

FINDING OF SUITABILITY TO LEASE

(FOSL)

Fort Monmouth, New Jersey

Fort Monmouth, Main Post Building 502

March 2, 2012

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1. PURPOSE

The purpose of this Finding of Suitability to Lease (FOSL) is to document the environmental suitability of Fort Monmouth (FTMM), Main Post (MP) Building 502 for lease consistent with Department of Defense (DOD) policy. In addition, the FOSL includes the Environmental Protection Provisions (EPPs) necessary to protect human health or the environment during a lease.

2. PROPERTY DESCRIPTION

This FOSL covers FTMM, Main Post (MP) Building 502 on 1.3 acres (see Figure 1, Enclosure 1) (“Property”). The building is an approximately 10,650 square foot building formerly used as the Main Library on the facility.

The primary mission of FTMM was to provide command, administrative, and logistical support for Headquarters, U.S. Army Communications and Electronics Command (CECOM). CECOM is a major subordinate command of the U.S. Army Material Command (AMC) and is the host activity. Fort Monmouth served as the center for the development of the Army’s Command and Control Communications, Computers, Intelligence, Sensors and Reconnaissance (C4ISR) systems, operated as a partnership between the AMC and the Assistant Secretary of the Army for Acquisition, Logistics and Technology on the MP. C4ISR was the primary tenant of the Fort. Much of the Army’s research and development of high-tech systems was done at Fort Monmouth. The support provided by the Garrison was used by tenant activities in the performance of research, development, procurement, and production of prototype communications and electronics equipment for use by the U.S. Armed Forces. FTMM is divided into three areas MP, the Charles Wood Area (CWA) and the Evans Area (EA).

FTMM is located in the central-eastern portion of New Jersey in Monmouth County, approximately 45 miles south of New York City, 70 miles northeast of Philadelphia, and 40 miles east of Trenton. The Atlantic Ocean is approximately 3 miles to the east. Fort Monmouth falls within the Boroughs of Eatontown, Oceanport, and Tinton Falls. Building 502 is in the Oceanport Borough.

The original FTMM Army camp, established for signal troop training in 1917, was located at Little Silver, New Jersey. The majority of MP property was previously developed as the Monmouth Park Race Track, dating from 1870 to 1893. The one-mile horse racing track was located in the vicinity of Patterson Clinic near the intersection of Broad Street and Park Avenue. A larger Monmouth Park was constructed and opened on July 4, 1890. The oval track was centered on present day Greeley Field. Grandstands and a luxury hotel along Parkers Creek were part of the associated land uses. The entire facility encompassed 640 acres of land, the majority

of which later became part of MP. Vacated buildings and structures fell into ruin and the hotel burned to the ground in 1915. The land was owned by Melvin Van Keuren when it was evaluated for use by Camp Little Silver. The Army leased 468 acres from Mr. Van Keuren on May 16, 1917. The land was farmed with potato crops for at least four years prior to this lease.

The MP of FTMM was established on June 17, 1917, as Camp Little Silver. The name of the Camp was changed after 3 months to Camp Alfred Vail. The initial mission of the Camp was to train Signal Corps operators for service in World War I. In the first 19 months of the Camp's existence, 129 semi-permanent structures were built, a tent camp was established on the site of a former swamp, and a parade ground was established on the site of a former marsh. A radio laboratory and an airfield were developed in 1918. After the war, Camp Vail was designated as the site of the Signal Corps School, the only training area for Signal Corpsmen in the country. All but four World War I structures were demolished by 1924.

In 1925 the facility became a permanent post and its name was changed to FTMM. The primary mission of FTMM continued to be Signal Corps training and electronics research. In 1934, laboratory operations were consolidated in a new facility, Squier Laboratory (Building 283). Research on radios and radar continued here until the early 1950s. During World War II, the pace of training increased tremendously at FTMM. The expanded laboratory effort was accomplished by starting new laboratories at other post facilities. Squier Laboratory continued to be the principal laboratory on MP until 1954. In 1955 and 1956, 72 World War II wooden structures were demolished to make room for permanent structures. These new buildings were used for residential, administrative, commercial, and recreational purposes. A small number of additional administrative buildings were completed during the 1970s, 1980s, and 1990s.

