

MEMORANDUM OF UNDERSTANDING

**between the Government of the United States of America and the
Government of the Republic of Kazakhstan on Providing a Land Plot to the
Government of the United States of America for the Construction of New
Diplomatic Mission Facilities of the United States of America**

Article 1

In consideration of the right granted by the Government of the United States to the Republic of Kazakhstan to purchase the property in Washington DC, located at 1401 16th Street N.W., for its Chancery, the Government of the Republic of Kazakhstan leases to the Government of the United States of America a land plot of the area of 8.614 hectares located at Manas Street (nearby the Ak-Bulak-4 microdistrict) in Astana for a period of 49 years, with the option to renew the lease, at no additional cost, for at least three subsequent additional 49-year periods, for the construction of buildings for the United States of America diplomatic mission on the condition that the United States pays a one-time payment in the amount of three hundred thousand US Dollars (US \$300,000).

Article 2

Should the legislation of the Government of the Republic of Kazakhstan be amended to the effect that foreign governments are granted the right to purchase land with the right of ownership, the Government of Kazakhstan by virtue of the present Memorandum gives the United States Government the right to re-register the leasehold right into the right of ownership, at no additional cost, as reciprocity for the acquisition of 1401 16th St., NW for the diplomatic mission of the Republic of Kazakhstan in Washington, DC.

Article 3

Subject to the prior approval of the Ministry of Foreign Affairs of the Government of Kazakhstan and the United States' Department of State, Office of Foreign Missions, each participant guarantees the other the right to possess and transfer property and the right to possess the buildings, and land plots occupied by its diplomatic mission in the host state remain.

Article 4

The Government of the United States of America will respect the legislation of the Government of the Republic of Kazakhstan governing urban development and architectural affairs.

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Article 5

The leased land plot referred to in Article 1 of this Memorandum of Understanding must be provided free from any debts, encumbrances and rights of third parties.

Article 6

The Government of the Republic of Kazakhstan, in accordance with the norms of international law, the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963, and by virtue of the present Memorandum undertakes not to levy any and all taxes, fees and other costs associated with the land plot and releases the Government of the United States of America from all expenses associated with the execution and registration of the Lease Agreement, including, without limitation, all notary, registration fees, and other charges to be collected under the legislation of the Government of the Republic of Kazakhstan upon execution of all papers and documents relating to the land plot.

Article 7

The Government of the United States of America undertakes to pay all expenses related to the construction of its diplomatic mission, as well as all expenses related to maintenance, repairs, electricity, gas, water and heating supplies, and communication services in accordance with applicable rates and tariffs existing in the Republic of Kazakhstan.

Article 8

The Government of the Republic of Kazakhstan undertakes to provide every assistance in a timely manner in arranging for and implementing all necessary connections to utility facilities, at the cost of the Government of the Republic of Kazakhstan or the City of Astana, upon the provision by the Government of the United States of America of technical specifications for the utilities to the leased land.

Article 9

The Government of the Republic of Kazakhstan undertakes to provide every assistance in a timely manner in arranging for issuing of all necessary construction permits, consents and approvals required for the design and construction of new buildings on the land, provided that the Government of the United States of America follows the applicable and pertinent procedures established by the prevailing legislation of the Republic of Kazakhstan.

Article 10

Should any disputes or disagreements arise out of or in connection with the interpretation or implementation of the terms and conditions of this Memorandum of Understanding, the Parties undertake to resolve the same by way of consultation and negotiation.

Article 11

Any amendments or additions hereto, including those stipulated in Article 2 of this Memorandum of Understanding, may only be made subject to the mutual consent of the Parties in the form of separate protocols which would then form an integral part of this Memorandum of Understanding.

Article 12

This Memorandum of Understanding shall enter into force provisionally upon signature and shall enter into force definitively from the date on which the last written notice is made confirming the implementation by the Parties of all internal procedures required to make this Memorandum effective.

DONE in duplicate at Almaty, Kazakhstan, on October 3, 2002, in English and Russian languages, both texts being equally authentic. A Kazakh language text, considered equally authentic, shall be signed upon an exchange of diplomatic notes confirming its conformity with the English language text.

