

6 FAM 730 LEASED SPACE

(CT:GS-140; 10-04-2004)
(Office of Origin: OBO)

6 FAM 731 AUTHORITY AND SCOPE

6 FAM 731.1 Authority

(CT:GS-140; 10-04-2004)
(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. **General:** The Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 301); 22 U.S.C. 291; the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2396); *and* Delegations of Authority Numbers 114 and 120 (State).
- b. **Post *leasing authority*:** Authority to execute, renew, and amend *real property leases abroad is held by the Director/Chief Operating Officer (DIR/COO) of the Bureau of Overseas Buildings Operations (OBO), through the Secretary of State, under the Foreign Buildings Act of 1926, as amended (22 U.S.C. 292 et seq.). The general services officer or management officer executes leases at post. In the absence of the general services officer or management officer, post must request authorization from the Real Estate and Property Management Office in the Bureau of Overseas Buildings Operations (OBO/REPM) for another embassy officer to sign the lease. Other authority to execute, renew, amend, or assign short term leases for the U.S. Agency for International Development (USAID) is delegated by USAID to mission directors and executive officers per ADS (Automated Directives System) 535.2 and ADS 103.3.21.*

6 FAM 731.2 Scope

(CT:GS-140; 10-04-2004)
(Uniform State/USAID/Commerce/Agriculture/DIA)

This subchapter applies to all short-term leases (STLs) and long-term leases (LTLs), executed in the name of the U.S. Government, of real properties for residential, office, and other functional space for the use of the Department of State, Foreign Affairs Agencies, and other U.S. Government agencies represented at post, and their employees. LTLs are treated as acquisitions

for programming, authorization, and funding purposes, but the documentation for LTL proposals and the LTL contract is governed by leasing regulations in this subchapter. Detailed procedures and guidelines are found in 6 FAM 734 through 6 FAM 738. Questions or comments on these policies and regulations may be directed to *the Real Estate and Property Management Office in the Bureau of Overseas Buildings Operations (OBO/REPM)* for State. *For USAID, contact the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS).*

6 FAM 731.3 Leasehold Management

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. The Bureau of Overseas Buildings Operations (OBO) will provide each post with a funding target for the State program leasehold account based on post's budget submissions (initial baseline plus additional requirements planned). All leases exceeding the target will require notification to and approval by OBO, regardless of size or cost (i.e., even if they are under the \$25,000/year lease waiver ceiling or within usual size limitations).*
- b. Requests for new State program functional (nonresidential) leases will be strictly prioritized and weighed against other requirements, both regionally and worldwide. Posts must provide sound justifications for any new lease requests and be prepared to consider alternatives if funding is not available or is delayed.*
- c. International Cooperative Administrative Support Services (ICASS) lease targets will continue to be provided through the regional bureaus and the ICASS Service Center based on OBO recommendations.*

6 FAM 732 LEASING POLICY

6 FAM 732.1 Long-Term Leasing Authority

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

As single real property manager (SRPM), the Department of State signs lease contracts for and manages all *long-term leases (LTLs)* for U.S. diplomatic and consular missions, with the exception of some USAID leases. LTLs require prior *Bureau of Overseas Buildings Operations (OBO) approval* or, *for USAID leases, the approval of the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W -*

M/OMS).

6 FAM 732.2 Leases for Functional Space

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. Leases of functional space require prior approval by *the Bureau of Overseas Buildings Operations (OBO)* and the funding agency's Washington headquarters. In particular, leasing functional space for the installation of a facility at a new post, relocating a major installation at an existing post, or leasing shared space must be approved by all agencies involved. Posts must submit requests and proposals to *OBO*, the regional bureaus, and the parent agencies, following the procedures outlined in 6 FAM Exhibit 732.2. USAID leases signed by the executive officer or mission director require prior approval by *the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)*; *OBO* approval is not required. (See also collocation policy *in 12 FAH-5, Physical Security Handbook*.)
- b. Property already owned, leased, or otherwise controlled by the U.S. Government must be considered in meeting requirements for functional space before the post leases additional space.

6 FAM 732.3 U.S. Government Leasing and *Living Quarters Allowance (LQA) Programs*

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Posts must obtain *Bureau of Overseas Buildings Operations (OBO)*, regional bureau, and parent agency approval before initiating or reestablishing a U.S. Government-leasing program for residential quarters or a living quarters allowance (LQA) program (see 6 FAM 734).

6 FAM 732.4 Lease Costs and Funding

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

All *long-term leases (LTLs)* should establish fixed rental rates for the entire term of the lease. Funding responsibilities for *short-term leases (STLs)* and LTLs are found in 6 FAM 717, 6 FAM 762.3, and 6 FAM 765.

6 FAM 732.5 Security

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

New and renewed residential leases, including those funded by *living quarters allowances (LQAs)* or *overseas housing allowances (OHAs)*, must meet security guidelines established by the *Bureau of Diplomatic Security (DS)* and must be approved by the *regional security officer/post security officer (RSO/PSO)*; see 12 FAM 330. New and renewed leases for functional space also require approval by the cognizant parent agency's office of security.

6 FAM 732.6 Short-Term Leasing Authority

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. All *short-term leases (STLs)* shall be executed by the post *general services officer or management officer, or by other post administrative personnel as authorized by the Bureau of Overseas Buildings Operations (OBO)*, except for certain USAID-managed leases.
- b. All leased buildings should conform to local structural, safety *and health*, fire, and building codes and/or requirements.
- c. All leases for other agencies require prior parent agency approval (except for certain renewals and Commerce; see paragraphs e and f in this section) and must be executed following the procedures for *Department of State leases*.
- d. Prior *OBO approval* for *Department of State, or the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)* for USAID, is required in the circumstances listed below (see detailed guidelines in 6 FAM 735). The limitation applies to both the Department of State and USAID unless otherwise designated:
 - (1) Rental costs exceed the maximum allowable amount (\$25,000 per annum);
 - (2) The residential space to be leased by the U.S. Government falls outside post's approved housing profile;
 - (3) The lease requires an advance payment that exceeds 12 months (State) or that exceeds 18 months or extends beyond the end of the next fiscal year, whichever is the shorter period (USAID);
 - (4) The lessor has requested offshore payments;

- (5) The lessor will construct or substantially alter leased premises to U.S. Government specifications;
 - (6) The lease contains a nonstandard clause or otherwise substantially deviates from the model lease (6 FAM Exhibit 737.1B);
 - (7) The time period between lease execution and estimated occupancy exceeds three months;
 - (8) Rents to be paid under the lease will be assigned to a third party or other creditor, not the owner;
 - (9) The rent cannot be funded from current post-held allotments;
 - (10) Funding is by another agency that requires prior approval;
 - (11) The lease is for other than residential space (e.g., functional or recreational space);
 - (12) The post has not previously had a residential leasing program, or a previous program was discontinued and is being reestablished;
 - (13) The lease is for 10 years or longer (i.e., is not a short-term lease);
 - (14) The lease is for housing to be used as temporary or transient quarters (new and renewal leases); *and*
 - (15) The lease is for designated residences.
- e. STLs executed for the Department of Commerce (DOC) require prior DOC/Washington approval regardless of cost, except for renewals occurring automatically under the initial lease terms.
- f. STLs executed for the Defense Intelligence Agency (DIA) require prior DIA headquarters (HQ) approval. This requirement applies to all leasing actions abroad including lease renewal and termination.

6 FAM 732.7 Waivers and Approvals for STLs

6 FAM 732.7-1 Leases with Rents Exceeding Allowable Amount

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. **Authority:** Under 22 U.S.C. 301 and Secretary of State Delegation of Authority No. 114, any short-term lease in the name of the United States of America requiring an annual payment in excess of \$50,000 and any lease which will cross the \$50,000 per year threshold during the term of the lease must be approved by the Secretary of State, the Under Secretary for Management (*M*), or the *Director/Chief Operating Officer (DIR/COO), Bureau of Overseas Buildings Operations (OBO)*, and

reported to Congress. By law, this authority cannot be delegated.

- b. **Approval required:** Leases in the name of the United States of America that exceed \$25,000 a year shall continue to require prior approval, notwithstanding the increase to \$50,000 effected by *Public Law* 102-138. Authority to grant approvals or waivers of this requirement is vested in *OBO* for the Department of State for all personnel under the authority of the *chief of mission* (COM), except USAID. *The Overseas Management Support Office in the Bureau for Management, USAID/Washington* (USAID/W - *M/OMS*) will act for USAID when it operates its own housing board at post and/or independently manages its housing and signs its leases. The prior approval requirement applies as well to lease renewals that exceed \$25,000, including leases initially approved. See 6 FAM 735 for procedures for requesting approval.

6 FAM 732.7-2 Residential Leases Exceeding Space Standards

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. **General policy:** Any lease for residential housing must be within the space standards in 6 FAM 724.7 or be justified on the basis of cost effectiveness. These standards apply to all agencies represented at post. U.S. Government leases that exceed the space standards require waivers or prior approval of *the Bureau of Overseas Buildings Operations (OBO)* for the Department of State or *the Overseas Management Support Office in the Bureau for Management, USAID/Washington* (USAID/W - *M/OMS*) for USAID.
- b. **Waivers for approved housing profiles:** Once the post's housing profile has been approved by *OBO* or USAID/W (*M/OMS*) and that profile is maintained, the requirement that the post obtain prior approval for housing assignments which exceed an employee's space authorization is waived. Likewise, if a lease must be terminated and the replacement property is similar in size (if less than \$25,000), no prior approval is required.
- c. **Other waivers and approval requests:** Posts may request approval of leases for properties that exceed space standards. Prior approval will be required in the circumstances listed in 6 FAM 735.2.

6 FAM 732.7-3 Procedures for Requesting Approval of *Short-Term Leases (STLs)*

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Guidelines and procedures for requesting waivers or approval of *short-term leases (STLs)* are found in 6 FAM 735.3.

6 FAM 733 ADDITIONAL LEASING REQUIREMENTS

6 FAM 733.1 Alterations, Improvements, and Repairs to *Short-Term Lease (STL) Properties*

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. Within the limitation of funds provided by the regional bureau, *the Bureau of International Organization Affairs (IO)*, or parent agency for this purpose, missions are authorized to accomplish minor alterations, improvements, and repairs (known as “make-ready”) when a lease is initially acquired or reassigned, provided structural alterations to the building are not involved. Such make-ready costs, *if approved at the post level*, may not exceed \$5,000 and *may also be* subject to *additional* limitations established by the regional bureau, IO, or parent agency. Make-ready work estimated to exceed the established limitation must have prior approval of the funding agency in Washington, *DC*. Security improvements (e.g., grillwork, installation of solid core doors) are not considered make-ready costs and are funded by *the Bureau of Diplomatic Security (DS) for State* or *the Office of Security (SEC)* for USAID. (See also 6 FAM 717 and 6 FAM 762.3.)
- b. Since preparations for occupancy increase the property’s value, they should be lessor-financed. Post funding of make-ready work should be the last resort after all other alternatives have been considered. These include negotiation with the lessor to perform alterations, assume all or part of the make-ready costs, or agree to a reduction in the rental rate. The post should not expend *diplomatic and consular programs (DCP)* funds for this purpose until attempts to have the lessor finance the preparations have been exhausted.

