

Influencing the Center of Gravity in Counterinsurgency Operations: Contingency Leasing in Afghanistan

Major Michael C. Evans*

*Counterinsurgency is not just thinking man's warfare—it is the graduate level of war.*¹

I. Introduction

In armed conflict and contingency operations, U.S. forces commonly displace private citizens from their property to quickly establish secure forward operating bases (FOBs). The security considerations that require U.S. military forces to quickly and quietly establish FOBs often leave displaced citizens homeless and feeling helpless. Some families have evacuated in advance of military operations, returning months or years later to find their homes, businesses, or land occupied. Displaced civilians often return after military operations improve the security situation but they become prime targets for insurgent recruitment when they find themselves homeless. Unfortunately, however, this does not change the fact that commanders engaged in offensive or peacekeeping operations require land and buildings to house soldiers, weapons, and equipment. A unit judge advocate opens channels of communication and limits insurgent inroads into local populations when he helps the unit quickly identify and pay property owners for the use of their land and related facilities. However, leasing land from private landowners in contingency operations, then legally paying for it out of appropriated funds, is a detailed and complex area of practice.

The purpose of this article is to prepare deploying judge advocates to efficiently navigate the lease process in Afghanistan from start to finish.

In order to effectively prepare deploying judge advocates, this article begins with background information that compares domestic property law rights with property law rights preserved by the law of war. Second, the article identifies and describes the agency that adjudicates leases in contingency operations. Third, the article identifies the process of creating a valid lease and common lease issues in Afghanistan. Finally, the article describes how quick payment of leases complements the current counterinsurgency approach in Afghanistan while promoting positive relationships with families who are paid for their property and with the greater community.

II. Background

The property rights enjoyed by Americans in peacetime are vastly greater than those protected by the law of war. Understanding the differences will enable judge advocates to keep applicable laws in context.

Americans are extremely secure in the rights and privileges endowed by domestic property law. The Fifth and Fourteenth Amendments to the U.S. Constitution guarantee

individual property rights, forbidding the state and federal governments to take property without due process of law or just compensation. Americans take these protections for granted. However, in many countries, individual property rights are less secure.

The Hague and Geneva Conventions protect individuals' rights to property during periods of international armed conflict. When a military force of one nation enters another nation, international law prohibits the destruction or seizure of enemy property unless it is, "imperatively demanded by the necessities of war."² The law of war does not allow the destruction of property, even in combat, without a "reasonably close connection between the destruction and overcoming the enemy's army."³ Army Field Manual (FM) 27-10 authorizes U.S. Army Forces to use, with or without the permission from land owners, property for:

marches, camp sites, construction of field fortifications, etc. Buildings may be destroyed for sanitary purposes or used for shelter for troops, the wounded and sick and vehicles for reconnaissance, cover, and defense. Fences, woods, crops, buildings, etc., may be demolished, cut down, and removed to clear field of fire, to clear ground for landing fields, or to furnish building materials or fuel if imperatively needed for the army.⁴

Once U.S. Forces firmly control an area and substitute their authority for that of the displaced government, they

* Judge Advocate, U.S. Marine Corps. Presently assigned as an Associate Counsel Procurement, Marine Corps Systems Command, Quantico, Virginia. Previously assigned as Deputy Regimental Judge Advocate, Regimental Combat Team-6, Fallujah, Iraq, 2007-2008. While deployed with RCT-6 in Anbar province, reviewed over 1200 lease claims, resulting in payments of over \$2.2 million to legitimate owners of occupied properties.

¹ U.S. DEP'T OF ARMY, FIELD MAN. 3-24, COUNTERINSURGENCY 1-1 (15 Dec. 2006) [hereinafter FM 3-24] (quoting a Special Forces officer in Iraq (2005)).

² Hague Convention No. IV Respecting the Laws and Customs of War on Land, art. 23(g), Oct. 18, 1907, 36 Stat. 2277, 205 Consol. T.S. 277 [hereinafter Hague IV].

³ U.S. DEP'T OF ARMY, FIELD MAN. 27-10, THE LAW OF LAND WARFARE para. 56 (18 July 1956) [hereinafter FM 27-10].

⁴ *Id.* (citing Geneva Convention for the Protection of Civilian Persons in Time of War, art. 53, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter GC IV]).

become occupying forces.⁵ Under the Hague and Geneva Conventions they may not destroy real or personal property belonging to private persons, “except where such destruction is rendered absolutely necessary by military operations.”⁶ However, they may control property within occupied territory as necessary to prevent hostile forces from benefiting from or using the property.⁷ A commanding officer may also authorize forcible requisition of real property.⁸ When requisitioning property, U.S. Forces must provide property owners with receipts immediately. Property owners may make claims using these receipts as evidence.⁹ Prices for requisitioned property should be mutually agreed upon, but if negotiations fail, the military authority may determine the price.¹⁰

International property rights are also protected during contingency operations through the law of war and U.S. law and policy.

III. Contingency Leasing in Afghanistan

Units occupying foreign property in contingency operations must coordinate with the U.S. Army Corps of Engineers Contingency Real Estate Support Team (CREST). The Army Corps of Engineers has legal authority to lease private property and enter into agreements to use host nation

property for military contingency operations.¹¹ The Army Corps of Engineers (ACE) created contingency real estate teams after the Persian Gulf War to deploy overseas on short notice and support contingency operations.¹² The CREST mission is to, “[p]rovide real estate support to American forces during overseas contingency operations leading to war, during war-time operations, and operations other than war.” Leases can be made available for billeting, warehouses, office space or other mission requirements.¹³ 10 U.S.C. § 2675 applies to leases in foreign countries and states:

The Secretary of a military department may acquire by lease in foreign countries structures and real property relating to structures that are needed for military purposes other than for military family housing. A lease under this section may be for a period of up to 10 years, or 15 years in the case of a lease in Korea, and the rental for each yearly period may be paid from funds appropriated to that military department for that year.¹⁴

A CREST may provide real estate services throughout the spectrum of operations anywhere in the battle space and through all phases of operations. However, the process the ACE utilizes in Afghanistan has changed in the past few years.

The U.S. Government does not have a Status of Forces Agreement (SOFA) with Afghanistan. Ordinarily, the U.S. Government and the host nation will negotiate a SOFA to ensure military forces in contingency operations have access to real property required for operations. In the absence of a SOFA, U.S. forces acquire real property through the following means: “(1) entering into an agreement with the Afghan government for use of land; (2) entering in to a permit with the International Security Assistance Force to use land made available to it under agreements with the Afghan government; and (3) entering into leases with private land owners.”¹⁵

⁵ FM 27-10, *supra* note 3, para. 351 (citing Hague IV, *supra* note 2, art. 42).

⁶ GC IV, *supra* note 4, art. 53.

⁷ FM 27-10, *supra* note 3, para. 399.