Building 502 is intended to be leased as an administrative building to the Fort Monmouth Economic Revitalization Authority (FMERA). This use is consistent with the intended reuse of the Property as set forth in the FMERA Reuse Plan. A site map of the Property is attached (Enclosure 1).

3. ENVIRONMENTAL DOCUMENTATION

A determination of the environmental condition of the Property was made based upon the:

- U.S. Army BRAC 2005 Environmental Condition of Property Report Fort Monmouth, Monmouth County, New Jersey, Final, 29 January 2007.
- Fort Monmouth Reuse and Redevelopment Plan, Final Plan, 22 August 2008.
- U.S. Army BRAC 2005 Site Investigation Report Fort Monmouth, Final, 21 July 2008.
- Final Baseline Ecological Evaluation Report, May 2011.
- U.S. Army, Environmental Condition of Property Recertification Report, Fort Monmouth, Monmouth County, New Jersey, February 14, 2012.

The information provided is a result of a complete search of agency files during the development of these environmental surveys.

A complete list of documents providing information on environmental conditions of the Property is attached (Enclosure 2).

4. ENVIRONMENTAL CONDITION OF PROPERTY

The DOD Environmental Condition of Property (ECP) category for the property is listed as ECP Category 2 based on the Phase 1 ECP. This category was based on ECP Parcel 51 (51(2)HS/PS/PR) and was based on potential environmental issues in the areas around Building 502. A summary is provided in Table 1 – Description of Property (Enclosure 3).

4.1 Environmental Remediation Sites

Building 502 is located within Parcel 51 of the ECP. There has been no environmental remediation required at or in the area of Building 502. A summary is provided in Table 2 – Notification of Hazardous Substance Storage, Release, or Disposal (Enclosure 4).

4.2 Storage, Release, or Disposal of Hazardous Substances

Building 502 was used as a library from 1974 until FTMM closed.

A summary of the buildings or areas in which hazardous substance activities occurred is provided in Table 2 – Notification of Hazardous Substance Storage, Release, or Disposal (Enclosure 4).

4.3 Petroleum and Petroleum Products

4.3.1 Underground and Above-Ground Storage Tanks (UST/AST)

There was formerly a heating oil (#2 fuel oil) UST at building 502. The tank was removed on October 11, 1996. No evidence of a leak was detected. A closure report was submitted on July 27, 1998. NJDEP issued a closure letter on August 29, 2000.

Current UST/AST Sites – There are no USTs at Building 502. There are no operating ASTs at Building 502.

A summary of the UST/AST petroleum product activities is provided in Table 3 – Notification of Petroleum Products Storage, Release, or Disposal (Enclosure 5).

4.3.2 Non-UST/AST Storage, Release, or Disposal of Petroleum Products

No non-UST/AST storage, release or disposal of petroleum products is associated with Building 502.

A summary of the non-UST/AST petroleum activities is provided in Table 3 – Notification of Petroleum Products Storage, Release, or Disposal (Enclosure 5).

4.4 Polychlorinated Biphenyls (PCB)

There is no evidence that PCB-containing equipment is located or was previously located on the Property or associated with Building 502.

4.5 Asbestos

There is asbestos-containing material (ACM) in the following area of building 502: the mechanical room, on a gasket below the ceiling.

Four phases of asbestos surveys were completed for FTMM. The majority of surveys took place from 1989 to 1992 and from 1997 to 2002. Building 502 was surveyed by Roy F. Weston (Phase 1) and Tetra Tech in 1990 and 1999. Table 4-1 shows the asbestos survey status of Building 502. Survey results are provided in Enclosure 6. At the time of the survey, the condition of the nonfriable ACM was noted to be good.

**Table 4-1
Fort Monmouth, Main Post Building 502 Asbestos Survey Status**

Building	Construction	Year Built	Facility Type	Description	Square Footage	Asbestos Survey	Comments
502	Permanent	1974	Building	Library	10,650	W1, T	

The ACM does not currently pose a threat to human health or the environment because all friable asbestos that posed an unacceptable risk to human health has been removed or encapsulated. The deed will include an asbestos warning and covenant (Enclosure 8).

4.6 Lead-Based Paint (LBP)

Most facilities and buildings at FTMM were constructed before the DoD ban on the use of lead based paint (LBP) in 1978 and are likely to contain one or more coats of such paint. In addition, some facilities constructed immediately after the ban may also contain LBP, because inventories of such paints that were in the supply network were likely to have been used up at these facilities.