6 FAM 733.2 Preference for Five-Year Minimum Term

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Posts should make every effort to retain appropriate housing under leases of five years or more to realize maximum cost-benefit, amortize make-ready and security upgrade costs, and facilitate negotiation of more favorable lease terms.

6 FAM 733.3 Leases of Designated Residences

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Posts must have prior *Bureau of Overseas Buildings Operations (OBO)* approval of new leases for residences of the ambassador, deputy chief of mission, consul general (when principal officer), and U.S. representative to *an international organization* abroad (when principal officer), *and Marine security guards*. Posts should carefully consider these leases since they normally involve significant costs for additional furniture, furnishings, appliances, and equipment as well as unbudgeted costs associated with the move.

6 FAM 733.4 Letters of Intent to Lease

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Since the legality of letters of intent varies significantly from country to country, all letters of intent must be submitted to *the Bureau of Overseas Buildings Operations (OBO)* for approval before *issuance*. For letters of intent concerning leases to be executed by USAID, advice should be requested from *the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)*.

6 FAM 733.5 Retention of Leases Vacant Between Occupants

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

In recognition of particular factors in a host country *that* necessitate a U.S. Government-leasing program, post management is authorized to retain leases on units that may be left vacant for short periods (not to exceed 90

days) between transfers of employees if post deems it in the best interests of the U.S. Government. (See 6 FAM 717 for funding responsibilities.)

6 FAM 733.6 Parking for Privately-Owned Vehicles (POVs)

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. Garage or parking space for one *privately owned vehicle (POV)* may be leased at U.S. Government expense for employees occupying *U.S. Government-owned/long-term leased (GO/LTL)* or *short-term leased (STL)* residential property, if the residence does not include such facilities. Parking spaces for POVs are not authorized for individual Marine guard watchstanders.
- b. Employees on *living quarters allowance/overseas housing allowance (LQA/OHA)* are authorized to lease garage space for one POV, within the limits of the LQA/OHA. (See Standardized Regulations, U.S. Government Civilians, Foreign Areas, Chapter 100.)
- c. POV parking at the workplace is not a U.S. Government obligation, either in Washington, *DC* or abroad. If such parking facilities are not otherwise available, the post employee association may acquire such space for leasing to employees.
- d. For security reasons, the Department *of State* strongly discourages parking POVs in a U.S. Government-held facility unless the vehicles can be adequately screened. If the *regional security officer/post security officer (RSO/PSO)* determines that screening is not possible, and if the post still wishes to facilitate employee travel to and from work, alternatives to be considered include these:
 - (1) When consistent with guidance in 6 FAM 228, the post may provide reimbursable home-to-office-to-home transportation for employees; *and*
 - (2) An employee association may lease offsite parking for POVs and charge a fee to post employees. Such facilities should be located at least 100 feet from any U.S. Government office buildings. The Bureau of Diplomatic Security (DS) will consider funding security improvements, including guard services, lighting, closed-circuit televisions, and access controls.

6 FAM 733.7 Recreational Facilities

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. *Post management may request approval and funding to acquire recreational facilities at hardship posts and at posts* where recreational facilities for U.S. Government employees are nonexistent or very expensive (see 6 FAM 500 for detailed guidance). *Post proposals for such facilities must be reviewed for security considerations and approved* by the *regional security officer/post security officer (RSO/PSO)* and *then submitted by the posts to the Bureau of Overseas Buildings Operations (OBO)* for technical review and funding consideration.
- b. Employee recreation associations may acquire recreational facilities with the approval of the responsible security officer. *OBO* review of recreation association facilities is required where construction or placement of such facilities is proposed on *U.S. Government-owned/long-term leased (GO/LTL)* property, or where such construction or placement will affect the boundary walls, access, or other aspect of neighboring GO/LTL property.

6 FAM 733.8 Rental Agents

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Although employing an agent to obtain a lease is not prohibited, the policy is to avoid this service and resulting cost where there is no cost advantage to the U.S. Government. In any case, no fee shall be paid except to a reputable, licensed, and/or accredited rental agent and only in accordance with a recognized local practice, verified in advance of engaging the agent. Fees may be payable in full by the lessor, by the lessee, or divided between the two. Responsibility for payment of this fee must be determined in advance and in writing. Rental agents are paid from the same fund as the basic lease.

6 FAM 734 GUIDELINES FOR *ESTABLISHMENT OF U.S. GOVERNMENT LEASING PROGRAMS*

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. *In addition to or in place of U.S. Government-owned, long-term leased (LTL), and living quarters allowance (LQA) housing existent abroad*, posts may seek to establish a *short-term lease (STL) housing program* when the following conditions prevail: *host-country laws prohibit individuals from leasing housing on their own*, limited housing availability, difficult and complex local rental laws, *or* substantial make-ready and/or security upgrade funds are required to bring residential properties up to acceptable standards. *Prior approval of each parent agency is required for conversion of its LQA housing.*
- b. When requesting approval for a U.S. Government leasing program, posts should submit to *the Real Property Management Division in the Real Estate and Property Management Office of the Bureau of Overseas Buildings Operations (OBO/REPM/RPM)*, information on the following factors:
 - (1) Comparative costs of present and proposed housing programs;
 - (2) Availability of suitable leased housing;
 - (3) Security;
 - (4) Employee productivity;
 - (5) Employee and family fire protection and life safety, comfort and morale; and
 - (6) The workload impact on the administrative staff, including need for additional positions, if any; an estimate of the average amount of staff time that will be spent negotiating and communicating with lessors; and increased travel and work time of *general services office (GSO)* personnel.
- c. Establishment of a U.S. Government leasing program requires consideration of whether such quarters will be U.S. Government-furnished. The post should discuss funding of furniture, furnishings, appliances, and equipment (FFA&E) for new STL living quarters with the regional bureau and parent agencies.

6 FAM 735 WAIVER/APPROVAL PROCEDURES FOR *SHORT-TERM LEASES (STLS)*

6 FAM 735.1 Waivers for Leases with Rentals in Excess of \$25,000

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Posts must submit requests for waivers/approval to *the Bureau of Overseas Buildings Operations (OBO)* in the format shown in 6 FAM Exhibit 735.1, with a copy to the paying agency if other than the Department of State. For leases executed by a USAID contracting officer in the name of USAID, such requests must be submitted to *the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)*, using the format in 6 FAM Exhibit 735.1. Requests for approval of renewals must be received by *OBO, USAID/W (M/OMS)*, or the paying agency at least one month before the advance notification period required by the terms of the lease.

6 FAM 735.2 Waivers for Leases Exceeding Space Standards

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. Posts must request waivers/approval of residential leases exceeding space standards in the *following* situations:
 - (1) At posts where the only available housing exceeds the space standards and a housing profile has not been approved;
 - (2) At posts where the only available housing exceeds the space standards and the property has not been approved for inclusion in the housing profile (e.g., overstandard housing for a new position or acquired to replace an existing lease); *and*
 - (3) In cases where an agency believes that the space standard will adversely affect an employee's ability to perform his or her official responsibilities. The justification for such requests must document the representational requirements for the employee, providing any supporting information from the current or previous incumbent. To justify a waiver, the representational requirements should frequently exceed the estimates outlined in 6 FAM 728.4-3(C). Such requests must be approved first by the *single real property manager (SRPM)* and the post *interagency housing board (IAHB)*

- and subsequently by the *chief of mission* (COM).
- b. Requests for waivers or approval of new leases and renewals that exceed the space standards shall be directed to *the Bureau of Overseas Buildings Operations (OBO)* or *the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)* and to the parent agency, as appropriate, using the format in 6 FAM Exhibit 735.1.
 - c. Approval is given for a specific employee and/or family. If a change in occupancy occurs during the basic or renewal term of the lease, prior *OBO* or USAID/W (*M/OMS*) and parent agency approval is required if the unit is overstandard for the proposed new occupant. Moreover, if the lease expires during the tour of an employee, the lease may be extended or renewed without prior Washington approval (if under \$25,000 per year), but only to the end of that employee's stay at post. The lease may not be extended beyond the tour of the current occupant without prior Washington approval.

6 FAM 735.3 Advance Lease Payments

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. Whenever possible, lease payments should be made monthly or quarterly. Posts may execute leases with provision for advance payments without prior *Bureau of Overseas Buildings Operations (OBO)* and parent agency approval, provided such payments are not *due* more than 12 months in advance and all other lease criteria are met. In the event that the lessor requires an advance payment of more than 12 months, post must obtain *OBO* approval before executing the lease. For USAID, payments may be made up to 18 months in advance or to the end of the next fiscal year, whichever is the shorter period, without prior *approval from the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)*. However, if an USAID lease is part of the embassy housing program, *OBO* approval is required.
- b. An advance lease payment is one in which the U.S. Government is obligated to make rental payments in advance for a rental period greater than that for which market rents are customarily quoted. For example, in U.S. real estate markets, rents are typically quoted on a monthly basis (with payments due at the beginning of each month). If a U.S. lessor required payments for the first 12 months at the onset of the lease, this would be considered an advance payment.
- c. Advance payments for periods greater than 12 months (18 months for USAID) require justification and will be approved by *OBO* and parent

agencies on a case-by-case basis. Advance payments are considered the exception, not the rule, in lease negotiations. Although it is recognized that in some real estate markets abroad advance payments of rent may be the only means to obtain a lease, advance payments for extended periods should be avoided for these reasons:

- (1) Lessors have a reduced incentive to honor their obligations under the lease once the advance payment is made;
 - (2) In the event of force majeure (e.g., an act of God, war) where the premises are left untenable through partial or total destruction, it is difficult or impossible to obtain immediate and satisfactory restitution of the premises or a rebate of the unearned portion of the rent;
 - (3) In the event of currency devaluation (in terms of the U.S. dollar), the U.S. Government is precluded from taking advantage of the more favorable exchange rate;
 - (4) In the event of a decline in market rental values, the U.S. Government is precluded from taking advantage of the more favorable market rental terms; and
 - (5) Financially, it is prudent to withhold payments as long as possible so that such money is available for other opportunities. Providing advance payments commits a larger than usual sum of money, can be riskier, and is typically not the most efficient use of funds.
- d. Posts must consider the “time value of money” in calculating the value of an advance payment and seek appropriate discounts for advance payment. “Time value of money” is the concept underlying compound interest which holds that \$1 received today is worth more than \$1 received in the future due to opportunity cost, inflation, and the certainty of payment. (See 6 FAM Exhibit 735.3A for further details on calculating advance payments using the time value of money concept.) *OBO’s Evaluation Division in the Real Estate and Property Management Office (OBO/REPM/EV)* can assist the post in calculating advance payments.
- e. Requests for approval of advance payments for periods greater than 12 months should follow the instructions in 6 FAM Exhibit 735.3B.