For and on behalf of the Government
of the United States of America

For and on behalf of the Government
of the Republic of Kazakhstan

Lang E. Nappu

Thouaen

LAND LEASE AGREEMENT
BETWEEN THE AKIMAT OF THE CITY OF ASTANA ACTING ON BEHALF OF THE
REPUBLIC OF KAZAKHSTAN AND THE UNITED STATES OF AMERICA

No. _____ of October 4, 2002

Astana

ARTICLE 1. PARTIES

On the basis of the Memorandum of Understanding signed on October 3, 2002 between the Government of Kazakhstan and the Government of the United States of America on allocating a land plot to the Government of the United States of America for the Construction of New Diplomatic Mission Facilities of the United States of America in Kazakhstan (the "Memorandum"), and Resolution No. 3-1-1651 of the Akimat of the City of Astana dated 9 September 2002 (Attachment A), this Lease Agreement (the "Lease") is made this 4th day of October, 2002, by the Akimat of the City of Astana, owner of the property (hereinafter referred to as LANDLORD), acting on behalf of the Republic of Kazakhstan on the basis of the "Land Law of the RK of 2001", Article 14 and the United States of America, duly represented by Jeffry R. Olesen, Contracting Officer, United States Embassy, Almaty, Kazakhstan, ("TENANT").

ARTICLE 2. DESCRIPTION OF PROPERTY

The LANDLORD, hereby leases to the TENANT a land plot of 86,140 square meters (cadaster number: 21-318-049-451) located on Manas Road, Astana, (Ak-Bulak Microdistrict) for the purpose of designing, construction, and operation of a diplomatic establishment and infrastructure.

ARTICLE 3. LEASE TERM

The term of this Lease shall be for FORTY NINE (49) years, beginning on 4 October 2002, and ending 3 October 2051.

ARTICLE 4. LEASE RENEWAL

The Lease is renewable by the TENANT under the same terms and conditions for three additional terms of FORTY NINE (49) years each, or until October 3, 2198, provided that written notice is given to the LANDLORD at least one hundred eighty (180) days prior to the date this Lease or any renewal term would expire.

ARTICLE 5. RENT

- 5.1. The total rent for the initial term and all three renewal terms together is US\$ 300,000 which shall be paid in United States dollars, either by U.S. Government check or electronic transfer, in one lump sum and in accordance with Article 6 of this lease. Payment shall be made into the account identified by the LANDLORD.

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

ARTICLE 6. SETTLEMENT DATE

- 6.1. Payment to the Landlord will be made on the day of settlement. The settlement date shall be not more than ten (10) calendar days after satisfactory completion of the last condition in Article Nine. On the settlement date, the LANDLORD will deliver vacant possession and the TENANT will pay the rent.
- 6.2. The LANDLORD may give possession of the Property earlier than the settlement date if agreed to by the TENANT. In the event possession is granted early, the TENANT shall not pay rent for such possession and may erect fences to secure exclusive possession of the site. If the Lease is terminated before the settlement date, the TENANT will remove such fences promptly.

ARTICLE 7. WARRANTIES

- 7.1. The LANDLORD warrants that it is the sole and lawful owner of the Property and that 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 Property for the Lease term (and any renewals), 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 it will hold the TENANT free and harmless from any and all demands, claims, actions or proceedings by others in regard to the Property after the execution of this Lease.
- 7.2. 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, unless such demands, claims, actions, or proceedings are resulting from violation of the legislation of the Republic of Kazakhstan by the TENANT. In the event the TENANT incurs expenses in defense of its right to quiet possession, the LANDLORD agrees to reimburse the TENANT all costs it incurs as soon as possible 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.
- 7.3. There is no lien, tax, or other charge of any kind against the Property; no preventive or executive matters pending before any local authority (e.g., embargo, attachment, prohibition on leasing or selling) or any other matter that curtails, diminishes, or limits free transfer of the Property on signing or any time during the Lease.
- 7.4. The Property shall be delivered with vacant possession and free of any form of occupancy, tenancy, squatters, unlawful possessor or holder.

- 7.5. If, during the life of this Lease, any of the warranties is breached and such breach adversely affects the Property, its value or the TENANT'S ability or right to use the Property as intended, the LANDLORD shall undertake all steps necessary to resolve the problem within thirty (30) days at its cost.

ARTICLE 8. DAMAGE OR LOSS

The risk of loss or damages to the Property by flood, earthquake, civil unrest, unlawful occupation, military action, act of God, or other casualty remains with LANDLORD until the settlement date and registration of the lease.