⁸ Requisition is a demand for property placed on the owner of the property or his representative. U.S. DEP’T OF ARMY, TECHNICAL MAN. 5-300, REAL ESTATE OPERATIONS IN OVERSEA COMMANDS para. 34 (10 Dec. 1958) [hereinafter TM 5-300]. *See also* FM 27-10, *supra* note 8, para. 412.

a. Treaty Provision.

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in operations of the war against their country. Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied. Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

b. What May Be Requisitioned. Practically everything may be requisitioned under this article that is necessary for the maintenance of the army, such as fuel, food, clothing, building materials, machinery, tools, vehicles, furnishings for quarters, etc. Billeting of troops in occupied areas is also authorized.

Id. (citing Hague IV, *supra* note 3, art. 52).

⁹ FM 27-10, *supra* note 3, paras. 409, 412a.

¹⁰ *Id.* para. 416.

¹¹ *See* U.S. DEP’T OF ARMY, REG. 405-10, REAL ESTATE ACQUISITION OF REAL PROPERTY AND INTERESTS THEREIN paras. 3-2a, 3-3a (14 May 1970).

¹² JANET A. McDONNELL, SUPPORTING THE TROOPS: THE U.S. ARMY CORPS OF ENGINEERS IN THE PERSIAN GULF WAR 172 (1996).

¹³ Field Force Engineering: Contingency Real Estate Support Team Fact Sheet, U.S. ARMY CORPS OF ENG’RS, <http://usace.army.mil/CEMP/ffe/Documents/CREST%20Fact%20Sheet.pdf> (last visited Dec. 2, 2010).

¹⁴ 10 U.S.C. § 2675(a) (2006).

¹⁵ E-mail from Dominic H. Frinzi, Jr., Attorney, Headquarters U.S. Army Corps of Eng’rs Office of Chief Counsel, to Lieutenant Colonel Michael E. Mueller, Chair, Contract & Fiscal Law Dep’t, The Judge Advocate Gen.’s Legal Ctr. & Sch., Charlottesville, Va. (Feb. 28, 2011, 16:05 EST) (on file with author).

The ACE has developed North and South District Real Estate offices in Afghanistan to assist units in negotiating and executing agreements, permits and leases of real property. The District Real Estate offices replaced the CRESTs and provide comprehensive support in Afghanistan.¹⁶ Units in Afghanistan must coordinate their lease efforts with the appropriate District Real Estate offices. No authority to execute leases has been delegated below the district level.¹⁷ Judge advocates must be familiar with the real estate process to adequately advise their commanders in Afghanistan.

IV. Lease Formation and Administration Issues in Afghanistan

Deployed judge advocates encounter many claims involving real property in Afghanistan.¹⁸ Not all claims lend themselves to the lease process.¹⁹ Generally, the Foreign Claims Act (FCA)²⁰ or the Military Claims Act (MCA)²¹ covers claims for damage and use of real estate for thirty days or less. The *Operational Law Handbook* and Army

Regulation (AR) 27-20 cover FCA and MCA in detail.²² Claims for periods of thirty-one days or more become real estate claims and must be handled through the ACE.²³

Although paying the owner of seized property is imperative, the process of obtaining a lease and verifying ownership can be arduous in contingency operations. Correctly identifying legal owners when no ownership documentation exists, while at the same time attempting to identify fraudulent claims, makes a complex process even more difficult. Judge advocates must be well integrated into an organization in order to educate unit leaders on the need to identify, locate, and quickly pay owners of occupied property. The lease process requires both the claimant and the unit claims officer, usually the judge advocate, to follow strict procedures to ensure the efficient use of U.S. taxpayer money.²⁴

A. Lease Process in Afghanistan

Military units must strictly follow the ACE process in order to execute a lease in Afghanistan. First, units must identify their land requirements and validate the availability of necessary funding. Second, units must complete a Land Acquisition Request Form and an Environmental Baseline Survey, which are included as Annexes A and B of U.S. Forces–Afghanistan Fragmentary Order (USFOR–A FRAGO) 09-265. The unit claims officer must submit these forms along with proof of ownership, grid coordinates, and approval from local officials to the Corps of Engineers Real Estate Departments Transatlantic Engineer District–North (TAN) or Transatlantic Engineer District–South (TAS). In Afghanistan, land ownership is often disputed. A unit must communicate information on known land disputes to the appropriate real estate office. After submitting the required documentation, the unit should maintain contact with the real estate office. No unit should occupy property without an executed lease or real estate instrument. Once the real estate office receives the request, it will determine the appropriate method for acquiring the land.²⁵ Many issues arise in lease formation and administration in Afghanistan.

¹⁶ *Id.* The Army Corps of Engineers will use Contingency Real Estate Support Teams to support contingency operations in the future.

¹⁷ The Service Secretaries' authority to enter into leases is provided by 10 U.S.C. § 2675(a). The Secretary of the Army delegated this authority to the Assistant Secretary of the Army (Installations & Environment) (ASA(I&E)) through General Order Number 3, Headquarters, Department of the Army, dated 9 July 2002. The ASA (I&E) then delegated his authority to the Deputy Assistant Secretary of the Army (Installations & Environment), who further delegated it down to the Engineer districts which are now in place in Afghanistan. See Memorandum from Assistant Sec'y of the Army, Installations & Env't, to Acting Dir. of Real Estate CEMP-CR, subject: Delegation of Authority to Execute Leases in Support of Contingency Operations (12 Dec. 2008) (on file with author). See also Memorandum from Dir. of Real Estate, U.S. Army Corps of Eng's, to Mr. Vincent Leduc, Chief of Real Estate, subject: This Delegation of Authority to Execute Leases in Support of CETAS Real Estate Operations (9 Dec. 2009) (on file with author).

¹⁸ Real property is any interest in land, together with improvements, structures, and fixtures on the land. 41 C.F.R. § 102.71.20 (2005).

¹⁹ At the beginning of 2007 in Fallujah, Iraq the locals knew U.S. forces paid claims based on damage to real and personal property, but at that time leases were not commonly paid in that area. U.S. Forces in the area usually occupied the largest and best located property and many powerful local nationals had received nothing for property taken from them by U.S. forces. As a result, the commanding officer was consistently presented with claims for payment from powerful and influential people in areas it was his job to secure. Claims for payment were consistently presented at tribal meetings, meetings with local judges and police, and at weekly claims processing days. The deployed JA must become an expert at recognizing the processes available to adjudicate claims and manage that process effectively to ensure claims are paid in a timely fashion and fraudulent claims are not paid. He must also recognize when claims processes are not appropriate and when the more lengthy lease process should be used. The author became familiar with these issues while serving as the Deputy Regimental Judge Advocate, Regimental Combat Team–6, Fallujah, Iraq, from 10 January 2007 to 12 January 2008. During that time over 1200 lease claims were reviewed in Anbar Province resulting in over \$2.2 million in payments to verified owners.

²⁰ See 10 U.S.C. § 2734 (2006).

²¹ See *id.* § 2733.

²² INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., U.S. ARMY, JA 422, OPERATIONAL LAW HANDBOOK 315–16 (2010) [hereinafter OPERATIONAL LAW HANDBOOK].