6 FAM 735.4 Leases with Offshore Payments or Payments in Other than Local Currency

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Rental payments made to landlords (individuals or financial institutions) in other than local currency must be permissible under local law. Any offshore

payment requires a waiver from Washington. Information on waiver request formats is available from *the Real Estate and Property Management Office in the Bureau of Overseas Buildings Operations (OBO/REPM)*.

6 FAM 735.5 Leases for Space to Be Constructed to U.S. Government Specifications

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Any post proposals to have a lessor construct or alter leased or proposed leased space must be submitted to *the Bureau of Overseas Buildings Operations (OBO)* and the parent agency for prior review and approval. For leases signed by USAID, proposals must be submitted to *the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)* for prior review and approval. A complete justification should accompany the request.

6 FAM 735.6 Leases Containing Nonstandard Clauses

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

The standard clauses that must be included in U.S. Government lease agreements are described in 6 FAM Exhibit 737.1A. Except as authorized by *the Bureau of Overseas Buildings Operations (OBO) or, for USAID leases, from the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)* for leases signed by USAID contracting officers, no leases will contain the following provisions:

- (1) The payment by the lessee (U.S. Government) of insurance charges on buildings or other appurtenances to the realty or on personal property, whether privately or U.S. Government-owned;
- (2) The assumption by the lessee of responsibility for damage occasioned to or by visitors through the use of halls, stairways, elevators, or other common conveniences and areas at their disposal;
- (3) A lien in favor of the lessor upon U.S. Government-leased property;
- (4) The payment of a bonus or premium in connection with the procurement of quarters;
- (5) The submission of disputes to boards or panels for arbitration, or to the jurisdiction of the local courts (such rights cannot be waived at post without specific approval from the Department *of State*); and

- (6) An agreement to indemnify (hold harmless) the lessor from injuries and damages that occur on the premises.

6 FAM 735.7 Advance Lease Agreements

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. Leases for premises under construction or to be constructed, or for premises in need of additional work prior to occupancy, for which a definite occupancy date has not been established, or other leases for which the date of occupancy is more than three months subsequent to the signing of the lease, require prior *Bureau of Overseas Buildings Operations (OBO)* and parent agency approval. For leases signed by USAID, prior *approval from the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)* is required.
- b. The information needed by parent agencies will vary depending upon the circumstances. Posts should contact *OBO* or USAID/W (*M/OMS*) and the appropriate parent agency when such leases are being considered.

6 FAM 735.8 Leases Containing an Option to Purchase

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. If advantageous to the U.S. Government and allowable under local law, leases may contain an option to purchase. Prior *Bureau of Overseas Buildings Operations (OBO)* approval is required if the lease/purchase or purchase option agreement requires lease payments in excess of market rental rates or if the purchase option clause differs significantly from the sample shown in 6 FAM Exhibit 735.8.
- b. For USAID leases, USAID missions must obtain *approval from the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)* prior to including an option-to-purchase clause in leases. USAID/W (*M/OMS*) will seek *the Office of Management and Budget's (OMB)* approval of such leases.

6 FAM 736 LEASE PROCEDURES

6 FAM 736.1 Short-Term Leases (*STLs*)

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. *Posts* should refer to 6 FAM 730 exhibits for contracting procedures.
- b. USAID contracting officers should follow the standard contracting procedures outlined in *ADS (Automated Directives System) 535 and 6 FAM 700*.

6 FAM 736.2 Long-Term Leases (*LTLs*)

6 FAM 736.2-1 When to Consider Long-Term Leases (*LTLs*)

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. *Long-term leases (LTLs)* allow the post better control of lease costs and greater flexibility and control of maintenance, renovation, and improvements. All LTLs should establish fixed rental rates for the entire lease term.
- b. LTLs may be desirable under one or more of the following conditions:
 - (1) When the post would normally buy such a property, but the fee simple title (full rights of ownership and transfer in perpetuity) is unobtainable by reason of constitutional, legal, or regulatory prohibitions of the host or municipal government; or
 - (2) When major alterations are required to reconfigure property to the needs of the U.S. Government and the cost will be passed on to the U.S. Government directly or through the lease payment.
- c. Normally, it is in the U.S. Government's interest to own or lease on long-term chanceries, ambassadors' residences, and Marine guard quarters because of the significant modifications required.

6 FAM 736.2-2 Submitting Proposals for Long-Term Leases (*LTLs*)

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Posts must submit proposals for *long-term leases (LTLs)* to *the Bureau of Overseas Buildings Operations (OBO)* or, *for USAID leases, to the Overseas*

Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS); 6 FAM Exhibit 736.2 lists the required proposal information.

6 FAM 737 LEASE AGREEMENTS

6 FAM 737.1 Drafting a Lease

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

When drafting a lease, posts must use the model lease in 6 FAM Exhibit 737.1B and follow the instructions given in 6 FAM Exhibit 737.1A.

6 FAM 737.2 Lease Amendments

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Approvals for lease amendments are handled in the same manner as approvals for the original leases; 6 FAM Exhibit 737.2 provides a sample lease amendment.

6 FAM 737.3 Renegotiation

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- 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 document 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 should identify the former lease by number and state that it is replacing or superseding that contract.

6 FAM 737.4 Notice of Termination

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

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

Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS), and funding agency approval. All lease termination agreements should follow the sample in 6 FAM Exhibit 737.4.

6 FAM 737.5 Local Rent Controls

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

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 payment of rent increases is required by local law, the post must investigate and retain copies of the appropriate laws or pertinent extracts therefrom and an original or certified copy of any pertinent ruling of a local rent control board or authority.

6 FAM 737.6 Local Registration of Leases

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

In many countries lease terms are not enforceable by law unless the lease has been officially registered. Failure of posts to register leases can lead to loss of valuable contract rights. *Despite the fact that the model lease requires landlords to register the lease, some landlords do not. In those cases*, posts must 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. Registration fees should normally be paid by the lessor; however, if this is not feasible, these costs *should be split or, as a last resort*, should be charged to the lease fund.

6 FAM 738 REQUIRED LEASE DOCUMENTATION

(CT:GS-140; 10-04-2004)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. Required documents must be sent to *the Bureau of Overseas Buildings Operations (OBO)* or, *for USAID leases, to the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)* and parent agencies, as appropriate, at the addresses provided in 6 FAM 719.5.
- b. If any documentation is prepared in a foreign language, the copies

forwarded to *OBO* or USAID/W (*M/OMS*) shall be accompanied by an English translation, signed by the translator, with the translator's name typed below the signature.

6 FAM 738.1 State Lease Documents

(CT:GS-140; 10-04-2004)
(State Only)

Posts are responsible for handling lease documents *noted below that are* executed in the name of the Secretary of State.

- (1) **Long-term leases (LTLs):** Posts must submit to *the Bureau of Overseas Buildings Operations (OBO)* or *to the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)* copies of signed long-term leases, lease renewals and other amendments, and related records for new, renewed, and renegotiated LTLs. Related records include decision memoranda, blueprints, plans, photographs, surveys, plans and cost documentation for construction that increases the value of the property, and other contracts and agreements (e.g., protocols, *memorandums of understanding (MOUs)*, property agreements). Posts must maintain copies of these documents.
- (2) **Termination and Acquittance Agreement:** Posts must submit one signed copy of each Termination and Acquittance Agreement for LTLs to *OBO*.
- (3) **Short-term leases (STLs):** Posts must retain original contracts, leases, renewals, amendments, and related records to include purchase orders and receipts, work orders, telegrams, notes, letters, property descriptions, etc. Posts must submit copies of signed short-term lease documents of all major STL properties to *OBO's Real Property Management Division in the Real Estate and Property Management Office (OBO/REPM/RPM)*. The signed STL documents include new leases, renewed and renegotiated leases, and all related amendments. The major properties for which *OBO* requires documentation are chanceries, consulates, other office/functional space (e.g., annexes and warehouses), and designated residences.
- (4) **Other documentation:** The post must retain all other lease documentation.

6 FAM 738.2 USAID Lease Documents

(CT:GS-140; 10-04-2004)
(USAID Only)

USAID contracting officer will forward to *the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)* one copy of the signed original of all USAID leases (for other than *short-term lease (STL)* residential properties) and one copy of each lease amendment. Post must keep a signed original of all leases.

6 FAM 738.3 Documents for Leases Funded by Other Agencies

(CT:GS-140; 10-04-2004)
(Uniform State/USAID/Commerce/Agriculture/DIA)

Each agency is responsible for providing required documents to *its* parent agency. One copy of all leases and any related amendments and Termination and Acquittance Agreements should be provided to the respective agencies for forwarding to parent agencies at the addresses listed in 6 FAM 719.5-3.

6 FAM 739 UNASSIGNED

6 FAM EXHIBIT 732.2 FORMAT FOR LEASE OF FUNCTIONAL SPACE

(CT:GS-140; 10-04-2004)

- a. All leases of functional (nonresidential) space whether new, renewal, or replacement, and regardless of size or cost, require the advance approval of the Department *of State (Bureau of Overseas Buildings Operations (OBO))*, regional bureaus, and Bureau of Diplomatic Security (*DS*) and the parent agency, if applicable.
- b. This exhibit lists the information and format required for submitting a request to *OBO*. For USAID-leased properties, *send requests to the Overseas Management Support Office in the Bureau for Management, U.S. Agency for International Development/Washington (USAID/W - M/OMS)*. This exhibit does not address requirements for long-term leases (*LTLs*) - 10 years or more. Information required for LTLs is given in 6 FAM 736.2 and does not apply here.
- c. Posts must obtain approval of both *OBO* and *DS's Project Coordination Branch in the Physical Security Division (DS/PSD/PCB)* before signing a lease for functional space. Information posts provide in accordance with the format below will go to both *OBO* and *DS*. *DS's Physical Security Division in the Office of Physical Security Programs (DS/PSP/PSD)* will advise posts if any additional information is required.
- d. Leases for functional space often involve terminology that is not used in standard lease formats. Posts should submit data well in advance, in the event a detailed review of lease language is required.
- e. Posts should submit requests by using the format below, repeating the item numbers and exact titles in the left-hand column, then *completing* each item with the information requested by following the instructions in the right-hand column.
- f. Address telegrams to *the Real Property Management Division in the Real Estate and Property Management Office of the Bureau of Overseas Buildings Operations (OBO/REPM/RPM)* for action, with an information copy to *DS/PSD/PCB* and other agencies involved, if any. The tag lines should read: ABLD, AMGT, ASEC.

