. In either event, if the lessee shall fail or neglect to remove the property of the lessee and so restore the leased property, then, at the option of the Secretary of the Army, the property of the lessee shall either become the property of the United States without compensation therefor, or the Secretary of the Army may cause it to be removed and the leased property to be so restored at the expense of the lessee, and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

20 (ALTERNATE). That, on or before the date of expiration of this lease or its termination by the lessee, the lessee shall vacate the demised premises, remove the property of the lessee therefrom, and restore the premises to as good order and condition as that existing upon the date of commencement of the term of this lease, damages beyond the control of the lessee and due to fair wear and tear excepted. If, however, this lease is revoked, the lessee shall vacate the premises, remove said property therefrom, and restore the premises to the condition aforesaid within such time as the Secretary of the Army may designate. In either event, if the lessee shall fail or neglect to remove said property and so restore the premises, then, at the option of the Secretary of the Army, said property shall either become the property of the United States without compensation therefor, or the Secretary of the Army may cause it to be removed and the premises to be restored at the expense of the lessee, and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

21. That if more than one lessee is named in this lease the obligations of said lessees herein contained shall be joint and several obligations.

22. That, except as otherwise specifically provided, any reference herein to "Division Engineer", "District Engineer" or "said officer" shall include his duly appointed successors and his authorized representatives.

23. That all notices to be given pursuant to this lease shall be addressed, if to the lessee to

; if to the Government to the

or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when inclosed in a properly sealed envelope, or wrapper, addressed as aforesaid and deposited postage prepaid (or, if mailed by the Government, deposited under its franking privilege) in a post office or branch post office regularly maintained by the United States Government.

24. The lessee 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 lessee for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to require the lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

25. That in the event the United States revokes this lease or in any other manner materially reduces the area covered thereby prior to the date of expiration thereof, an equitable adjustment in the rental paid or thereafter to be paid under this lease shall be made: Provided, however, that this provision shall not apply in the event of revocation because of a breach by the lessee of any of the terms and conditions of this lease.

That prior to execution of this lease conditions were deleted, revised and added in the following manner:

This lease is not subject to Title 10, United States Code, Section 2662.