ARTICLE 9. CONDITIONS

- 9.1. The Lease for the Property will become effective, and the TENANT will pay the rent, subject to satisfactory completion of the conditions below as determined by the TENANT. The LANDLORD agrees to allow all access needed to the Property by representatives and/or employees of the TENANT for the purposes of conducting investigations and inspections of the Property to satisfy the conditions above.
- 9.2. Within ninety (90) calendar days of the date of this Agreement:
- 9.2.1. Boundary Survey. The TENANT obtains a boundary survey of the property performed by professional boundary surveyor selected by the TENANT, confirming, in the TENANT's sole opinion that the property is the correct size, shape and location and that there are no encroachments, easements, rights of way, land reserves of any kind or other public land use that inhibits the TENANT's use or development of the Property.
- 9.2.2. Geological tests. The TENANT executes a geological survey including soil borings and test pits of the Property performed by a professional company selected by the TENANT, confirming, in the TENANTS sole opinion that the ground is suitable for the construction of the intended structures. If geological tests show the land to be unsuitable, then the TENANT has the right to rent another alternate site of the same size and configuration on the same lease terms and conditions, at a location agreed to between the parties.
- 9.2.3. Host Government Approval. The TENANT obtains all authorization, approvals, permits and confirmations regarding, but not limited to, zoning, building heights, site access, utility connections and land use which, pursuant to the laws of Kazakhstan, may be necessary for the TENANT to fully use and develop the site and acquire title to the Property.
- 9.2.4. Parliament Approval. The Parliament of Kazakhstan ratifies the above mentioned Memorandum of Understanding.
- 9.2.5. US Department of State Approval. The U.S. Embassy at Almaty, Kazakhstan obtains final approval from the US Department of State, Office of Foreign Buildings Operations, to proceed with the execution of this lease.

- 9.3. Within seven calendar days of completion of each condition, the party benefiting shall notify the other in writing of completion. If more than ninety days is required by either Party to satisfy any of the conditions described above, TENANT and LANDLORD may agree to extend the date of settlement for sufficient time to effect these conditions.
- 9.4. If the original time and any extensions allowed for completion of the conditions expires, and any of the above conditions have not been fully completed, or the warranties in Article Seven are not fully intact, the incomplete condition or breach of warranty may be waived by the Party to benefit from the same and the Parties may proceed to settlement as if the condition or warranty was complete or intact, or at the option of the Purchaser, this Agreement shall terminate. On termination under this Article, both Parties shall be released from their respective obligations and neither shall have to pay the other any compensation.

ARTICLE 10. LANDLORD RIGHTS AND RESPONSIBILITIES

- 10.1. The LANDLORD undertakes to maintain the roads and any sidewalks along the boundaries of the land plot in proper repair.
- 10.2. The LANDLORD shall exempt the TENANT from payment of all fees, taxes, costs and other charges of a public nature with regard to the allocated land plot and expenses incurred in connection with the execution and registration of this Lease, including without limitation, notarial and registration charges payable when registering the land lease documents specified by the legislation of the Republic of Kazakhstan.
- 10.3. Registration. If local law requires the Lease to be registered, the LANDLORD warrants that it will do so and the LANDLORD will provide the TENANT proof of registration within a reasonable time following the execution of this Lease.

ARTICLE 11. TENANT RIGHTS AND RESPONSIBILITIES

- 11.1. Should the land legislation of the Republic of Kazakhstan be amended to the effect that foreign governments are granted the right to purchase land with the right of ownership, the LANDLORD shall grant the TENANT the right to convert the leasehold interest into an ownership interest, at no additional cost, as reciprocity for the land plot for the diplomatic mission of the Republic of Kazakhstan in Washington, DC.
- 11.2. The TENANT shall have the right, during the existence of this Lease, to erect buildings, warehouses, ancillary structures, additions and signs, upon the Property consistent with the land's purpose. This includes the right to affix a flagstaff, American flag, American seal, and office signs and insignia on any structures on the territory of the Property.

ARTICLE 12. TRANSFER OF INTEREST

- 12.1 The TENANT may at any time transfer, assign or sublease its leasehold interest in the whole Property or any portion thereof to any party with prior notification and consent of the LANDLORD.
- 12.2 If the LANDLORD assigns its rights and responsibilities under the Lease to a third party, the TENANT may, within one year of becoming aware of the identity of the third party, terminate the Lease.
- 12.3 If the LANDLORD sells, transfers or assigns the Property to any third party, the LANDLORD shall give to the TENANT written notice of the identity of the third party prior to the sale, transfer or assignment. The TENANT agrees to become the tenant of the third party unless that party 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 third party is unacceptable to the TENANT for any of the foregoing reasons, the TENANT may, within one year of the receipt of LANDLORD's notice, terminate this Lease by giving at least 60 days' prior written notice of termination.

ARTICLE 13. 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 act in accordance with this Article prior to taking such action.

ARTICLE 14. TERMINATION OF LEASE

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 90 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.