The first LBP Risk Assessment was conducted in 1996. Residential buildings were assessed. Residential structures are not part of the Building 502 lease.

No LBP survey work has been conducted at the non-residential buildings. Based on the age of the facility it is assumed that Building 502 contains some LBP. The lease will include a lead-based paint warning and covenant (Enclosure 8).

4.7 Radiological Materials

Building 502 has not been identified as a building with potential radiological contamination or a location where radioactive material or sources were stored or used. Based on its use as a library it is unlikely that radiological materials were used in the building.

4.8 Radon

Radon surveys were conducted in 1991 by the Directorate of Engineering and Housing's Environmental Office as part of the Army's Radon Reduction Program. The survey was conducted for all of FTMM. Radon detectors were deployed in all structures designated as priority one buildings (daycare centers, hospitals, schools and living areas). The radon levels measured in all detectors were less than 4 picoCuries per liter (pCi/L). Based on the USEPA criteria for radon 4 pCi/L, radon levels at FTMM do not pose a health risk and no further action (NFA) was deemed required for radon.

4.9 Munitions and Explosives of Concern (MEC)

Based on a review of existing records and available information, there is no evidence that Munitions and Explosives of Concern (MEC) are present on the property. A Historic Records Review (HRR) conducted in 2006 did not find any record of range or other activities that would result in MEC or explosives contamination at or around Building 502.

The term "MEC" means military munitions that may pose unique explosives safety risks, including: (A) unexploded ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (B) discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (C) munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard.

4.10 Other Property Conditions

There are no other hazardous conditions on the Building 502 property that present an unacceptable risk to human health and the environment.

5. ADJACENT PROPERTY CONDITIONS

The following other potentially hazardous conditions exist on adjacent property: historically, adjacent industrial properties have impacted the surface water quality of FTMM. Known environmental conditions on the rest of the MP are not suspected of having impacted the soil or groundwater quality at Building 502.

6. ENVIRONMENTAL REMEDIATION AGREEMENTS

The following environmental agreement is applicable to Fort Monmouth generally: Voluntary Cleanup Agreement among New Jersey Department of Environmental Protection, U.S. Department of the Army, U.S. Department of the Navy, U.S. Department of the Air Force, and U.S. Defense Logistics Agency, dated August 30, 2000. However, the Voluntary Cleanup Agreement does not require any remedial action on the Building 502 property. The lease will include a provision reserving the Army's right to conduct remediation activities under the Voluntary Cleanup Agreement if necessary in the future (Enclosure 8).

7. REGULATORY/PUBLIC COORDINATION

The NJDEP and the public were notified of the initiation of this FOSL. Regulatory/public comment received during the public comment period will be reviewed and incorporated, as appropriate. A copy of the regulatory/public comments and the Army Response will be included at Enclosure 9

8. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

The environmental impacts associated with the lease of the property have been analyzed in accordance with the National Environmental Policy Act (NEPA). The results of this analysis are documented in the Final Environmental Assessment of the Implementation of the Base Realignment and Closure at Fort Monmouth, New Jersey, March 2009. The EA concluded that the proposed action would have no significant adverse direct, indirect or cumulative effects on the quality of the natural or human environment. There were no encumbrances or condition identified in the NEPA analysis as necessary to protect human health or the environmental.

9. FINDING OF SUITABILITY TO LEASE

Based on the above information, I conclude that the Building 502 property is suitable for lease for the intended use as a administrative building, the use contemplated for the lease are consistent with the protection of human health and the environment, and there is adequate assurances that the United States will take any additional remedial action found to be necessary that has not been taken on the date of the lease. In addition, all Department of Defense requirements to reach a finding of suitability to lease have been met, subject to the terms and conditions set forth in the attached Environmental Protection Provisions that shall be included in the lease for the property. Finally, the hazardous substance notification (Table 2) shall be included in the lease.