Continuation—6 FAM Exhibit 732.2

- 1) **Post** Name of post where space is to be leased.
- 2) **Type of Space** Indicate office, warehouse, shops, etc.
- 3) **Justification** Provide details about why space is needed (e.g., to accommodate additional personnel, loss of old storage facility, etc.).
- 4) **Lease Category** Indicate renewal, replacement, or net addition.
 - A) Annual Lease Amount Provide annual cost in U.S. dollars. If escalation costs or clauses are included in the lease terms, provide details.
 - B) Size Provide measurements in gross and net square meters.
 - C) Funding Available Can post fund lease with available operating allowances? If no, what additional funds are needed for the current fiscal year? Provide U.S. dollar amount.
NOTE: additional funds must be requested from the funding agency.
 - D) Agency Funding Lease Provide agency name. If cost is to be shared, name agencies and annual amount to be paid by each in U.S. dollars.
 - E) Other Associated Costs (Not annual lease cost/rent) Identify item/s and cost/s (e.g., relocation, make-ready, renovation, condominium, and/or property management fees; association dues; *security upgrades*; etc.). If this is a replacement property, provide costs to be incurred in restoration of existing facility and costs pertaining to relocation (i.e., costs to physically move, as well as double rents during transition, if applicable); advise if existing lease contains termination and restoration clauses.
Does lease provide for initial repairs/improvements? If yes, at whose expense (landlord, *OBO*, regional bureau, other agency)? Provide details and U.S. dollar *amounts*.

Continuation—6 FAM Exhibit 732.2

- | | |
|---|---|
| F) Average Annual Lease Cost for Similar Property Currently Under Lease | Provide in U.S. dollars for comparable properties. |
| G) Average Annual Lease Cost for Similar Property Surveyed | Provide estimated average annual lease cost in U.S. dollars, using current market survey figures.
Indicate the normal terms for quoting rent (e.g., monthly, annually, other)?
List other properties surveyed and explain why this property was selected. |
| H) Proposed Lease Dates | Specify month/day/year start and end dates (use mm/dd/yyyy format). |
| I) Scheduled Occupancy Date | Specify month/day/year (mm/dd/yyyy format). If vacant longer than six weeks, provide justification. |
| J) Renewal Options | If yes, provide renewal notification date (mm/dd/yyyy format) and number and duration of firm renewal options, as provided in lease. |
| K) Renewal Terms | Explain rent increase either as a renewal increase or due to a lease escalation clause. Describe any other changes in lease terms. |
| L) Purchase Option | If yes, provide details and date (mm/dd/yyyy format) purchase option can be exercised. NOTE: a right of first refusal is not considered a purchase option, but indicate if lease contains a right of first refusal. |
| M) Currency for Lease Payment | If other than U.S. dollars, provide type of currency, annual amount, and exchange rate. |

Continuation—6 FAM Exhibit 732.2

- | | |
|-----------------------------------|--|
| N) Payment Address | Provide complete address. Indicate if in country or offshore. NOTE: if offshore, a separate request must be submitted as per instructions in 6 FAM 735.4. For guidance on cable preparation, refer to 91 State 354178, available from <i>OBO/REPM/RPM</i> . |
| O) Frequency of Payments | Specify monthly, quarterly, semi-annually, or other (explain). |
| P) Advance Payment | If yes, provide number of years/months to be paid in advance and the amount in U.S. dollars as per 6 FAM 735.3.
Describe normal payment terms in this market (e.g., annually, monthly, other—explain). Are rents typically paid in advance or at the end of the payment period?
NOTE: requests for approval of leases with advance payments of more than 12 months must be submitted to <i>OBO</i> and the parent agency. |
| Q) Discount for Advance Payment | If yes, indicate U.S. dollar amount. If no, indicate why advance payment is necessary. What is the advantage to the U.S. Government? |
| R) Lease Document Deviations | Does the lease deviate from the model /standard lease (6 FAM Exhibit 737.1B)? If yes, explain in detail. NOTE: post must obtain approval for any deviations. |
| 5) Security Information | |
| A) <i>Security Officer Review</i> | Has the responsible security officer (<i>regional security officer or post security officer</i> (RSO or PSO)) inspected the property and approved its use by the U.S. Government?
Provide RSO or PSO recommendations in accordance with <i>12 FAH-5</i> , Physical Security <i>Standards</i> Handbook, as outlined in 12 FAH-5 H-200 and 12 FAH-5 H-300. |

Continuation—6 FAM Exhibit 732.2

- B) Collocation Waiver If the office or activity will not be collocated in chancery office buildings or on a chancery/consulate compound, provide an exemption notification or waiver request as per 92 State 241095 or *12 FAH-5*, Physical Security *Standards* Handbook.
NOTE: The RSO or PSO should review DS guidance in these two references and obtain DS/PSD/PCB approval prior to signing the lease.
- 6) **Physical Description** Provide characteristics of the new space including heat, ventilation, air conditioning, electricity, etc.
- 7) **Post Administrative Software Suite/Real Property Application (PASS/RPA) Information**
- A) Concurrence with *PASS/RPA* Data Does the information provided concur with *PASS/RPA* data submitted by post? If no, explain all deviations.
- B) New, Renewal, or Replacement Property Provide *PASS/RPA* property ID number and lease number. If replacement, identify property replaced by property ID number, lease number, and current annual lease amount in U.S. dollars.
- C) Property Information Indicate property use as described in post's *PASS/RPA User Manual, Appendix B*.
- D) Address Provide complete street address.

6 FAM EXHIBIT 735.1 LEASE WAIVER REQUEST FORMAT FOR RESIDENTIAL PROPERTIES

(CT:GS-140; 10-04-2004)

- a. This exhibit provides the format to request waivers for residential leases that exceed the maximum annual dollar amount of \$25,000, for leases (new or old) that are outside an approved profile, and for representational housing exceptions. Please send all telegrams to *the Real Property Management Division in the Real Estate and Property Management Office of the Bureau of Overseas Buildings Operations (OBO/REPM/RPM)* or to *the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)* for USAID-leased properties.
- b. Posts should prepare waiver request telegrams with comprehensive information, following the prescribed format. Requests must be supported by clear, strong rationales and precise, complete data. As waivers are approved and lease data confirmation telegrams are received from posts, *posts must update the post administrative software suite/real property application (PASS/RPA) database to reflect the new or updated information.*
- c. Waivers are required:
 - (1) For all new or renewal leases that will exceed the maximum annual dollar amount of \$25,000 at any time during the term of the lease;
 - (2) For all exceptions for representational purposes; *and*
 - (3) For leases exceeding space standards that fall outside a post's approved profile, or for posts not having approved housing profiles.
- d. Posts should submit waiver requests following the numbered format below. Each item should be carefully completed in accordance with the instructions. The request must repeat the question in the left-hand column and provide the appropriate information as noted in the right-hand column of the text. Do not repeat the right-hand column text.

Continuation—6 FAM Exhibit 735.1

Question

Information Required

- (1) Post Name of post where property exists.
- (2) Waiver for
- a) Lease over \$25,000 Yes/No
If yes, provide complete justification.
 - b) Lease exceeding space standards that fall outside approved profile Yes/No
If yes, provide complete justification.
 - c) Representational purposes Yes/No
If yes, does *chief of mission/principal officer (COM/PO)* approve as prescribed in 6 FAM 735.2?
Provide full justification for *OBO* and parent agency headquarters consideration.
- (3) Post approval certification:
- a) Has responsible security officer (*regional security officer or post security officer* (RSO or PSO)) inspected this property and approved its use by the U.S. Government? Yes/No

Continuation—6 FAM Exhibit 735.1

- b) *Has the post occupational safety and health officer (POSHO) inspected the property to ensure that there are no critical safety and health hazards present?* Yes/No
- c) Does housing board recommend approval? Yes/No
If response to either a or b above is no, waiver will not be granted.
- (4) Post profile information per 6 FAM Exhibit 724.7A
- a) Rank or occupant category of new unit to be leased To answer both a and b, provide information based on size of unit to be occupied, not on the occupant's position grade.
- b) Rank or occupant category of unit to be renewed or replaced Using the space standards chart, specify the rank or occupant category (e.g., mid 2, std 3/4)

Continuation—6 FAM Exhibit 735.1

- (5) Lease category information:
- Indicate renewal, replacement, or net addition. Depending on lease category selected, answer appropriate questions in a, b, or c below. Mark "N/A" for categories not appropriate. Provide gross/net square meters using instructions in 6 FAM Exhibit 724.8. For leases *that* cover more than one residential unit (RES/MLT), provide gross and net measurements for each individual unit covered under the lease.
- a) Renewal Identify property ID, lease number, annual rental amount in U.S. dollars, and gross/net square meters. Identify any changes in existing lease.
- b) Replacement Give annual rental amount in U.S. dollars, and gross/net square meters of replacement. Give reason/need for replacement. Provide property ID and ease number of unit being replaced. A basic premise of U.S. Government leasing is that there is economy in a stable lease portfolio. A replacement justification should show where additional costs are justified, or that the U.S. Government's costs will diminish.
- c) Net addition Give reason or need for additional property. Provide annual rental amount in U.S. dollars, and gross/net square meters of new property.
- d) Annual lease amount Lease cost only. Provide in U.S. dollars. If escalation costs are included in the lease terms, provide details.
- e) Funding available Can post fund lease within available operating allowances? Yes/No
If no, what additional funds are needed for current fiscal year? Provide U.S. dollar amount. Additional funds must be requested from funding agency.

Continuation—6 FAM Exhibit 735.1

- f) Agency funding lease Provide agency name. If cost is to be shared by two or more agencies, indicate agency and annual rental amount to be paid by each. Provide U.S. dollar amount.
- g) Other costs associated with the lease that are not included in the annual rent Yes/No
If yes, identify item(s) and cost (e.g., condo fees, property management fees). See 6 FAM 717.8 for condo fee clarification. Do not include security upgrades in this response
- h) Average annual lease cost for similar property currently under lease Provide average annual lease cost in U.S. dollars for similar sized properties.
- i) Average annual lease cost for similar property surveyed Provide estimated average annual lease cost in U.S. dollars for properties surveyed (use current market survey figures). Indicate other properties reviewed and why this property was selected over them.
- j) Proposed lease dates Specify month/day/year start and end dates (start: mm/dd/yyyy; end: mm/dd/yyyy).
- k) Scheduled date of occupancy Specify month/day/year (mm/dd/yyyy). Provide justification if vacant more than six weeks.
- l) Renewal terms Provide explanation for rent increase, if any, or any changes in lease terms.
- m) Renewal options Yes/No
If yes, please provide renewal notification date, and number and duration of firm renewal options as provided in the lease.