²³ U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS para. 2-15m (8 Feb. 2008) [hereinafter AR 27-20]. See also OPERATIONAL LAW HANDBOOK, *supra* note 22, at 318 and 337.

²⁴ Judge advocates may come into contact with claims that lend themselves to the lease process when they are out paying other unrelated claims. No requirement for judge advocate involvement exists; however, since judge advocates usually have the most experience and training in real property transactions, lease claims are normally presented to unit judge advocates. This article assumes the unit claims officer will be a judge advocate; however, anyone who follows the references in this article could successfully execute leases for their unit.

²⁵ U.S. FORCES AFGHANISTAN, FRAGMENTARY ORDER 09-265, PROCESS FOR ACQUIRING PUBLIC & PRIVATE LAND, TO OPORD 08-01 (9 Nov. 2009) [hereinafter USFOR–A FRAGO 09-265]. See *infra* Appendix A.

1. Real Estate Agreements on Public Land

The process of entering into a real estate agreement on public land is straightforward. First, the real estate office will verify the location of the property on a map using the grid coordinates provided by the unit and compare that location with the map sent by the unit. Second, the real estate office will review ownership documents and prepare a No-Cost Land Use Agreement (LUA). Finally, they will forward the LUA for translation and signature to the Government of the Islamic Republic of Afghanistan (GIROA) and will then return a copy of the fully executed LUA to the unit.²⁶ The process for entering into leases is somewhat different.

2. Leases on Private Land

On private land, the real estate office will verify the location of the property on a map using the grid coordinates provided by the unit and comparing that location with the map and aerial photographs provided by the unit. Next, they will review the ownership documents and determine the rental amount based on the proposed lease area, the type of land, and a review of any available market data. The real estate office will negotiate with the owner or representative and prepare the land lease agreement.²⁷ The real estate office will then request funds via certified purchase request and commitment (PR&C) from the unit.²⁸ The unit must provide funds prior to presenting the lease to the lessor. The unit then provides the lease to the owner(s) for his signature and returns the signed lease to the real estate office. When the lease is executed, the unit will receive a copy and can then pay the owner(s).²⁹ Unfortunately, the unit will normally encounter problems finding ownership documents in Afghanistan.

B. Proving Ownership in Afghanistan

The feudal Afghan society, a near-complete lack of land records, and the Afghan appetite for negotiation make proving land ownership difficult in Afghanistan.³⁰ In order to pay the legitimate owners for leased property, the ACE has published forms that help the real estate office determine ownership. When disputes arise, USFOR–A FRAGO 09-265 requires the disputing parties to use local tribal practice to resolve the conflict. Disputing parties must request a shura,

²⁶ *Id.*

²⁷ *Id.*

²⁸ U.S. Dep't of Defense, DD Form 3953, Purchase, Request and Commitment (PR&C) (Mar. 1991).

²⁹ USFOR–A FRAGO 09-265, *supra* note 25.

³⁰ Telephone Interview with Dominic H. Frinzi, Jr., Attorney, Headquarters U.S. Army Corps of Eng'rs Office of Chief Counsel (Mar. 8, 2011) [hereinafter Frinzi Telephone Interview].

also called a jirga, or request a formal court rule on their case.³¹ Pashtun tribes in Afghanistan customarily use shuras to settle disputes.³² A shura is a meeting of tribal elders which convenes to hear disputed claims. The shura is capable of hearing testimony and examining witnesses to find an impartial and acceptable solution to the problem. The tribe recognizes the shura's right to enforce decisions using punitive action. Shuras may resolve various ownership scenarios: (1) private owner claim with no official documentation; (2) tribal owner claim with no official documentation; (3) known ownership dispute between private parties; and (4) known ownership dispute between tribes.³³

1. Private Ownership Claimed with No Official Documentation

A private owner must provide an ownership affidavit with appropriate signatures and fingerprints to the unit if land is located in a remote area and no dispute as to ownership exists. The ownership affidavit must state: (1) the individual named swears he is the sole owner of the property; (2) the neighbors agree that he is the sole owner of the property; and (3) the village leader concurs with the ownership of the property as set forth in the affidavit. Village rules may still require a shura. In that case, the unit must ensure the claimant provides the minutes of the shura along with the ownership affidavit. The minutes of the shura must indicate agreement through the signature and fingerprint of each member of the shura. The owner must then take the affidavit or the minutes to the highest government level possible. The unit claims officer may be able to help owners get into contact with the sub-governor, governor, or ministry for official concurrence and signature with an official stamp.³⁴ Unit claims officers, with the help of the command, can also help ensure land owners are not subject to extortion.³⁵ In Afghanistan the unit claims officer may be approached by individuals or tribes claiming land ownership.

³¹ USFOR–A FRAGO 09-265, *supra* note 25.

³² SHERZAMAN TAIZI, JIRGA SYSTEM IN TRIBAL LIFE 4-5 (2007), available at <http://www.tribalanalysiscenter.com/PDF-TAC/Jirga%20System%20in%20Tribal%20Life.pdf>.

³³ USFOR–A FRAGO 09-265, *supra* note 25.

³⁴ *Id.*

³⁵ Obtaining stamps and signatures from local government officials may require legitimate administrative fees. However, judge advocates who discover locals must resort to bribes for services may find creative ways to influence local leaders through their uniformed counterparts in operations and logistics.

2. Tribal Ownership Claimed with No Official Documentation

Tribes must provide an ownership affidavit with appropriate signatures and fingerprints to the unit in order to claim ownership in remote areas where no dispute exists. That ownership affidavit must state: (1) the tribe named is the owner of the property; (2) the neighbors agree that the tribe is the sole owner of the property; and (3) the village leader concurs with the ownership of the property as set forth in the affidavit. Village rules may still require a shura. In that case, the unit must ensure the claimant provides the minutes of the shura along with the ownership affidavit. The minutes of the shura must indicate agreement through the signature and fingerprint of each member of the shura. The tribe must then take the affidavit or the minutes to the highest government level possible. The sub-governor, governor, or ministry should officially concur and sign the ownership affidavit and affix the appropriate stamp.³⁶ Unfortunately, land disputes regarding ownership arise continuously in Afghanistan.

3. Known Dispute Between Private Owners

Individuals or groups involved in land ownership disputes must request that a shura be convened to settle the dispute or else present their claim to a formal court for an official ruling. If land ownership has been resolved by a shura, the shura's minutes must be provided to the real estate office via the unit. The minutes must include all the information in the ownership affidavit. The minutes must also be signed and fingerprinted by the members of the shura. The individual or group whose claim was not upheld by the shura must also sign and fingerprint the minutes, concurring with the decision. The owner must then take the affidavit or minutes to the highest level possible, namely the sub governor, governor, or ministry, for official concurrence and signature with the appropriate stamp. If a formal court rules on the case, a copy of the official ruling with the appropriate stamps must be provided.³⁷

4. Known Dispute Between Tribes

If there is a known land ownership dispute between tribes, the tribal leaders must first attempt to resolve the dispute. If the tribes resolve ownership, the owning tribe must complete and sign the affidavit of ownership. The designated leader of the other tribe must concur and sign that document. The owning tribe must then take the affidavit to the highest level possible, namely the sub governor, governor, or ministry, for official concurrence and signature with the appropriate stamp. If the tribes fail to resolve the

³⁶ *Id.*

³⁷ *Id.*

conflict they must present their claims to a formal court. To prove ownership in this case, tribes must provide the decision of the formal court with the appropriate official stamps.³⁸ Once complicated ownership issues are resolved, the unit must coordinate lease payments with the district Army Corps of Engineers real estate office and the comptroller.