Mr. James E. Briggs
Actng Chief, Consolidated Branch
BRAC Division

Date

11 Enclosures

Encl 1 -- Site Map of Property

Encl 2 -- Environmental Documentation

Encl 3 -- Table 1 -- Description of Property

Encl 4 -- Table 2 -- Notification of Hazardous Substance Storage, Release, or Disposal

Encl 5 -- Table 3 -- Notification of Petroleum Product Storage, Release, or Disposal

Encl 6 -- Results Asbestos Survey at Building 502

Encl 7 -- Access Provisions

Encl 8 -- Environmental Protection Provisions

Encl 9 -- Regulatory and public comment and Army Responses

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ENCLOSURE 1

Site Map of Property

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ENCLOSURE 2

Environmental Documentation

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ENCLOSURE 3

TABLE 1 – DESCRIPTION OF PROPERTY

Building Number and Property Description	ECP Parcel Designation	Condition Category	Remedial Actions
Building 502	51(2)HS/PS/PR	2	None

Category 1: Areas where no release or disposal of hazardous substances or petroleum products has occurred. (including no migration of these substances from adjacent areas).

Category 2: Areas where only release or disposal of petroleum products has occurred.

Category 3: Areas where release, disposal, and/or migration of hazardous substances has occurred, but at concentrations that do not require a removal or remedial response.

Category 4: Areas where release, disposal, and/or migration of hazardous substances has occurred, and all removal or remedial actions to protect human health and the environment have been taken.

Category 5: Areas where a release, disposal, and/or migration of hazardous substances has occurred, and removal or remedial actions are underway but all required remedial actions have not yet taken place.

Category 6: Areas where a release, disposal, and/or migration of hazardous substances has occurred, but required actions have not yet been implemented.

Category 7: Areas that are not evaluated or require additional evaluation.

ENCLOSURE 4

TABLE 2 – NOTIFICATION OF HAZARDOUS SUBSTANCE STORAGE, RELEASE OR DISPOSAL

Building Number	Name of Hazardous Substance(s)	Date of Storage, Release, or Disposal	Remedial Actions
Building 502	None	NA	None

* The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or ‘Superfund’) 42 U.S.C. §9620(h). This table provides information on the storage of hazardous substances for one year or more in quantities greater than or equal to 1,000 kilograms or the hazardous substance’s CERCLA reportable quantity (which ever is greater). In addition, it provides information on the known release of hazardous substances in quantities greater than or equal to the substances CERCLA reportable quantity. See 40 CFR Part 373.

DRAFT

ENCLOSURE 5

TABLE 3 – NOTIFICATION OF PETROLEUM PRODUCT STORAGE, RELEASE, OR DISPOSAL

Building Number	Name of Petroleum Product(s)	Date of Storage, Release, or Disposal	Remedial Actions
Building 502	#2 Fuel Oil	1974 to 1996	UST removed on October 11, 1996; No evidence of leakage observed, Closure report issued July 27, 1998; Closure letter from NJDEP August 29, 2000.

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ENCLOSURE 6

**ASBESTOS CONTAINING MATERIAL
RESULTS FROM WESTON ACM SURVEY 1991
(TO BE INSERTED)**

DRAFT

Building 502 Sampling Information

Building Number

Building Description

Sq Ft

Building Contact

Phone Number

Sample Date

Sample ID

Sample Results

Sample Location

Miscellaneous Note

Building 502 Sampling Information

Building Number

Building Description

Sq Ft

Building Contact

Phone Number

Sample Date

Sample ID

Sample Results

Sample Location

2' x 4' Ceiling tile, white, (used as patch tile)

Miscellaneous Note

2' x 4' White ceiling tiles are used as patch tiles throughout the building

[Sample Summary](#)

[Previous Screen](#)

Building 502 Sampling Information

Building Number

Building Description

Sq Ft

Building Contact

Phone Number

Sample Date

Sample ID

Sample Results

Sample Location

Mechanical Room, >14" pipe fittings.

Miscellaneous Note

[Sample Summary](#)

[Previous Screen](#)

Building 502 Sampling Information

Building Number

Building Description

Sq Ft

Building Contact

Phone Number

Sample Date

Sample ID

Sample Results

Sample Location

Mechanical Room, 4-8" pipe elbows.