Continuation—6 FAM Exhibit 735.1

- n) Purchase option Yes/No
If yes, provide details and date purchase option can be exercised. Right of first refusal is not considered a purchase option.
- o) Currency used for lease Local, U.S. dollars, or other. If other, provide annual amount and exchange rate.
- p) Payment address In-country or offshore? If offshore, submit a separate request per instructions in 6 FAM 735.4. For guidance in telegram preparation, please contact *OBO*.
- q) Frequency of payments Monthly, quarterly, semiannually, or other (specify).
- r) Advance payment Yes/No
If yes, provide the number of years/months rent is to be paid in advance and the amount in U.S. dollars. Submit approval requests for advance payments that are longer than 12 months to *OBO* and parent agency.
- s) Discount for advance payment Yes/No
If yes, indicate U.S. dollar amount. If no, why is advance payment necessary? What is U.S. Government getting for its money?
- (6) Initial improvements:
- a) Lease provides for initial repairs/improvements Yes/No
If yes, at whose expense? (Landlord/*OBO*/bureau/other agency). Provide details. There is a ceiling of U.S. dollars 5,000 for U.S. Government-funded initial improvements.

Continuation—6 FAM Exhibit 735.1

- b) U.S. Government-funded make-ready improvements Yes/No
If yes, what is the value of U.S. Government-funded improvements already invested in this property? (Nonsecurity costs only; do not include value of security improvements.)
Provide U.S. dollar amount.
- (7) Security information:
- a) Security improvements for new lease List specific security enhancements required and estimated costs. Has *the Bureau of Diplomatic Security (DS)* or agency funding been requested for any new security requirements?
- b) Security improvements List security improvements that have already been made and the cost. (Security costs for renewal lease only, do not include the value of nonsecurity improvements.)
- c) Security improvements for property being abandoned State the U.S. dollar value of security improvements for property being abandoned.
- (8) Property information:
- a) Property use data element Indicate how property is being used as described in post's *PASS/RPA (Post Administrative Software Suite/Real Property Application) User Manual, Appendix B*.
- b) Address Provide complete street address.
- c) Apt/TH/Det Indicate if apartment (Apt), town house (TH), or detached residence (Det).
- d) Unit number For multiple unit properties held under one lease (RES/MLT), indicate the apartment/unit number for which the waiver is requested.

Continuation—6 FAM Exhibit 735.1

- e) Space for domestic employees If property includes domestic employees' quarters, provide net floor space of quarters and briefly describe (i.e., one room/one bath). Do not include this measurement in the net square meters figure in item 5a, b, or c in this section.
- (9) Occupant information:
- a) Name Last, first.
- b) Title Position title as indicated in post staffing pattern.
- c) Personal grade Specify personal grade of employee (FS-01, GS-12, E-7).
- d) Position grade Specify grade of position as indicated in the post staffing pattern (FS-04, GS-9, E-3).
- e) Tour of duty Provide start and end dates of tour of duty using the month/year as follows: start: mm/yy; end: mm/yy (not two years or three years duration).
- f) Number of dependents on official orders If no dependents, state none.
- g) Number of dependents residing full time at post Indicate number as appropriate.
- h) Number of dependents residing away from post more than 50 percent of the year Indicate number as appropriate.

While this new lease waiver format is more lengthy and detailed, it is required to gather the data necessary for sound management decisions. We suggest that posts modify their existing lease waiver glossaries. *If post has additional information to support the request, please include it.*

6 FAM EXHIBIT 735.3A USING THE “TIME VALUE OF MONEY” CONCEPT TO CALCULATE ADVANCE PAYMENT OF RENT

(CT:GS-140; 10-04-2004)

Posts must consider the “time value of money” concept in calculating the amount of an advance payment. The principles *below* explain this concept.

- (1) Advance payments should not be calculated by merely multiplying the rental value by the number of rental periods or the term. For example, in calculating the advance payment for a \$1,000 per month rental for 12 months, it is incorrect to simply multiply the term (12) by the rental value (\$1,000) and realize a value of \$12,000 since it does not consider the “time value of money.”
- (2) To properly consider the “time value of money,” the present value cost of the proposed advance payment (\$12,000 in day 1 of the rental term) must be compared against the present value of a routine stream of rental payments (for example, \$1,000 per month for 12 months). The difference between the two present values represents the “time value of money” or, alternatively, the premium cost to the U.S. for the advance payment. Present value calculations are typically performed through the use of financial calculators, computer programs, or financial tables.
- (3) When the “time value of money” is considered, as in the example above, and an appropriate discount rate is selected, the advance payment for the example above would be less than \$12,000. The discount rate is never less than the interest rate at which the U.S. Government would borrow the money used to pay the advance.
- (4) If an annual discount rate of eight percent were selected and the standard monthly lease required prepayment at the beginning of each month, the correct advance payment satisfying the 12 month rental would be \$11,572. The difference between the incorrect method of developing an advance payment (multiplying the rental value by the term—\$12,000) and the correct way (considering the time value of money—\$11,572) would be a savings to the U.S. Government of \$428.

Continuation—6 FAM Exhibit 735.3A

- (5) The *Evaluation* Division *in* the *Real Estate and Property Management* Office of *the Bureau of Overseas* Buildings Operations (*OBO/REPM/EV*) can provide technical assistance to post personnel in calculating advance payments.

6 FAM EXHIBIT 735.3B REQUESTS FOR APPROVAL OF ADVANCE PAYMENTS

(CT:GS-140; 10-04-2004)

Requests for approval of advance payments for periods greater than 12 months should specify:

- (1) Whether, during the process of the lease negotiation, a discount for the advance payment already has been agreed upon. If a discount has been negotiated, explain the terms of the discount, i.e., “the lessor agreed to a 10 percent discount of normal routine terms in return for an advance payment of one year’s rent”;
- (2) The *OBO post administrative software suite/real property application (PASS/RPA)* Property Identification Number (PropID);
- (3) The property use code (e.g., OBC, COB, *RES/CMR*);
- (4) The term and the amount of the proposed advance payment (specified in local currency);
- (5) The total amount and terms of the lease (if different than (4) above);
- (6) The monthly rent and the annual escalation rate for comparable properties for a similar period;
- (7) Whether advance payments are customary in the local real estate market and the period of the advance payment (in months);
- (8) The customary time period for leases in the local real estate market (e.g., 1 yr., 2 yrs., 3 yrs.);
- (9) Today’s exchange rate;
- (10) The interest rates at which the lessor can safely borrow or invest money;
- (11) The reason for the advance payment or lessor’s motivation; and
- (12) The benefits to be gained by the U.S. Government from an advance payment.

Direct requests to *the Area Management Division in the Operations and Maintenance Office of the Bureau of Overseas Buildings Operations (OBO/OM/AM) for State*; or to *the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS)* for leases signed by USAID’s contracting officer.

6 FAM EXHIBIT 735.8 CLAUSES TO USE IN A LEASE WITH OPTION TO PURCHASE

(CT:GS-140; 10-04-2004)

With prior approval from *the Real Estate and Property Management Office in the Bureau of Overseas Buildings Operations (OBO/REPM) for State or the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS) for USAID*, clauses such as the following may be used in a lease with option to purchase.

“The Lessor hereby grants to the Lessee, in consideration of 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, for the sum of _____.”

“This option to purchase shall continue open and in force for the basic term and optional renewal terms as granted in this lease. If and when the Lessee exercises the said option to purchase, the Lessor covenants and agrees to convey to the United States Government 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, said deed to be registered by the Lessor (Vendor) in accordance with the laws of _____.”

6 FAM EXHIBIT 736.2 PROPOSALS FOR LONG-TERM LEASES

(CT:GS-140; 10-04-2004)

Proposals for *long-term leases* (LTLs) must be submitted to *the Area Management Division in the Operations and Maintenance Office of the Bureau of Overseas Buildings Operations (OBO/OM/AM) for State* or to *the Overseas Management Support Office in the Bureau for Management, USAID/Washington (USAID/W - M/OMS) for USAID* and must contain the following information:

- (1) The intended purpose of the property and the need for an LTL;
- (2) A draft copy of the proposed lease and description of any significant deviations from the model lease (6 FAM Exhibit 737.1B);
- (3) A description of the location of the property, including address by street and number, if available;
- (4) A city map showing the location of the property in relation to other U.S. Government and host-country government offices and other important local buildings;
- (5) A map of the neighborhood showing the subject property;
- (6) A statement signed by the *regional security officer/post security officer (RSO/PSO)* that he or she has approved the use of the property;
- (7) A narrative description of the type of surroundings (e.g., residential, commercial, industrial) and future outlook for the district;
- (8) Building and zoning restrictions pertaining to the property and to neighboring properties;
- (9) A site survey plan with an indicator for true north; dimensions and azimuths of the boundary lines; all buildings, walls, roads, and major trees and shrubs; the area of the site in acres, square meters or square feet; adjoining public roads and walks; and location and disposition of available utilities;
- (10) Photographs of exteriors and interiors of building(s), the site, and the surrounding neighborhood;
- (11) Copies of the original architectural, structural, mechanical, and electrical plans, and specifications of all buildings on the property;

Continuation—6 FAM Exhibit 736.2

- (12) Gross and net space measurements for all building(s), following guidelines in 6 FAM Exhibit 724.8. For functional space and official representational residences, floor plans at 1/4 or 1/8-inch scale or metric equivalent or sketches showing dimensions of rooms and locations of doors and windows should be provided. For functional space, identify each area by program, personnel, and function. In the case of residential space, note size and use of all rooms;
- (13) A statement describing the age and general condition of the building (and grounds, if applicable) and major building systems, together with a description of any initial repairs or needed improvements, and whether they are to be done by the lessor or by the U.S. Government. If repairs and improvements are to be funded by the U.S. Government, provide cost estimates;
- (14) The annual rent in local currency and the U.S. dollar equivalent and proposed payment terms;
- (15) If the lease is for residential use, a statement that the property does not exceed the space standards set forth in 6 FAM Exhibit 724.7A. If property does exceed the space standards, provide a justification;
- (16) A statement signed by the *chief of mission/principal officer (COM/PO)* that the requirement being met by this lease cannot be satisfied by better use of existing property at the post; and
- (17) If space is completely or partially furnished by the lessor, justification for providing for this cost in the lease.