C. Lease Payments in Afghanistan

Units that require leases must provide funding for them. 10 U.S.C. § 2675(b) authorizes the Department of Defense to use operation and maintenance or construction funds for the "acquisition of interests in land" in accordance with an approved lease agreement.³⁹ Operation and maintenance (O&M) funds are available to all units; however they are one-year funds, appropriated for use within a single fiscal year.⁴⁰ Most unit requirements for leases do not fall neatly into fiscal years. Happily, statutory authority exists to use O&M funds for leases that extend into the next fiscal year.

1. Leases for Periods Crossing Fiscal Years

The language of 10 U.S.C. § 2410a establishes a statutory exception to the bona fide needs rule. Units may use this authority to pay for real property leases that cross fiscal years, as long as each contract does not exceed one year. Funds may be obligated from the fiscal year in which the need for the lease arises for the entire period of the lease even though that period crosses fiscal years.⁴¹ Thus, if a

³⁸ *Id.*

³⁹ 10 U.S.C. § 2675 (2006).

⁴⁰ 31 U.S.C. § 1502(a) (2006).

The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability. . . . However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.

Id.

⁴¹ 10 U.S.C. § 2410a (2012).

(a) Authority. (1) The Secretary of Defense, the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may enter into a contract for a purpose described in paragraph (2) for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

(2) The purpose of a contract described in this paragraph is as follows:

(A) The procurement of severable services.

lease is executed to run from August 2011 to July 2012, the whole lease can be paid for using O&M funds from fiscal year 2011. U.S. Forces–Afghanistan FRAGO 09-265 requires that a lease be in place before a unit occupies real property in Afghanistan. However, some situations require the payment of retroactive leases.

2. Retroactive Real Estate Claims

For myriad reasons units sometimes use real property without having leases in place. Retroactive real estate claims may be paid in two ways. When the unit already occupies the property and has a continuing need for that property, AR 405-15 expressly authorizes real estate officials to negotiate a lease to cover the requirement. The lease will become effective from the beginning of the unit's use in order to settle a claim for prior use, as long as the lease continues into the future.⁴² If the unit has already vacated the premises the procedure is different.

A landowner may be paid for real property used and occupied under a lease (express, implied, or otherwise) under AR 27-20.⁴³ This regulation expresses a preference for handling claims for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property under AR 405-15.⁴⁴ However, the ACE has determined that AR 405-15 does not clearly authorize payment when the claim involves only past use of real property when there was no lease in place. In this case the claim is more appropriately paid under AR 27-20.⁴⁵ Before paying, the unit must coordinate with the district real estate office to ensure the claimant is not paid more than once for the same land. Unit responsibility for leased property is not limited to payment. In order to limit claims, units must attempt to protect that property.

D. Protecting Leased Property

Once a lease is in place, the unit commander must "protect the property." "This responsibility cannot be

transferred or delegated."⁴⁶ Protecting the property includes protecting plumbing and heating systems from freezing, protecting interiors against the elements, and ensuring that the property is not left unsecured.⁴⁷ Protecting leased property enables units to avoid paying future claims for damages.

E. Claims After a Unit Departs

Owners receiving their real property back after military forces have left normally claim the property has been damaged significantly. Although they have received lease payments for the use of their property, owners are normally given lump sum payments for damages upon termination of their leases. Payment is made in exchange for a liability release from the owner for any future claims for damage. The damages and restoration paragraph of the model lease identifies the mutually agreed-upon payment.⁴⁸

Units are required to verify ownership, follow stringent procedures, and safeguard property in order to ensure our actions promote the rule of law and limit the insurgent's ability to recruit from the local population. Acting in compliance with the procedures set forth above improves our ability to conduct effective counterinsurgency operations.

V. Leases and Counterinsurgency Operations

Executing counterinsurgency operations requires coordination across a broad spectrum of systems including military, political, economic, psychological, and civil actions. Counterinsurgency is difficult and requires the military to coordinate with other federal agencies, countries, and international organizations in order to work together toward a common goal.⁴⁹ "[B]y focusing on efforts to secure the safety and support of the local populace, and through a concerted effort to truly function as learning organizations, the Army and Marine Corps can defeat their insurgent enemies."⁵⁰ Leases are a small but valuable part of counterinsurgency operations.⁵¹ Using the lease process

(B) The lease of real or personal property, including the maintenance of such property when contracted for as part of the lease agreement.

(b) Obligation of funds.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a).

⁴² U.S. DEP'T OF ARMY, REG. 405-15, REAL ESTATE CLAIMS FOUNDED UPON CONTRACT para. 5 (1 February 1980). See *infra* Appendix B for a sample retroactive lease.

⁴³ AR 27-20, *supra* note 23, para. 3-3b(1).

⁴⁴ *Id.* para. 2-15m.

⁴⁵ Frinzi Telephone Interview, *supra* note 30, at 13.

⁴⁶ TM 5-300, *supra* note 8, para. 48.

⁴⁷ *Id.* paras. 28 and 48c.

⁴⁸ Frinzi Telephone Interview, *supra* note 30. See also *infra* Appendix B.

⁴⁹ FM 3-24, *supra* note 1, para. 5-1.

⁵⁰ *Id.* intro.

⁵¹ *Id.* para. 5-3. "COIN operations combine offensive, defensive, and stability operations to achieve the stable and secure environment needed for effective governance, essential services, and economic development." See also *id.* para. 5-12.

Commanders determine which LLOs [Local Lines of Operations] apply to their AO and how the LLOs connect with and support one another. For example, commanders may conduct offensive and defensive operations to form a shield behind which simultaneous stability operations can maintain a

described in this article and paying leases in a timely fashion allows the commander to demonstrate mutual respect and consideration for the local population in his area of operations.

A. Leases and Force Protection

“Both insurgents and counterinsurgents are fighting for the support of the populace.”⁵² According to General David H. Petraeus, the people of Afghanistan are the center of gravity and the key to the success of the Afghan government and International Security Assistance Force (ISAF). Military units must engage and live with the population. “We can’t commute to the fight. Position joint bases and combat outposts as close to those we’re seeking to secure as feasible. Decide on locations with input from our partners and after consultation with local citizens and informed intelligence and security assessments.”⁵³ When units plan to move into an area, the lease procedures require them to engage the local population in order to determine where they will move in. Commanders must carefully perform that process in order to reduce the security threat associated with informing the public of future unit positions. By informing the local population and engaging the leadership in the area, units avoid creating unnecessary enemies and potentially begin winning hearts and minds. When a unit coordinates its move with local elders and citizens they can ensure they have access to sites that will help secure the area while attempting to avoid displacing families with no other property or options for shelter. Creating fewer enemies enhances force protection. Cooperating with local leadership will likely create allies in previously hostile areas.