Miscellaneous Note

Summary of Negative Samples By Building

BuildingNumber 502

SampleID 502-11

Result	Location of Sample	Miscellaneous Notes	Sample Date
Negative	2' x 4' Ceiling tile, white with streaks, main room	2' x 4' Ceiling tile located throughout the building	11/29/1999

SampleID 502-12

Result	Location of Sample	Miscellaneous Notes	Sample Date
Negative	2' x 4' Ceiling tile, white, (used as patch tile)	2' x 4' White ceiling tiles are used as patch tiles throughout the building	11/29/1999

SampleID AP751

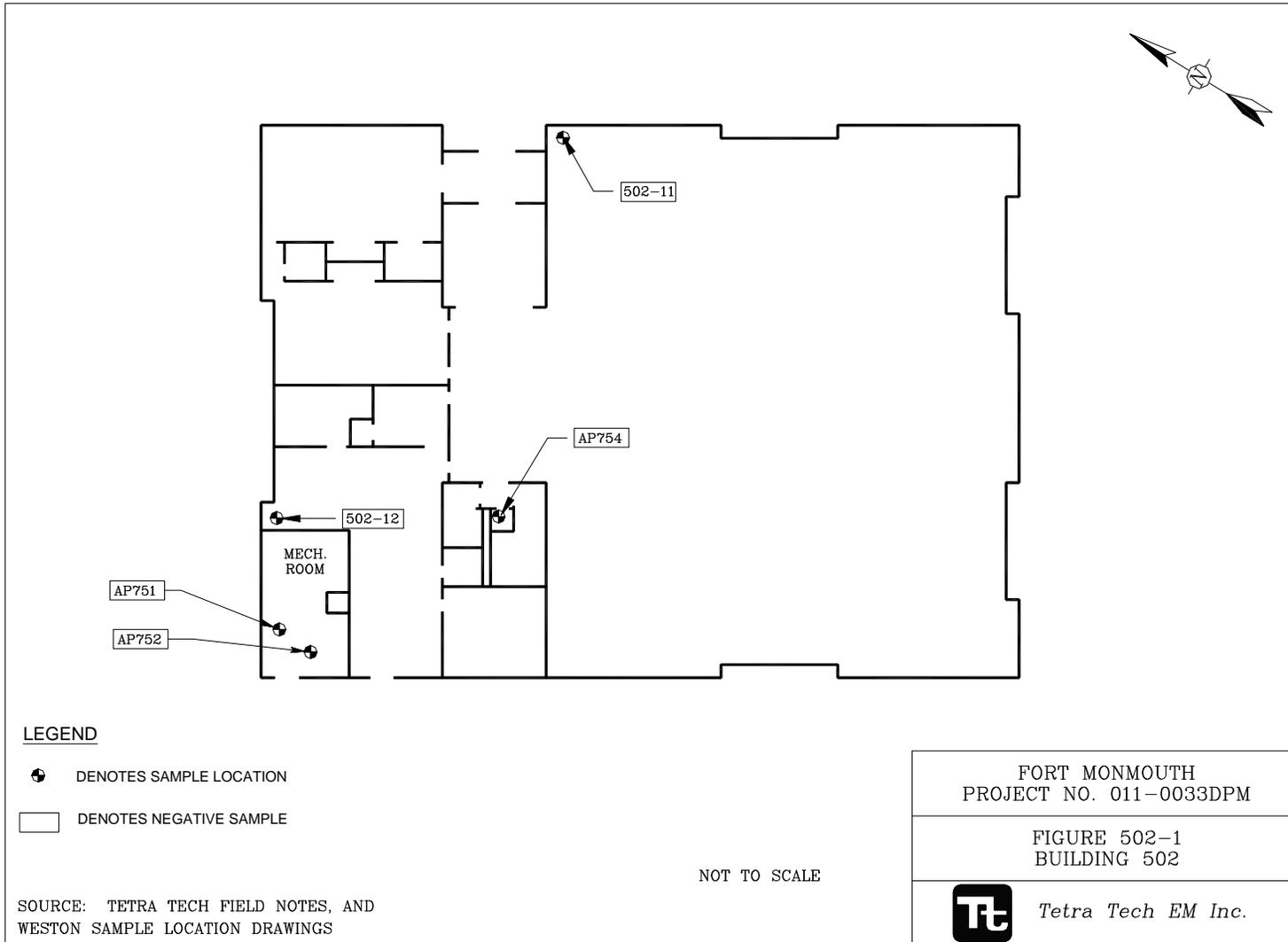
Result	Location of Sample	Miscellaneous Notes	Sample Date
Negative	Mechanical Room, >14" pipe fittings.		1/12/1990

SampleID AP752

Result	Location of Sample	Miscellaneous Notes	Sample Date
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Negative Mechanical Room, 4-8" pipe elbows.