6 FAM EXHIBIT 737.1A LEASE AGREEMENT TEXT

(CT:GS-140; 10-04-2004)

(State Only) Drafting a Lease

- a. For every lease signed by *post on behalf of* the Department of State, regardless of which agency will occupy the premises leased, posts should negotiate a lease *that* follows as closely as possible the content and format of the model lease. Posts should not arbitrarily edit the document to delete wordy phrases or add to the document without prior *Bureau of Overseas Buildings Operations (OBO)* approval. While it may sometimes appear that legal jargon has been substituted for straightforward sentences, there is nonetheless a legal purpose for each phrase as drafted. Posts should, however, select the appropriate pronouns for use throughout the lease and may, when local conditions demand it, make minor alterations to the model lease terms. Major or substantial changes may not be made without *OBO* approval.
- b. If, prior to use of this model lease, posts ask local legal counsel to review it for sufficiency under local law, *OBO* would appreciate having a copy of any comments provided to posts. Please send comments addressed for *the Acquisitions and Disposals Division in the Real Estate and Property Management Office of the Bureau of Overseas Buildings Operations (OBO/REPM/AQD)*.
- c. Once the lease has been negotiated, post should affix fiscal data to the lease, and ensure that both parties sign the final page and initial every page of the lease and its annexes.

ARTICLE ONE: Do not delete the phrase: “for itself, its heirs, executors, administrators, successors and assigns,” since doing so may mean that the lease ends when the landlord dies or when the leasing company ceases to do business.

NOTE: Posts may be able to use this language to argue for the continuation of the lease when a property that has been expropriated by the foreign government is returned to its private sector owner.

Continuation—6 FAM Exhibit 737.1A

The full name and address of the Landlord shall be recorded in the first article of the lease. The lease shall be executed in the name of “The United States of America, acting by (name), (title), and (post),” for State and all other agency leases. **NOTE:** The reference in the 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, two authenticated copies of the power of attorney or other evidence of authority to act on behalf of the Landlord shall be furnished with the lease.

ARTICLE TWO: It is important that the leased premises be described fully and completely. Provide the street address, building name, apartment number and the gross space leased. In the case of residential property, state the number and types of rooms, including servants’ quarters and garage/parking space. For multiple unit leases, state the floor and unit number of each apartment. Include a description of all common areas if this is a shared building, and of the land areas associated with the building(s). In addition to the required inventory of furnishings and equipment, posts are well advised to photograph the premises prior to post occupancy and keep those photographs with the lease file.

Furnishings and/or equipment provided or included within the leased space should be noted in the lease. An inventory showing the condition of each item as “Good”, “Fair” or “Poor” and indicating the nature of defects, if any, should be annexed to the lease. Furnishings and equipment included in this lease should not be removed from the property without written agreement between the Landlord and Tenant. *Wherever possible, photographs documenting conditions upon lease commencement should be included in the inventory.*

ARTICLE THREE: The basic term commences at the effective date of the lease and ends on the date agreed upon, unless otherwise terminated under the terms of the lease. The lease must be signed and dated by both parties.

Continuation—6 FAM Exhibit 737.1A

ARTICLE FOUR: Where possible and in the U.S. Government's interest, provision should be made for options to renew the lease, such options to include a definite period and rental terms. If the Landlord will agree to the same rental for the renewal term(s), posts should use Option One set out in Article Four. If the Landlord will not agree to the same rental for the renewal term(s), posts should use Option Two set out in Article Four. All of Article Four should be deleted if the Landlord will not consider a lease extension or if post is certain its need for the leased premises will cease at the natural termination of the particular lease.

If, under Option Two, the Landlord will not agree to a committee of valuers to establish fair market rental, posts may try the following fall back positions:

1. The new rental rate will be determined by mutual agreement between the parties;
2. The new rental rate will be a fixed percentage escalation over the current rate;
3. The new rental rate will be an escalated amount based on an economic Index published routinely in the country.

Posts are cautioned that rental rates which start low and are increased by an escalating factor at intervals throughout the lease may be more costly to the U.S. Government than a lease with a fixed, albeit high, rate at its commencement. Since currency exchange fluctuations, market fluctuations, and deteriorating building conditions will all affect renewal rate; since an index such as the Consumer Price Index normally is geared to "market basket" items and not to real estate; and since a thorough economic analysis is sometimes called for, posts should negotiate the best renewal terms possible and, where the annual lease payments exceed US\$25,000, posts should send a waiver request to *OBO* for review and approval before signing the lease.

ARTICLE FIVE: Posts are authorized to pay rent up to 12 months in advance. For longer advance payment terms, posts must cable *OBO* for approval. If payment is made in advance, posts should seek a discount from the overall rental since prepayment operates as a no-cost loan to the Landlord before the rental has actually accrued.

Continuation—6 FAM Exhibit 737.1A

Lease contracts should normally be paid 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 may be preferable to denominate the lease in U.S. dollars, payable in the equivalent local currency. Dollar or third-country currency payments are authorized only in those instances where such payments are necessary to the execution of the lease and are permissible under local law (see 6 FAM 735.3-4 and 6 FAM 735.6-8). Posts are reminded that offshore hard currency payments require specific prior Department approval. In addition, cash payments to offshore entities are prohibited. (See 92 State 331112.)

ARTICLE SEVEN: The itemization of the Landlord's maintenance responsibilities should not be viewed as services for which additional costs are to be assessed, therefore occasioning a larger rental amount. Rather, they should be regarded as an itemization of services *that* the Tenant requires from the Landlord at no additional cost. In a multi-tenanted building, post may wish to require the Landlord to provide periodic window washing, upkeep for common areas, care of the grounds, etc.

The lease shall clearly specify the services to be furnished by the Landlord, such as heat, light, power, sewage disposal, janitorial and custodial services, elevator service, toilet facilities, air conditioning, etc., and the nature of and responsibility for condominium fees and services, if any. For office space, the lease shall also specify:

1. That the Landlord will provide to the U.S. Government access to the premises at all times and hours; and
2. That the Landlord is bound by the terms of the Vienna Convention and may not enter leased diplomatic or consular premises without prior U.S. Government permission.

Continuation—6 FAM Exhibit 737.1A

Every effort should be made to include provisions which 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 reduction in overall rental costs as an offset to the *Tenant's* (the U.S. Government) undertaking to make the necessary improvements. Such improvements are governed by regulations outlined in 6 FAM 733.1. If posts have difficulty negotiating such a provision, guidance should be sought from *OBO*.

Tenant responsibility should be limited to periodic cleaning of the premises, removing the trash, replacing light bulbs, and other minor maintenance and repair necessary to meet Tenant's obligation to maintain the premises in good repair and tenantable condition in accordance with Article Eight. Since the Landlord's major maintenance responsibilities have been delineated, it should not be necessary to itemize the Tenant's responsibilities in this regard.

In no case shall the Tenant accept responsibility for major structural repair and maintenance; this must be specified as the responsibility of the Landlord.

Taxes, assessments and other charges of a public nature shall be borne by the Landlord. If prevailing circumstances require that the Tenant pay these charges directly or reimburse the Landlord separately, these costs shall in no case exceed the Landlord's actual costs.

Continuation—6 FAM Exhibit 737.1A

ARTICLE EIGHT: All leases should provide that the Tenant has the right to make minor alterations, attach fixtures, etc. If the lease terms require prior written permission of the Landlord, it is necessary that such written permission be obtained prior to any undertaking. Posts should not raise the issue of restoration responsibilities with the Landlord. If the Landlord requires it, however, post may use the bracketed language (paragraph 2) of Article 8. At the termination of the lease, the Landlord and Tenant will rely on the condition report compiled at the time the Premises were leased and on the photographic file which post has developed to document the building's condition. It is at this juncture that the importance of post's documentation becomes evident. 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, pay the Landlord a one-time rental increase to cover the restoration costs, or pay the Landlord rent for an additional period in an amount equivalent to the restoration charges. The Tenant may also sell excess U.S. Government property *that* would be difficult to remove from the premises to the Landlord at its depreciated rate, 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.

For any alterations (including security upgrades) made to the property, post should request from the Landlord a waiver from any requirement to restore the property to its original condition.

ARTICLE NINE: This article is intended to give the U.S. Government some protection in the event the building post is leasing is transferred to a foreign government hostile to U.S. Government interests, to a Landlord with a criminal background inimical to U.S. Government interests.

An assignment is preferable to a sublease because it allows the U.S. Government to terminate its entire contractual involvement with the Landlord. Under an assignment, the U.S. Government as Tenant contractually disappears altogether and the assignee becomes the new Tenant, as if the U.S. Government had not existed. Under a sublease, the U.S. Government still has a contractual relationship with the Landlord, even if the entire premises are sublet by the U.S. Government.

Continuation—6 FAM Exhibit 737.1A

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, 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.

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.

ARTICLE TEN: If insurance is not available at a post, posts 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.

ARTICLE ELEVEN: Posts should always ask for fee-simple absolute title or its local equivalent. (Posts should amend the language of the clause and send it to *the Acquisitions and Disposals Division in the Real Estate and Property Management Office of the Bureau of Overseas Buildings Operations (OBO/REPM/AQD)* for approval if the title will not be fee simple absolute.) Regarding the purchase price option, the free market value price may be stated as a multiple of the rental amount (e.g., 10 times the rental amount). Posts are advised that an option to buy "at a mutually agreeable price to be determined" is not an option with any value. Although such language may be included, if it assists in negotiations, it should not be considered a true option; nor can it justify any concessions or monetary consideration from the leasing officer.

Continuation—6 FAM Exhibit 737.1A

ARTICLE TWELVE: Note that this is not fashioned as a bilateral right for the Parties; rather it is intended as the right of the Tenant to repair and deduct the costs of repairs from the rent. If, however, post determines to terminate the lease under this clause, before doing so, post must notify *OBO/REPM/AQD* and *Office of the Assistant Legal Adviser for Buildings and Acquisitions (L/BA)* of the circumstances surrounding its wish to do so. Once approval is given, post may then terminate the lease without prior notice to the Landlord.

ARTICLES SIX, THIRTEEN AND FOURTEEN: Negotiations for termination rights shall be based on obtaining the best possible terms for the U.S. Government, but in no case shall the lease provide for less than the standard diplomatic escape rights described in the model lease. Provision should be made, if possible, for termination or cancellation of the lease at the option of the Tenant. Leases executed within the framework of the delegation of authority contained in 6 FAM 732.6, and whose basic term exceeds one year, should include a clause which will provide a unilateral right for the Tenant to terminate the lease at any time upon written notice to the Landlord. On residential leases, posts should consider the advisability of adding the right to terminate the lease when the occupant for whom it was leased is transferred from the post.