B. Leases Promoting Rule of Law

secure environment for the populace. Accomplishing the objectives of combat operations/civil security operations sets the conditions needed to achieve essential services and economic development objectives. When the populace perceives that the environment is safe enough to leave families at home, workers will seek employment or conduct public economic activity. Popular participation in civil and economic life facilitates further provision of essential services and development of greater economic activity. Over time such activities establish an environment that attracts outside capital for further development. Neglecting objectives along one LLO risks creating vulnerable conditions along another that insurgents can exploit. Achieving the desired end state requires linked successes along all LLOs.

Id.

⁵² *Id.* para. 1-160.

⁵³ Memorandum from Commander, Int’l Sec. Assistance Force/U.S. Forces–Afghanistan, to the Soldiers, Sailors, Airmen, Marines and Civilians of NATO ISAF and U.S. Forces Afg., subject: COMISAF’s Counterinsurgency Guidance (1 Aug. 2010) (on file with author).

“Help Afghans build accountable governance. Afghanistan has a long history of representative self-government at all levels, from the village shura to the government in Kabul. Help the government and the people revive those traditions and help them develop checks and balances to prevent abuses.”⁵⁴ Using the lease process described in this article requires units to refer individuals and tribes with competing ownership claims back to local governing bodies for resolution or support. Requiring locals to use recognized processes promotes the rule of law and benefits the unit. It promotes the rule of law by reinforcing the legitimacy of the local court, government representative, or shura.⁵⁵ In addition, it reduces the likelihood that the unit will pay fraudulent claims, because the tribal leadership and neighbors are required to identify the legitimate owner. Lastly, if fraud occurs, it helps the unit identify who in the community knew about or committed the fraud.

Creating, maintaining and turning over complete and detailed lease files enables follow-on units to immediately resolve contrary ownership claims, which inevitably follow a previous unit’s departure. Future claimants should be referred back to local practices to resolve ownership disputes. Formal courts and shuras are both capable of adjudicating ownership claims.⁵⁶ Shuras also appear capable of forcing individuals who were paid by the United States to compensate other owners who were excluded from the original leases.⁵⁷ Thus, the United States can avoid having to adjudicate follow-on claims itself, instead leaving these to local institutions.

VI. Conclusion

U.S. policy and the international law of war recognize the need for military forces to take and use real property during armed conflict and contingency operations. Worldwide recognition of that fact makes it no less difficult for a family to leave their home or a farmer to walk away from his fields. Unit judge advocates have a unique opportunity to help their commanding officers reach out to locals who find themselves in this situation by ensuring correct lease procedures are followed. Although property ownership is not well documented in Afghanistan and their dispute resolution techniques seem antiquated, Afghans can resolve ownership disputes themselves and must be allowed to do so. The judge advocate should educate unit leaders and local owners on the process so that when ownership disputes are settled, the remaining requirements are complete and

⁵⁴ *Id.*

⁵⁵ USFOR–A FRAGO 09-265, *supra* note 35. “This is a strategic initiative to reinforce good governance, rule of law, build technical opportunity and reinforce the bridge of goodwill and credibility between GIRA and the people of Afghanistan.” *Id.*

⁵⁶ *Id.*

⁵⁷ TAIZI, *supra* note 45.

leases can be processed efficiently. Leasing land from private landowners in Afghanistan is a complex operation that requires significant coordination with the ACE but

doing it quickly and efficiently enhances counterinsurgency efforts.

Appendix A

Model Lease

LEASE AGREEMENT
FOR
PRIVATELY OWNED PROPERTY
BETWEEN
[INSERT PARTY(S) NAME(S)] AND THE UNITED STATES OF AMERICA

This **LEASE**, is made and entered into this ____ day of ____ in the year of 20__, between the owner, _____, hereinafter called the Lessor, and the **UNITED STATES OF AMERICA**, hereinafter called the Lessee. The Lessor and the Lessee may be referred to jointly as the “Parties,” and each separately as a “Party.”

In consideration for the **RENT** specified in Article 3, below, the Parties promise and agree as follows:

1. **PROPERTY:** The Lessor leases to the Lessee the following described property with all its appurtenances, herein after known as the “Premises”: [INSERT LEGAL DESCRIPTION HERE (include GPS if possible).] A map depicting the borders of the property is attached as **Exhibit “A”** hereto and made a part hereof.

2. **LEASE TERM:** The Lessee shall have the right to have and to hold the Premises, or any portion thereof, for the period beginning _____ 20__ through _____ 20__. The Lessee shall have the right but not the obligation to renew this Lease for up to four (4) additional terms of up to one year or less, under the same terms, conditions, and negotiated consideration provided herein. The Lessee shall provide written notice to the Lessor of the Lessee’s intent to renew this Lease prior to the expiration date of the current term or renewal period, provided further that the renewal of this Lease is subject to adequate appropriations being made available from year to year for the payment of rentals. If Lessee does not provide written notice to the Lessor of the Lessee’s intent to renew this Lease prior to the expiration date of the current lease term, or renewal period, this Lease will expire, with no further notice being required from Lessee, at the end of the current lease term or renewal period.

3. **RENT:**

a. Subject to the availability of funds, the Lessee shall pay the Lessor Annual Rent in the amount of _____ USD, or local currency equivalent. The determination as to whether to accept USD or local currency will be at the Lessee’s option. In the event the Lessee elects to pay the Lessor in local currency, the Lessee shall not be responsible for fluctuations in the exchange rate from USD to such local currency on the date payment is made as compared to any previous (or subsequent) exchange rate(s).

b. In addition to the rent described in 3.a above, the Parties mutually agree, subject to the availability of funds, that the Lessee may pay, and that the Lessor agrees to accept, a one-time payment of \$_____ or Afghani equivalent at Lessee’s option, as full and final compensation for past rent (for the period _____ through _____).

FUNDING CITATION: _____

4. **OWNERSHIP:** The Lessor warrants that the Lessor is the rightful and legal owner of the herein described premises and has the legal right to enter into this Lease and perform its obligations. If the title of the Lessor shall fail, or it be discovered that the Lessor did not have authority to lease to the Lessee, the Lessee shall have the option to terminate this Lease. The Lessor, the Lessor’s heirs, executors, administrators, successors, or assigns agree to indemnify the Lessee by reason of such failure and to **refund all rental paid by the Lessee**. Further, the Lessee shall have the option to withhold rents pending the resolution of any and all ownership issues and discrepancies.