ARTICLE 15. DISPUTES RESOLUTION

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 16. CHOICE OF LAW

The terms of this Lease shall be construed in accordance with the laws of the Republic of Kazakhstan. However, nothing in this lease shall be construed as waiver by the United States of America of any rights or privileges it enjoys under the Vienna Convention on Diplomatic Relations of 1961 or international law.

ARTICLE 17. SCOPE OF AGREEMENT/LEGAL CONSTRUCTION

- 17.1. This Lease cancels all other agreements that the parties may have previously entered which relate in any way to the Property, 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.
- 17.2 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 a Contracting Officer at the U.S. Embassy in Astana in shall be deemed valid and binding as against the TENANT.
- 17.3 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 the clauses of this Lease shall not be grounds for invalidation of any other clauses.

ARTICLE 18. NOTICES

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

For the LANDLORD:

Toleugazy K. Nurkenov
Akimat of the City of Astana
Republic of Kazakhstan.

For the TENANT:

Jeffrey R. Olesen
Contracting Officer,
U.S. Embassy, Astana
Republic of Kazakhstan

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

ARTICLE 19. LANDLORD'S CERTIFICATIONS

In conjunction with the execution of this Agreement, the LANDLORD shall execute the Landlord's Certification, attached hereto as Exhibit B.

Done in duplicate in Astana, Kazakhstan on October 4, 2002, in English and Russian languages, both texts being equally authentic. A Kazakh language text considered equally authentic, shall be signed upon an exchange of official letters between the Akimat of the City of Astana and the U.S. Embassy confirming its conformity with the English language text.

For AKIMAT OF CITY OF ASTANA:

FOR TENANT United States of America:

By: Toleugazy K. Nurkenov
Akimat of the City of Astana
Republic of Kazakhstan

By: Jeffry R. Olesen
Contracting Officer,
U.S. Embassy, Almaty
Republic of Kazakhstan

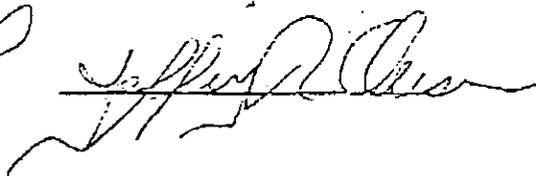
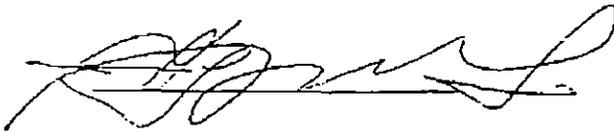


EXHIBIT A
[CITY RESOLUTION]

RESOLUTION

of the Akimat of the City of Astana

3-1-1651p

09.09.02

On Allocation of a Land Plot to the Embassy of the United States of America

for Designing and Construction Purposes

Having considered the letter from the Diplomatic Corps Servicing Department of the Ministry of Foreign Affairs of the Republic of Kazakhstan, the Land Plot Selection and Approval Deed and the Draft General Layout and being guided by Resolution No. 713 of the Government of the Republic of Kazakhstan "On Matters Pertaining to Allocation of Land Plots to Diplomatic Missions in the City of Akmola" of 6 June 1996, the Akimat of the City of Astana **RESOLVES:**

1. To allocate to the Embassy of the United States of America a land plot of 8.614 hectares located at Manas Street (Ak-Bulak-4 Microdistrict) for the purpose of designing and construction of a complex of buildings of the Embassy of the United States of America for the period of two years subject to civil and industrial construction conditions as determined by the Agreement with the Architecture and Urban Development Department of the City of Astana (for designing and construction purposes).
2. Temporary land use rights shall be granted to the Embassy of the United States of America for the period of 49 years and any additional term in accordance with the international agreement ratified by the Republic of Kazakhstan.
3. F.Kh. Galimov, First Deputy of the Astana Akim, shall monitor the implementation of this Resolution.

Akim of the City of Astana

A. Dzhaksybekov

EXHIBIT B

CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE
CERTAIN FEDERAL TRANSACTIONS

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

B. 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.

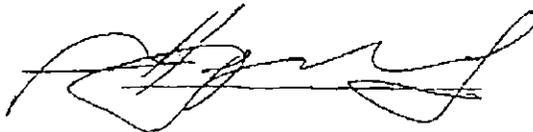
C. If any funds other than United States Government appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, 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.

D. 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.

E. Submission of this certification and disclosure is a prerequisite for making and entering into this lease imposed by 31 U.S.C. § 1352. 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 expenditure or failure.

SIGNED BY THE LANDLORD
REPUBLIC OF KAZAKHSTAN:

By: Toleugazy K. Nurkenov
Akimat of the City of Astana
Republic of Kazakhstan



DATE: October 4, 2002