When a lease specifies that rent shall be paid for more than three months in advance, the lease should contain a rebate clause as follows: "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." For functional space where large advance payments are required, effort should 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 should be explained and retained in post's lease files.

Continuation—6 FAM Exhibit 737.1A

Posts are required to negotiate a termination clause no less than that given as the fallback position. If posts are unable to do so, however, they should notify *OBO* of the circumstances surrounding negotiation of this clause immediately. *OBO* will work with post to fashion an acceptable alternative based on the Landlord's objections to the clause, e.g., increasing the period of notice. For the notice period of this clause, posts should determine the fewest days' notice acceptable to the Landlord. Post may wish to open with 30 days, to test the Landlord's flexibility in regard to this provision. If post and the Landlord cannot agree to thirty days, then agree to provide a longer notice period.

Please note carefully that this termination for convenience provision is not intended as a reciprocal provision. If *OBO* were to agree that the Landlord has this same right of termination, then the period of any lease signed might only be effective for the length of the notice period, i.e., 90 days.

ARTICLE FIFTEEN: The Contract Disputes Act, set out in Article Fifteen, must, by law, be included in all U.S. Government leases, unless its use is waived for reasons set out below. Thus posts must attempt to negotiate the Contract Disputes Act language into all leases. If post has difficulty including this clause, please notify *OBO/REPM/AQD* immediately of the full circumstances involved in negotiating this particular clause. The clause may be waived in contracts with a foreign government or governmental agency, or with an international organization, *at the discretion of the OBO Director/Chief Operating Officer, based upon justification presented.* Post should keep *OBO/REPM/AQD* apprised of any problems encountered with negotiating this clause so that *OBO* can assist post in drafting appropriate *documentation* for signature by the *OBO Director/Chief Operating Officer.* In the event that this clause is not acceptable under local law, posts should obtain a full legal opinion from local legal counsel and submit that to *OBO* along with the request for a blanket waiver from use of this clause.

ARTICLE SIXTEEN: The purpose of this clause is to state which substantive law will be used in construing the terms of the lease. *While it is typically the law of the country in which the property is located, there may be valid reasons for selecting the law of an alternative country.*

Continuation—6 FAM Exhibit 737.1A

ARTICLE SEVENTEEN: For any legal service of process, posts must immediately notify L/BA of the circumstances involved which occasioned the notice so that L/BA can instruct posts on appropriate procedures to be followed. Posts should also note that any formal legal service of process can only be submitted to the U.S. Government through the Ministry of Foreign Affairs.

If there are registered or certified mail or return receipt requested procedures available at post, posts should specify the type of mail service required. If there is no adequate mail service, posts may wish to specify hand delivery.

ARTICLE EIGHTEEN: Recent legislation requires that this “anti-lobbying” clause be included in all real estate contracts (other than Deeds) whose value exceeds \$100,000. Thus, even sales contracts and conditional (or promissory) sales agreements whose value exceeds \$100,000 must contain this clause. For leases, post should look only to the annual payments to determine the \$100,000 threshold. Thus, if the annual payment is greater than \$100,000, this clause must be included. Unlike the Contract Disputes Act clause (Article Fifteen), the law provides no exemptions to the use of this Article Eighteen language in real estate contracts. If post encounters resistance to the inclusion of this clause, please notify *the Acquisitions and Disposals Division in the Real Estate and Property Management Office of the Bureau of Overseas Buildings Operations (OBO/REPM/AQD)* immediately of the full circumstances and *OBO* will provide further explanation that post may pass on to the prospective landlord.

SIGNATURES: If local law and custom so suggest, posts may wish to have two witnesses sign the lease document.

6 FAM EXHIBIT 737.1B
SAMPLE OF STANDARD LEASE*

(*State only; USAID does not use this model lease.)

(CT:GS-140; 10-04-2004)
(State Only)

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 of the United States of America at _____, hereinafter referred to as "the TENANT."

ARTICLE TWO: DESCRIPTION OF PREMISES

The LANDLORD hereby leases to the TENANT the following described Premises (*hereinafter the "Premises"*), together with their appurtenances:

[Describe property]

to be used as a diplomatic establishment in _____ and for such other purposes as the TENANT may desire.

Continuation—6 FAM Exhibit 737.1B

An inventory of any mechanical and electrical equipment on the premises, as well as condition reports of the premises, equipment, and furniture and furnishings provided by the LANDLORD, as they now exist, signed by both parties, is 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

OPTION ONE:

A. The Lease is renewable by the TENANT under these same terms and conditions for ___ further period(s) of ___ years, or until [date]____, provided that written notice is given to the LANDLORD at least ___ days prior to the date this Lease or any extension of it would otherwise expire.

OPTION TWO:

B. In the event the TENANT exercises its right to renew, the renewal rate shall be fair market rental, to be determined by the parties hereto. Within six months prior to the termination 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 twenty-one days of receipt of such notice, the rental change will take effect in the next rental term.

If the parties are unable to agree on fair market rental, there shall be a valuation committee of three valuers. One valuer (certified by the national Board of Appraisers, the Appraiser General, or the Land Valuation Department, depending upon what services are available locally) shall be appointed by each of the Parties within ten working days after written notice of renewal 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 one month after the appointment of the second valuer, the third valuer shall be appointed by the local governmental board having authority over appraisals. 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. The decision of the valuation committee shall be final and binding upon formal, written issuance thereof. There shall be no appeal of the decision of the valuation

Continuation—6 FAM Exhibit 737.1B

committee. Should fair market rental not be ascertained when the renewal period begins, the TENANT shall continue to pay rent at the applicable rate until the new rate has been set, at which time the TENANT will make retroactive payments to the date of commencement of the new Lease, if necessary.

ARTICLE FIVE: PAYMENT

The TENANT shall pay the LANDLORD for the premises rented and for other services provided at the following rate and terms:

[Insert amount. **NOTE:** If payment is to be made in other than U.S. dollars, insert specific information concerning the applicable exchange rate, e.g., what rate applies, is it subject to change, etc.]

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. Payments are to be made [monthly, quarterly, semi-annually, annually] in advance to the LANDLORD at [specify address within the host country. If otherwise, see Comments].

ARTICLE SIX: WARRANTIES

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. The LANDLORD also warrants that the TENANT shall and may 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. 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 others in regard to the leased Premises.

The LANDLORD will handle and settle or otherwise dispose of all demands, claims, actions, or proceedings by others in respect of TENANT's right of quiet possession. In the event, however, that the TENANT incurs expenses in defense of its right to quiet possession, the LANDLORD agrees to reimburse the TENANT cost for cost as soon as practicable after the TENANT's presentation of its claim for such expenses, provided the TENANT has, before incurring such expenses, 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.

Continuation—6 FAM Exhibit 737.1B

The TENANT warrants that the person executing this Lease on its behalf *has been appointed under the authority of the Director/Chief Operating Officer of the Bureau of Overseas Buildings Operations (OBO DIR/COO)*, possessing all requisite power and authority to enter into this lease agreement on behalf of the United States Government.

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 (which consent shall not be unreasonably withheld) and, at the TENANT's discretion, in the presence of a TENANT employee. 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 during the Lease term the following: [Insert a full description of the services to be provided, e.g., heat, light, water, power, sewage disposal, janitorial and/or custodial services, elevator service, telephone service, and note who is responsible for payment of real property taxes.]

C. Maintenance Responsibilities. The LANDLORD shall, at his/her/its own cost and expense, be responsible for all major maintenance, structural work, and major repair 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, elevators, escalators, plumbing and related fixtures, LANDLORD-supplied generators, water filtration systems, and fire protection systems. The LANDLORD acknowledges that keeping the premises in good repair and tenable condition is essential to make them appropriate for use by the United States of America.

[If applicable to a building shared with other tenants, add this language: 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 tenable condition.]

Continuation—6 FAM Exhibit 737.1B

The LANDLORD will be responsible for any damages caused by the breakdown of these systems or any failure to maintain the common areas discussed above. The LANDLORD shall not be responsible for interruptions in utilities, beyond LANDLORD's control, supplied by municipal sources. 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.

[If conditions warrant, use the following language: The LANDLORD undertakes to maintain the sidewalks 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. Emergency Repairs. The LANDLORD agrees to commence, carry out, and complete emergency repairs within 48 hours after receiving oral or written notice from the TENANT. For repairs which cannot be completed within 48 hours, the LANDLORD agrees to present a completion schedule for acceptance by the TENANT. For any emergency repairs which the LANDLORD does not handle in this manner, the TENANT may undertake the repair at the LANDLORD's expense. Any funds expended by the TENANT in this regard shall be deemed prepaid rent and a subsequent rental payment shall be reduced by this amount. (If all rental payments have been made, the LANDLORD will make a direct refund to the TENANT.)

E. Taxes, Fees, and Assessments. The LANDLORD accepts full and sole responsibility for the payment of all fees, taxes and other charges of a public nature which are or may be assessed against the Premises. 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.

F. Registration. If local law requires the LANDLORD to register this lease, he/she/it warrants that he/she/it will do so 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.

Continuation—6 FAM Exhibit 737.1B

G. 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 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 and/or willful acts of the LANDLORD, LANDLORD's agents, and/or employees.

ARTICLE EIGHT: TENANT RIGHTS AND RESPONSIBILITIES

The TENANT shall have the right, during the existence of this Lease, to erect structures, additions and signs, to make alterations, and/or attach fixtures in or upon the Premises. This includes the right to affix a flagstaff, *U.S.* flag, *U.S.* seal, and office signs and insignia on the Premises leased. (Include only when necessary: provided that the alterations, additions, structures, or signs so placed shall not be detrimental to or inconsistent with the rights granted to other tenants). 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 at the time of or within a reasonable time after the Lease or any extension thereof expires or is terminated.

[The following clause may be added only if required by the LANDLORD: 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 same under this Lease, except for reasonable and ordinary wear and tear, damage by the elements, or by circumstances over which the TENANT has no control. However, if the LANDLORD requires such restoration, the LANDLORD shall give written notice thereof to the TENANT 30 days before the termination of the lease.]

The TENANT shall, unless hereinafter specified to the contrary, maintain the said Premises in good repair and tenantable condition during the continuance of this Lease, except for reasonable and ordinary wear and tear, damage by the elements or circumstances over which the TENANT had no control. Any damage arising from the intentional acts or negligence of the LANDLORD, its agents or employees is similarly excepted.

Continuation—6 FAM Exhibit 737.1B

ARTICLE NINE: ASSIGNMENT AND SUBLEASE

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. If the LANDLORD assigns its rights and responsibilities under the Lease to a third party, the TENANT may, within 60 days of becoming aware of the identity of the third party, terminate the Lease.