5. **EXCLUSIVE USE:** The premises are to be used exclusively by the Lessee, its employees, agents, or contractors. The Lessor shall not interfere with or restrict the Lessee, or its representatives, in the use and enjoyment of the Premises, nor shall the Lessor erect any fence, wall, partition or any construction upon the Premises, except as otherwise agreed to in writing by the Lessee.

6. **TERMINATION:**

a. The Lessee may terminate this Lease for breach or default. No rent shall accrue after the effective date of termination. Notice of termination under this Article 6 will be computed commencing with the day after the date of mailing or other written notification.

b. The Lessee may terminate this lease in whole or in part, at any time by giving thirty (30) days notice in writing to the Lessor. Said notice shall be computed commencing with the day after the date of mailing, e-mailing, or hand delivery. No rents shall accrue for the portion or entirety of the lease premises so terminated after the effective date of said termination. In the event Lessor is furnished said notice that Lessee desires to terminate the entire lease or a portion of the leased premises after rental payment has been made, the balance of such advanced payment of rental to the Lessor, covering the time period after the effective date of said termination, shall be refunded to the Lessee within thirty (30) days after said effective date of termination. Refund payments shall be prorated on a daily basis for the occupancy period consistent with the rental rates stipulated in Article 3. RENT.

c. In the event the Lessee is directed by the government of **Afghanistan** to vacate the Premises or **Afghanistan** territory prior to the expiration date of this Lease or any extension thereof, Lessee shall have the right to terminate this Lease at any point following Lessee's receipt of the notice to vacate from the government of **Afghanistan**. No rents shall accrue for the portion or entirety of the Premises so terminated after the effective date of said termination. In the event Lessor is furnished said notice that Lessee desires to terminate after rental payment has been made, the balance of such advanced payment of rent to the Lessor, covering the time period after the effective date of said termination, shall be refunded to the Lessee within thirty (30) days after said effective date of termination. The refund payment will be prorated on a daily basis for the occupancy period consistent with the rental rates stipulated in Article 3, RENT.

d. The Lessor has no termination rights under this Lease.

7. **UTILITIES, SERVICES, EQUIPMENT AND PERSONAL PROPERTY:** [Note: This paragraph is optional depending on whether the premises have such equipment.]

a. The Lessor warrants the mechanical equipment and utilities to be in good serviceable and operating condition. In particular, the Lessor warrants that the heating system of the leased property is adequate and sufficient to maintain a 20 degree Celsius temperature. If the heating, domestic hot water, electric, water, or gas systems prove to be inadequate, the Lessor agrees to correct the deficiencies at Lessor's expense. Furthermore, the Lessor warrants the mechanical equipment, utilities, and their respective systems comply with present standards, established by the U.S. Government. Should these standards be changed or modified, the Lessor will, at Lessor's expense, do whatever is necessary to comply with the new standards.

b. The Lessee will make arrangements and payment for the utilities and services used by separate contract.

c. There is no personal property in or on these premises.

8. **ALTERATIONS:** The Lessee shall have the right, during the existence of this Lease, to make alterations, attach fixtures, excavate, and erect additions, structures, or signs, in or upon the Premises, which fixtures, additions, or structures, so placed in, upon or attached to the Premises shall be and remain the property of the Lessee and may be removed or left in place at the option of the Lessee.

9. **DAMAGES AND RESTORATION:** [Note: Use the following text if the lessor has not already received payment for damages to the premises. In cases where the United States has already paid the lessor damages for previous claims with respect to the premises (such as cases where the land was occupied by the United States before entering into a lease) use the highlighted text in lieu of the non-highlighted text.]

On or before the termination of this Lease, or its relinquishment by the Lessee, the Lessee shall, within such reasonable time as determined by the Lessee, vacate the Premises, remove all its personal property therefrom, and restore the Premises to its previous condition, damages beyond the control of the Lessee and due to fair wear and tear and construction authorized under this Lease excepted. Notwithstanding the foregoing, the Parties mutually agree, subject to the availability of funds, that the Lessee may pay, and that the Lessor agrees to accept, a one-time payment of \$_____ or COUNTRY equivalent, at Lessee's option, as full and final compensation for damage settlement in lieu of restoration arising from or related to the occupancy, use, and alteration of the Premises. In consideration of such compensation, the Lessor does hereby release, acquit, and forever discharge the Lessee from any and all manner of actions, liability, and claims for any reason whatsoever;

past, present, or future, arising from the occupancy, use, and alteration of the Premises, and for any other matters related thereto, and the Lessor agrees to indemnify, hold harmless, and defend, at Lessor's expense, the Lessee from and against any judicial process, including, but not limited to, demands and liabilities; past, present, and future, arising from the use, occupancy, and alteration of the Premises.

Lessor acknowledges that Lessor has already received a one time payment of \$_____ or COUNTRY equivalent as final compensation for damage in lieu of restoration arising from or related to the occupancy, use, and alteration of the Premises. As a result of this one time payment, Lessor agrees that Lessee will not be responsible for damages to the leased property, and the Parties mutually agree, that the Lessor does hereby release, acquit, and forever discharge the Lessee from any and all manner of actions, liability, and claims for any reason whatsoever; past, present, or future, arising from the occupancy, use, and alteration of the Premises, and for any other matters related thereto, and the Lessor agrees to indemnify, hold harmless, and defend, at Lessor's expense, the Lessee from and against any judicial process, including, but not limited to, demands and liabilities; past, present, and future, arising from the use, occupancy, and alteration of the Premises.

10. MAINTENANCE AND REPAIRS: [Note: This paragraph is optional depending on whether the premises have such equipment.]

a. The Lessor shall, at all times, maintain the leased property in good repair and tenantable condition. In the event the Lessor shall be absent or otherwise unavailable, Lessor shall provide the Lessee the name, address, e-mail address, and telephone number of a designated representative who will assume full responsibility for maintenance and repairs.

b. The Lessor shall be responsible to perform all maintenance and repairs of \$500 or more, as determined by Lessee (anything less will be the responsibility of the Lessee and shall be paid by separate contract), which shall be performed in a timely manner. Scheduling of all maintenance and repairs shall be coordinated with the designated occupant representative of the Lessee.

c. The Lessee occupant representative will notify the Lessor of any emergency and request the Lessor to perform the necessary work. All emergency maintenance and repairs performed by the Lessor will be completed within 48 hours from the time of notification. Emergency maintenance and repairs include but are not limited to: (1) leaking water pipes; (2) blocked or leaking drains; (3) electrical failure; and (4) sewerage system malfunction.

d. In the event the Lessor shall fail to perform emergency maintenance and repairs within 48 hours or to perform non-emergency maintenance and repairs within 5 days from the date notice is given by the Lessee, the Lessee may immediately perform or have performed such maintenance and repairs and deduct all costs thereof from the rental and other charges due or to become due under the terms of this lease.