1/12/1990



ENCLOSURE 7

CERCLA NOTICE AND ACCESS PROVISIONS

The following Access Provisions will be placed in the lease in a substantially similar form to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities.

1. RIGHT OF ACCESS

A. The United States retains and reserves a perpetual and assignable right of access on, over, and through the property, to enter upon the property in any case in which an environmental response action or corrective action is found to be necessary on the part of the United States, without regard to whether such environmental response action or corrective action is on the Property or on adjoining or nearby lands. Such right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this instrument. Such right of access shall be binding on the Lessee and its successors and assigns and shall run with the land.

B. In exercising such right of access, the United States shall provide the Lessee or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means, but without significant additional costs to the United States, to avoid and to minimize interference with the Lessee's and the Lessee's successors' and assigns' quiet enjoyment of the property. At the completion of work, the work site shall be reasonably restored. Such right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Lessee nor its successors and assigns, for the exercise of the right of access hereby retained and reserved by the United States.

C. In exercising such right of access, neither the Lessee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this covenant. Provided, however, that nothing in this paragraph shall be considered as a waiver by the grantee and its successors and assigns of any remedy available to them under the Federal Tort Claims Act. In addition, the Lessee, its successors and assigns, shall not interfere with any response action or corrective action conducted by the Lessor on the Property.

ENCLOSURE 8

ENVIRONMENTAL PROTECTION PROVISIONS

The following conditions, restrictions, and notifications will be placed, in a substantially similar form, in the lease to ensure that there will be no unacceptable risk to human health and the environment and to preclude any interference with ongoing or completed remediation activities at Fort Monmouth.

1. USE OF THE PROPERTY

The sole purpose, for which premises and improvements thereon may be used, absent written approval from the government for any other use, is for non-residential uses.

2. SUBSEQUENT TRANSFERS

The Lessee shall neither transfer nor assign this lease or any interest therein or any property on the leased premises, nor sublet the leased premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this lease without the prior written consent of the Army. Such consent shall not be unreasonably withheld or delayed. Every lease or sublease shall contain the environmental protection provisions contained herein.

3. REGULATORY OR ENVIRONMENTAL PERMITS

The Lessee shall be solely responsible for obtaining at its own cost and expense any regulatory or environmental permits required for their operation under the lease, independent of any existing Fort Monmouth permits. The Lessee shall also be required to obtain its own EPA Identification Number if applicable.

4. LESSEE COMPLIANCE

The Lessee shall comply with all lawful statutes, regulations, permits, or orders affecting the activity hereby authorized when such are issued by the Environmental Protection Agency; the New Jersey Department of Environmental Protection (NJDEP); or any other Federal, State, interstate, or local government agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the leased premises by the Lessee or any sub-lessee is prohibited.

5. INTERERENCE WITH ON-GOING RESTORATION

The Lessee shall not disrupt, inflict damage, obstruct, or impede on-going environmental restoration work on the leased premises or anywhere else on Fort Monmouth. The Lessee shall indemnify the Government for any costs incurred as a result of Lessee's breach of this provision.

6. LESSOR ACCESS CLAUSE

The Army's rights under a lease specifically include the right for Army officials to inspect, upon reasonable notice, the leased premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Army is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Army normally will give the Lessee twenty-four (24) hours prior notice of its intention to enter the leased premises unless it determines the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim against the United States or any officer, agent, employee, or contractor thereof on account of any entries.

7. ENVIRONMENTAL REMEDIATION AGREEMENT

Fort Monmouth is subject to the following environmental remediation agreement: Voluntary Cleanup Agreement among New Jersey Department of Environmental Protection, U.S. Department of the Army, U.S. Department of the Navy, U.S. Department of the Air Force, and U.S. Defense Logistics Agency, dated August 30, 2000.

8. LESSEE COMPLIANCE DURING RESPONSE OR CORRECTIVE ACTION

The Lessee will agree to comply with the provisions of the appropriate health or safety plan in effect during the course of any of the above-described actions. Any inspection, survey, investigation, or other corrective or response action will, to the extent practicable, be coordinated with representatives designated by the Lessee or any sub-lessees. The Lessee or sub-lessees shall have no claim, on account of such entries, against the United States or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the Lessee and any sub-lessees shall comply with all the applicable Federal, State and Local Occupational Safety & Health Regulations.