If the LANDLORD sells the Premises, or defaults under any mortgage, trust deed or trust indenture related to the Premises, and if a purchaser or mortgagee duly enters into possession of the Premises, the LANDLORD shall give to the TENANT written notice of the identity of such third party prior to the sale, transfer or assignment. The TENANT agrees to become the tenant of the purchaser or mortgagee, unless the purchaser or mortgagee is a person or entity from whom TENANT may not lease under applicable laws of the United States or for essential security or foreign policy reasons. If the purchaser or mortgagee is unacceptable to the TENANT for any of the foregoing reasons, the TENANT may, within 60 days of the receipt of the LANDLORD's notice, terminate this Lease by giving at least 60 days' prior written notice of termination.

ARTICLE TEN: INSURANCE

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 with or without fault of the LANDLORD, including but not limited to fire; lightning; storm; tempest; explosion; riot; civil commotion; bursting or overflowing of water tanks, apparatus or pipes, boiler or machinery; flood; labor disturbance; earthquake; malicious damage or any other casualty or Act of God. The LANDLORD shall adequately insure the property against fire and all other risks enumerated above and normally insured under standard coverage; the LANDLORD shall also carry adequate personal injury and liability insurance on all areas of the property to cover all risks for which he/she/it is responsible. Each party, respectively, shall be liable for damages to the leased premises caused by its own fault or negligence, or that of its agents and/or employees. Evidence of the LANDLORD's insurance coverage shall be furnished to the TENANT within 45 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.

Continuation—6 FAM Exhibit 737.1B

ARTICLE ELEVEN: PURCHASE OPTION

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 [an amount equal to fair market value: state the amount, if known, or see Comments for further instructions].

This option to purchase shall continue open and in full force for the basic term as granted in this Lease and any extensions thereof. If and when the TENANT exercises the said option to purchase, the LANDLORD covenants and agrees to convey to the United States Government 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 TWELVE: LANDLORD'S DEFAULT

In the event the LANDLORD fails to fulfill any of its obligations under this Lease, 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 agreement at the entire expense of the LANDLORD. The TENANT will notify the LANDLORD in writing of its intention to take action in accordance with this Article prior to taking such action.

ARTICLE THIRTEEN: DESTRUCTION OF PREMISES

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, or other similar casualty, this Lease shall, at the option of the TENANT, immediately terminate. In case of partial destruction or damage, this Lease may be terminated in whole or in part at the TENANT's option. Should the TENANT exercise its option, it shall provide at least twenty days' written notice to the LANDLORD, and no rent shall accrue to the LANDLORD after such termination.

Continuation—6 FAM Exhibit 737.1B

If the Lease is terminated in whole or in part, the LANDLORD shall within 45 days of termination refund any advance rental payments in excess of rental liabilities accrued to the date of termination. Should the TENANT elect to remain in premises rendered partially untenable, 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 two months after the damage occurs.

ARTICLE FOURTEEN: TERMINATION

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, 60, or 90, etc.] 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.

[If the Lessor will not accept the clause above, one which is normally required in U.S. Government contracts, post may negotiate a longer notice period; the following termination clause; or a termination clause which provides the U.S. Government no lesser rights than those provided by this clause.]

If the TENANT decides to remove its establishment from _____, or change the grade thereof, or acquires its own property in _____, or substantially reduces its personnel from the present level, (or if the employee assigned this housing is transferred), it shall be at liberty to terminate this Lease upon giving the LANDLORD 90 days' written notice without the LANDLORD having right to any payment other than rental to the date the TENANT removes its belongings and surrenders the Premises.

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

In the event that any disputes arise concerning the text of this Lease, the English version controls. 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 which follow:

1. Contract Disputes Act.

Continuation—6 FAM Exhibit 737.1B

(A) This lease agreement is subject to the Contract Disputes Act of 1978, *as amended* (41 U.S.C. 601-613) (*the "Act"*).

(B) *Except as provided in the Act, all disputes arising under or relating to this Lease shall be resolved under this clause.*

(C) "Claim," as used in this clause, 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 *US\$100,000* is not a claim until certified as required by subparagraph (D)(2) below. 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 clause, if it is disputed either as to liability or amount or is not acted upon within a reasonable time.

(D)(1) A claim by the LANDLORD shall be made in writing and submitted *within six years after accrual of the claim* to the TENANT's *General Services Officer or Management Officer* for a written decision. A claim by the TENANT against the LANDLORD shall be subject to a written decision by the TENANT's *General Services Officer or Management Officer*.

(2)(i) The LANDLORD shall provide the certification specified in subparagraph (D)(2)(iii) of this clause when submitting any claim –

Exceeding US\$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").

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

Continuation—6 FAM Exhibit 737.1B

(iii) *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."*

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

(E) *For LANDLORD claims of US\$100,000 or less, the TENANT's General Services Officer or Management Officer must, if requested in writing by the LANDLORD, render a decision within 60 days of the request. For LANDLORD-certified claims over US\$100,000, the TENANT's General Services Officer or Management Officer must, within 60 days, decide the claim or notify the LANDLORD of the date by which the decision will be made.*

(F) *The TENANT's General Services Officer or Management Officer's decision shall be final unless the LANDLORD appeals or files a suit as provided in the Act.*

(G) *If the claim by the LANDLORD is submitted to the TENANT's General Services Officer or Management Officer or a claim by the TENANT is presented to the LANDLORD, the parties, by mutual consent, may agree to use ADR. If the LANDLORD refuses an offer for alternative disputes resolution, the LANDLORD shall inform the TENANT's General Services Officer or Management Officer, in writing, of the LANDLORD's specific reasons for rejecting the request. When using arbitration 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 (D)(2)(iii) of this clause, and executed in accordance with subparagraph (D)(3) of this clause.*

(H) *The TENANT shall pay interest on the amount found due and unpaid from:*

(1) *The date the TENANT's General Services Officer or Management Officer receives the claim (certified if required); or*

Continuation—6 FAM Exhibit 737.1B

(2) 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 General Services Officer or Management 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 General Services Officer or Management Officer receives the claim, and then at the rate applicable for each 6-month period as fixed by the U.S. Treasury Secretary during the pendency of the claim.

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 General Services Officer or Management Officer.

If the LANDLORD is unwilling to accept Article 15 above, post may, with prior OBO/REPM and L/BA approval, use either of the following clauses:

Arbitration (#1).

In the event that any disputes arise concerning the text of this Lease, the English version controls. Any disputes arising between the parties hereto concerning this Lease which cannot be resolved in negotiations between the LANDLORD and TENANT shall be settled by arbitration, using the rules of the United Nations Commission on International Trade Law (UNCITRAL) in effect at that time, except that in the event of any conflict between those rules and the arbitration provisions of this Lease, the provisions of this Lease shall control and govern.

There shall be an arbitration committee of three arbitrators. One arbitrator shall be appointed by each of the Parties within ten working days after the complaining Party delivers to the other Party a formal, written complaint or charge specifying the nature of the complaint or charge and requesting arbitration. The two named arbitrators shall appoint the third arbitrator. If the arbitrators are unable to agree to a third arbitrator within a period of one month after the appointment of the second arbitrator, the third arbitrator shall be appointed by UNCITRAL in accordance with its procedural rules.

Continuation—6 FAM Exhibit 737.1B

Taking into consideration the provisions of public international law, the arbitration committee shall apply the law of [country] to all questions of law. The decision of the arbitration committee shall be final and binding upon formal, written issuance thereof. There shall be no appeal of the decision of the arbitration committee.

Arbitration (#2).

In the event that any disputes arise concerning the text of this Lease, the English version controls. Any disputes arising between the parties hereto concerning this Lease which cannot be resolved in negotiations between the LANDLORD and TENANT shall be settled by arbitration. One arbitrator shall be appointed by each of the Parties within ten working days after the complaining Party delivers to the other Party a formal, written charge specifying the nature of the complaint and requesting arbitration. The two named arbitrators shall appoint the third arbitrator no later than one month after their appointment, and shall reach agreement on the dispute no later than three months after they have been convened. The decision of the arbitration committee shall be final and binding once it has been issued in writing. There shall be no appeal of the decision of the arbitration committee.

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/LEGAL CONSTRUCTION

This Lease cancels all other agreements which the parties may have previously entered into which relate in any way to the Premises, and this written agreement constitutes the entire understanding of the parties. Oral discussions and representations made during negotiation of this Lease shall not be construed to be terms of this Lease. Any changes, 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 General Services Officer or the Management Officer* at the (U.S. Embassy) in _____ shall be deemed valid and binding as against the TENANT. 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. An invalidation of one of

Continuation—6 FAM Exhibit 737.1B

the clauses of this lease agreement shall not be grounds for invalidation of any other clauses.

ARTICLE EIGHTEEN: NOTICES

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 or Management Officer)
U.S. Embassy/
Consulate *General/*
Consulate Address

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 [required only if the annual rental amount of the lease exceeds \$100,000]

(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 U.S. 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.

Continuation—6 FAM Exhibit 737.1B

(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 \$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 1532, 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 \$10,000, and not more than \$100,000, for each such failure. IN WITNESS WHEREOF, the parties have affixed their signatures this ___ day of _____, 20__.

LANDLORD:
[Typed Name]

TENANT:
United States of America

By _____
[Typed Name]

By _____
[Typed Name]

*(Title, i.e., General Services Officer
or Management Officer) at U.S.
Embassy/Consulate General/Consulate*

6 FAM EXHIBIT 737.2 LEASE AMENDMENT

(TL:GS-59; 10-01-1999)

(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 Lessor] , Lessor, and the United States of America, acting by [Name and Title of Officer] , Lessee, for [Type of Space] at [Address] , and amendments to such lease if any.

(2) In consideration of the Lessor providing _____ square feet of additional space, the Lessee hereby agrees to pay additional rent in the amount of _____ (quarterly, annually) commencing on [Date] , [Year] .

(or)

The Lessor hereby grants permission to the Lessee 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 Lessee, 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 Lessee 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.

Continuation—6 FAM Exhibit 737.2

(3) Therefore, it is agreed by and between the Lessor and the Lessee 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]_____
LESSEE

_____[Name, Title, and Address]_____
LESSOR

6 FAM EXHIBIT 737.4 TERMINATION AND ACQUITTANCE AGREEMENT

(TL:GS-59; 10-01-1999)

Date _____
Post _____
Lease No. _____
PropID _____

(1) Reference is hereby made to lease number _____ dated [Date], [Year] and amendments, between [Name of Lessor] as Lessor and the United States of America as Lessee, 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 Lessor hereby acknowledges that the premises (and furnishings) were returned by the Lessee to the Lessor on [Date], in a condition acceptable to the Lessor, 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]_____
LESSEE

_____[Name, Title, and Address]_____
LESSOR