11. INSPECTION: As of the beginning date of this Lease, or as soon as possible thereafter, the UNITED STATES shall prepare the following reports and will attach them as exhibits:

a. A joint physical condition survey and inspection (JS&I) report signed by representatives of the Lessor and the Lessee setting forth the agreed physical appearance and condition of the Premises on the beginning date of this Lease as determined from a joint inspection by the Parties (Exhibit B).

b. An environmental baseline survey (EBS) signed by representatives of the Lessor and the Lessee reflecting the condition of the Premises on the term beginning date of this Lease as determined by an environmental site assessment (Exhibit C).

c. At the expiration or earlier termination or revocation of this Lease, the following reports will be prepared by the UNITED STATES and attached as exhibits and made a part of this Lease:

(1) An update of the JS&I, signed by representatives of the Lessor and the Lessee, which shall be attached as Exhibit B 1 to this Lease. The update of the JS&I will set forth the agreed physical appearance and condition of the Premises on the ending date of this Lease as determined from a joint inspection by the Parties.

(2) An update of the EBS, signed by representatives of the Lessor and the Lessee, which shall be attached as Exhibit C 1 to this Lease. The update of the EBS will set forth those environmental conditions and matters on and affecting the Premises on the ending date of this Lease.

d. The final JS&I and EBS will include an unconditional release for any and all liability or claims of damage, against the Lessee, its officers, agents or employees for use and occupancy of the Premises.

12. **TAXES:** The Lessor accepts full and sole responsibility for the payment of all fees, taxes and other charges of a public nature which may arise in connection with this Lease, or which may be assessed against the Premises. This includes registration of this Lease and payment of related charges.

13. **NOTICE:**

a. Any notice under this Lease shall be in writing signed by a duly authorized representative of the party giving such notice, and if given by the Lessee shall be addressed to the Lessor at: _____, by e-mail of a scanned document to _____, or by leaving a copy of the written notice at the Entry Control Point (ECP) and informing Lessor by telephone that Lessor may retrieve the document at the ECP. Notice is effective at the point the Lessee mails, e-mails, or telephones the Lessor in conjunction with the written notice.

b. If notice is given by the Lessor, such notice shall be addressed to the Lessee at:

Camp _____, Afghanistan, ATTN: Real Estate

Alternate:

U.S. Army Corps of Engineers, District Office
ATTN: Office Symbol
Street
Other (P.O. Box, etc.)
City, State Zip

14. **LESSOR'S SUCCESSORS:** The terms and conditions of this Lease shall be binding on the Lessor, and the Lessor's heirs, executors, administrators, successors, and assigns. If the Lessor shall sell or otherwise transfer the land containing all or any portion of the Premises, Lessor shall ensure that such land is sold or transferred subject to this Lease. If Lessor fails to sell or transfer such land subject to this Lease, the Lessee shall have the same rights as under Article 4 of this Lease, OWNERSHIP.

15. **COVENANT AGAINST CONTINGENT FEES:** The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or a contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty the Lessee shall have the right to annul this lease without liability therefore, or in the Lessee's discretion, to deduct from the RENT in Article 3, the full amount of such commission, percentage, brokerage, or contingent fee.

16. **OFFICIALS NOT TO BENEFIT:** No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Lease if made with a corporation for its general benefit.

17. **GRATUITIES:**

a. The Lessee may, by written notice to the Lessor, may terminate the right of the Lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or the Secretary of the Army's duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or representative of the Lessor, to any officer, or employee of the Lessee with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such lease; provided that the existence of facts upon which the Secretary of the Army or the Secretary of the Army's duly authorized representative makes such findings, shall be in issue and may be reviewed in any competent court.

b. In the event this Lease is terminated as provided in Article 17.a hereof, the Lessee shall be entitled: (i) to pursue the same remedies against the Lessor as it could pursue in the event of a breach of this Lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or Secretary of the Army's duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Lessor in providing any such gratuities to an such officer or employee.

c. The rights and remedies of the Lessee provided in this Article 17 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Lease.

18. **EXAMINATION OF RECORDS:** The Lessor agrees that any duly authorized representatives of the Lessee shall have the right until the expiration of three (3) years after final payment of the agreed rental in Article 3, to have access to and the right to examine any directly pertinent books, documents, papers and records of the Lessor involving transactions related to this Lease.

19. **MODIFICATION:** No Change or modification of this Lease shall be effective unless it is in writing and signed by both parties to this Lease.

20. **LANGUAGE PRECEDENCE:** This Lease is executed in English. A courtesy translation may be furnished to the Lessor. In the event of inconsistency between any terms and conditions of this Lease and its translation, the English language version will have precedence and control.

21. **ASSIGNMENT:** The Lessee shall have the right to assign this Lease to a successor organization or entity, hereinafter referred to as a "Successor." Such assignment shall take effect by the signing of an amendment to this Lease by Lessor, Lessee, and the Successor. Assignment rights contained herein include the right of the Lessee to enter into agreements with any Successor for any and all fixtures, additions, alterations, improvements, or structures of the Lessee.

22. **DISPUTES CLAUSE:**

a. All disputes arising under or relating to this Lease shall be resolved under this Article 22.

b. The term "Claim" as used in this Article 22, means a written demand or written assertion by one of the Parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of the Lease terms, or relief arising under or relating to this Lease. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a Claim, unless the submission of such voucher, invoice, or other routine request for payment is converted to a Claim by following the procedures in this Article 22, because the such voucher, invoice, or other routine request for payment is either disputed either as to liability or amount, or it is not acted upon in a reasonable time.

c. All Claims shall be made in writing and submitted to the Real Estate Contracting Officer for a written decision. All Claims shall be subject to a written decision by the Contracting Officer.

d. For all Claims by the Lessor, the Lessor shall submit with the claim a certification that -

(1) The claim is made in good faith;

(2) Supporting data are accurate and complete to the best of the Lessor's knowledge and belief; and

(3) The amount requested accurately reflects the Lease adjustment for which the Lessor believes the Government is liable.

e. If the Lessor is an individual, the certification shall be executed by that individual. If the Lessor is not an individual, the certification shall be executed by-

(1) A senior company official in charge at the Lessor's office location involved; or

(2) An officer or general partner of the Lessor having overall responsibility for the conduct of the Lessor's affairs.

f. The Real Estate Contracting Officer, will, within 60 days of receipt of a Claim, decide the Claim or notify the Lessor of the date by which the decision will be made.

g. The Real Estate Contracting Officer's decision will be final unless the Lessor appeals the decision to the Chief of Real Estate. The decision of the Chief of Real Estate or his or her duly authorized representative for the determination of such appeals shall be final and conclusive.

h. The Lessee will pay interest on the amount found due and unpaid from (1) the date the Real Estate Contracting Officer receives a properly certified claim, or (2) the date payment otherwise would be due, if that date is later, until the date

of payment. Simple interest on Claims shall be paid at the current rate established by the U.S. Secretary of the Treasury, which is applicable to the period during which the Real Estate Contracting Officer receives the claim. This rate will be equal to the yield rate of ten (10) year U.S. Treasury maturities as of the date this interest first becomes due and payable, as reported by the Federal Reserve Board in Federal Reserve Statistical Release H.15, plus one and one half percent (1 1/2%) rounded up to the nearest one eighth percent (1/8%).

i. The Parties shall proceed diligently with their performance of this Lease, pending final resolution of any request for relief, claim, appeal, or action arising under the Lease, and comply with any decision of the Real Estate Contracting Officer.