9. ENVIRONMENTAL COMPLIANCE PLANS

The Lessee shall submit to the Army, and maintain thereafter, an Environmental Compliance Plan which describes, in detail, the program for environmental management and method of compliance, by the user of any portion of the leased premises, whether Lessee, with all Army, Federal, State, and local laws and regulations for the use, management, generation, storage, treatment, and disposal of all hazardous waste, hazardous materials, and hazardous substances. Each Environmental Compliance Plan for a portion of the leased premises, or request for waiver of the requirement for a plan due to the non-hazardous nature of the proposed use, must be submitted and approved in writing by Fort Monmouth prior to occupancy of the intended portion of the leased premises. Thereafter, each such Environmental Compliance Plan shall be incorporated in the lease, and shall be included as an exhibit in the relevant sublease(s). The Lessee will be responsible for the overall compliance of its operations. The Lessee will be responsible for ensuring the preparation of all documents, records, and reports associated with the environmental compliance of its operation. No liability or responsibility shall attach to Fort

Monmouth or the Army as a result of the Army's review and approval of the Environmental Compliance Plan under this paragraph.

The Lessee further agrees that in the event of any assignment or sublease of the leased premises, it shall provide to the EPA Region 2, and NJDEP a copy of the agreement or sublease of the leased premises, by certified mail, within 14 days after the effective date of such transaction. The Lessee shall delete the financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this condition.

10. LAND USE RESTRICTIONS

- A. The United States Department of the Army has undertaken careful environmental study of the Property and concluded that the land use restrictions set forth below are required to ensure protection of human health and the environment. The Lessee shall not undertake nor allow any activity on or use of the Property that would violate the land use restrictions contained herein.
- 1) **Residential Use Restriction.** The Lessee shall not use the Property for residential purposes. For purposes of this provision, residential use includes, but is not limited to: single family or multi-family residences; child care facilities; nursing home or assisted living facilities; and any type of educational purpose for children/young adults in grades kindergarten through 12.
 - 2) **Groundwater Restriction.** The Lessee shall not access or use groundwater underlying the Property for potable uses without the prior written approval of United States Department of the Army, the U.S. Environmental Protection Agency, Region 2, and the NJDEP. For the purpose of this restriction, "groundwater" shall have the same meaning as in section 101(12) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).
- B. **Modifying Restrictions.** Nothing contained herein shall preclude the Lessee from undertaking, in accordance with applicable laws and regulations and without any cost to the Army, such additional action necessary to allow for other less restrictive use of the Property. Prior to such use of the Property, Lessee shall consult with and obtain the approval of the Army, and, as appropriate, the State or Federal regulators, or the local authorities in accordance with this Environmental Protection Provisions. Upon the Lessee's obtaining the approval of the Army and, as appropriate, State or Federal regulators, or local authorities, the Army agrees to revise the lease.
- C. **Submissions.** The Lessee shall submit any requests for modifications to the above restrictions to the Army, NJDEP and EPA by first class mail, postage prepaid, addressed as follows:

a. Lessor:

Fort Monmouth

Fort Monmouth, NJ

- b. EPA: Chief, Federal Facility and Site Cleanup Branch
Superfund Division
U.S. Environmental Protection Agency, Region 2

- c. NJDEP: State of New Jersey
Department of Environmental Protection
Site Remediation, Publicly Funded Remediation Element
P.O. Box 413
Trenton, NJ 08625-0413

11. HAZARDOUS WASTE MANAGEMENT

The Lessee will not store or dispose of hazardous materials on the leased premises unless authorized under 10 U.S.C. 2692. The Lessee shall strictly comply with hazardous waste management requirements under RCRA and New Jersey hazardous waste management rules, including proper hazardous waste characterization, labeling, storage, disposal, and documentation requirements. Except as specifically authorized by the Army in writing, the Lessee must provide, at its own expense, such hazardous waste management facilities, as needed to maintain compliance with all laws and regulations. Army hazardous waste management facilities will not be available to the Lessee. Any violation of the requirements in this condition shall be deemed a material breach of this lease.

12. EXISTING HAZARDOUS WASTE

The Lessee will not use Fort Monmouth hazardous waste accumulation points. Neither will the lessee permit its hazardous wastes to be commingled with Fort Monmouth's hazardous waste.

13. LESSEE RESPONSE PLAN

The Lessee that establishes operations within the facilities being made available for lease shall prepare and maintain thereafter, an Army-approved plan for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the leased premises. Such plan shall be independent of Fort Monmouth's Spill Contingency Plan and, except for initial fire response and/or spill containment, shall not rely on use of Fort Monmouth installation personnel or equipment. Should the Army provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on request of the Lessee, or because the Lessee was not, in the opinion of the said officer, conducting timely cleanup actions, the Lessee agrees to reimburse the Army for its response costs.

14. ALTERATIONS, ADDITIONS AND IMPROVEMENTS TO THE LEASED PREMISES

The Lessee shall not construct, make or permit any alterations, additions, or improvements or otherwise modify the leased premises in any way which may adversely affect Fort Monmouth's investigations, restoration, or human health or the environment without prior written consent of the Army. Such consent may include a requirement to provide the Army with a performance and payment bond to it in all respects and other requirements deemed necessary to protect the interests of the Army. Except as such written approval shall expressly provide otherwise, all such approved alterations/additions/modifications shall become government property when annexed to leased premises.

15. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

- A. The Lessee is hereby informed and does acknowledge that non-friable asbestos or asbestos-containing material (ACM) has been found on the Property. The Property may also contain improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground, that contain non-friable asbestos or ACM. The Occupational Safety and Health Administration (OSHA) and the U.S. Environmental Protection Agency (EPA) have determined that unprotected or unregulated exposure to airborne asbestos fibers increases the risk of asbestos-related diseases, including certain cancers that can result in disability or death.
- B. The Lessee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos. The Lessee agrees to be responsible for any future remediation or abatement of asbestos found to be necessary on the Property during the lease.
- C. The Lessee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its asbestos and ACM content and condition, and any hazardous or environmental conditions relating thereto. The Lessee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos or ACM hazards or concerns.

16. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT (LBP) AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSE

- A. The Lessee is hereby informed and does acknowledge that Building 502, which was constructed or rehabilitated prior to 1978, is presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that there is a risk of exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning.

- B. The Leased Premises are not being leased for residential purposes. The Lessee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Property, as defined under 24 Code of Federal Regulations part 35, without complying with this section and all applicable Federal, State, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to lease is intended for residential habitation, the Lessee specifically agrees to obtain written consent from the Army and, upon receiving written consent, to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992).
- C. The Lessee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its lead-based paint content and condition and any hazardous or environmental conditions relating thereto. The Lessee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any lead-based paint hazards or concerns.
- D. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of the lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Condition of Property Report, which has been provided to the Lessee. Additionally, the Lessee has been provided with a copy of the federally approved pamphlet on lead poisoning prevention. The Lessee hereby acknowledges receipt of all information described in this subparagraph.

17. "AS IS"

- A. The Lessee acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the subject Property. The Lessee understands and agrees that the Property and any part thereof is offered "AS IS" without any representation, warranty, or guarantee by the Army as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose(s) intended by the Lessee, and no claim for allowance or deduction upon such grounds will be considered.
- B. No warranties either express or implied are given with regard to the condition of the Property, including, without limitation, whether the Property does or does not contain asbestos or lead-based paint. The Lessee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos or lead-based paint, or other conditions on the Property. The failure of the Lessee to inspect, or to exercise due diligence to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States.

18. HOLD HARMLESS

- A. To the extent authorized by law, the Lessee, its successors and assigns, covenant and agree to indemnify and hold harmless the Army, its officers, agents, and employees from: (1) any and all claims, damages, judgments, losses, and costs, including fines and penalties, arising out of the violation of the Access and Environmental Protection Provisions in this Lease by the Lessee, its successors and assigns; and (2) any and all claims, damages, and judgments arising out of, or in any manner predicated upon, human exposure to asbestos, lead-based paint, or other condition on any portion of the Property after the date of conveyance.
- B. The Lessee, its successors and assigns, covenant and agree that the Army shall not be responsible for any costs associated with modification or termination of the Access and Environmental Protection Provisions in this Lease, including without limitation, any costs associated with additional investigation or remediation of asbestos, lead-based paint, or other condition on any portion of the Property.