23. ENTIRE AGREEMENT:

a. This Lease contains all terms and conditions agreed to by the parties and no other verbal statement or conditions will be honored without an amendment to this Lease in writing as provided in Article 19, above. The failure of either party to insist on strict performance of any covenant or condition hereof or to exercise any option herein contained shall not be construed as a waiver of such covenant, condition, or option in any other instance. This Lease cannot be changed or terminated orally. The provisions of this Lease shall apply to, bind and inure to the benefit of Lessor and Lessee, and their respective heirs, successors, legal representatives and assigns of the parties hereto.

b. Nothing in this lease agreement shall constitute, or be deemed to constitute an obligation of future appropriations by the Lessee, for the costs herein set forth.

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

LESSOR:

WITNESS

(owner)

THE UNITED STATES OF AMERICA:

WITNESS

BY: NAME
AED Real Estate
Afghanistan

AGENT Language

In exchange for Lessee allowing Lessor's Agent or Attorney in Fact, hereinafter "Agent," to act on behalf of Lessor and other good and valuable consideration, Lessor and Agent agree to hold Lessee harmless in any claim or dispute between Lessor and Agent, involving the relationship between Lessor and Agent, or regarding any action taken by Agent pursuant to the agreement that allows Agent to represent Lessor in matters concerning the property described in Article 1. Furthermore, Lessor and Agent agree that the sole recourse for any such claim or dispute shall be with and between the Lessor and Agent.

Appendix B

Retroactive Lease

**LEASE AGREEMENT
FOR
PRIVATELY OWNED PROPERTY
BETWEEN
[INSERT LESSOR(S) NAME(S) HERE]**

AND THE UNITED STATES OF AMERICA

This **LEASE**, is made and entered into this ____ day of ____ in the year of 20__, between the owner, _____ (**LOCAL passport/ID #XXXXXXXXX**[if applicable]), hereinafter called the Lessor, and the **UNITED STATES OF AMERICA**, hereinafter called the Lessee. The Lessor and the Lessee may be referred to jointly as the “Parties,” and each separately as a “Party.”

Prior to the execution of this Lease, the Lessee occupied the Lessor’s property (land), and now the parties desire to enter into this Lease to establish the terms of occupancy and the rental consideration for the term of this Lease, and to obtain a release from the Lessor for any past, present or future claim of any kind arising from the occupancy of the premises or damage to the premises by the Lessee.

In consideration for the **RENT** specified in Article 3, below, the Parties promise and agree as follows:

1. **PROPERTY:** The Lessor leases to the Lessee the following described property with all its appurtenances, herein after known as the “Premises”: **LOCATION’S LEGAL DESCRIPTION HERE (include GPS if possible)**
A map depicting the borders of the property is attached as Exhibit “A” hereto and made a part hereof.

2. **LEASE TERM:** The Lessee occupied and held said premises for the period beginning on or before _____ and ending _____. The lease will terminate upon execution of the lease and fulfillment of the terms hereunder.

3. **RENTAL:** The Lessee shall pay the Lessor rent for the term of this lease in the amount of \$ _____ USD, or local currency equivalent. The determination as to whether to accept USD or local currency will be at the Lessee’s option. In the event the Lessee elects to pay the Lessor in local currency, the Lessee shall not be responsible for fluctuations in the exchange rate from USD to such local currency on the date payment is made as compared to any previous (or subsequent) exchange rate(s).. Said rental payment represents the total consideration due the Lessor for occupancy of the premises by the Lessee and for any and all damages or alterations to the premises by the Lessee.

The Lessor shall have no other claim whatsoever, now or in the future, for any compensation arising from Lessee’s use or occupancy of the premises.

4. **DAMAGES:** The parties agree that the Lessee is not responsible for combat or war related damages. The parties also agree the Lessee shall not be liable for any loss, destruction or damages to the premises, including but not restricted to acts of nature, fire, lightning, floods or severe weather. The parties agree that the above rent includes any and total settlement of damages, and claims by the Lessor.

5. **OWNERSHIP:** The Lessor warrants that he is the rightful and legal owner of the property and has the legal right to enter into this lease. If the title of the Lessor shall fail, or it be discovered that the Lessor did not have authority to lease the property, the Lessee shall have the option to terminate this lease and the Lessor agrees to reimburse the Lessee for any rentals paid to the Lessor.

6. **TAXES:** The Lessor accepts full and sole responsibility for the payment of all taxes and other charges of a public nature which may arise in connection with this lease or which may be assessed against the property. This includes registration of the lease and payment of related charges.

7. **LESSOR’S SUCCESSORS:** The terms and provisions of this lease and the conditions shall bind the Lessor, and the Lessor’s heirs, executors, administrators, successors, and assigns.

8. COVENANT AGAINST CONTINGENT FEES: The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or a contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty the Lessee shall have the right to annul this lease without liability or in its discretion to deduct from the lease price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

9. OFFICIALS NOT TO BENEFIT: No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit that may arise there from, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

10. GRATUITIES:

a. The Lessee may, by written notice to the Lessor, terminate the right of the Lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or representative of the Lessor, to any officer, or employee of the Lessee with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such lease; provided, that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

b. In the event this lease is terminated as provided in paragraph (a) hereof, the Lessee shall be entitled (i) to pursue the same remedies against the Lessor as it could pursue in the event of a breach of the lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Lessor in providing any such gratuities to an such officer or employee.

c. The rights and remedies of the Lessee provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.

11. EXAMINATION OF RECORDS: The Lessor agrees that any duly authorized representatives shall have the right until the expiration of three (3) years after final payment of the agreed rental, have access to and the right to examine any directly pertinent books, documents, papers and records of the Lessor involving transactions related to this lease.

12. MODIFICATION: No Change or modification of this lease shall be effective unless it is in writing and signed by both parties to this lease.

13. ENGLISH LANGUAGE: This Lease is executed in English. A courtesy translation may be furnished to the Lessor. In the event of inconsistency between any terms and conditions of this Lease and its translation, the English language version will have precedence and control.

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

WITNESS

LESSOR

THE UNITED STATES OF AMERICA:

WITNESS

Real Estate Officer
U.S. Army Corps of
Trans Atlantic-????

AGENT Language

In exchange for Lessee allowing Lessor's Agent or Attorney in Fact, hereinafter "Agent," to act on behalf of Lessor and other good and valuable consideration, Lessor and Agent agree to hold Lessee harmless in any claim or dispute between Lessor and Agent, involving the relationship between Lessor and Agent, or regarding any action taken by Agent pursuant to the agreement that allows Agent to represent Lessor in matters concerning the property described in Article 1. Furthermore, Lessor and Agent agree that the sole recourse for any such claim or dispute shall be with and between the Lessor and Agent.