

PROGRAMMATIC AGREEMENT
AMONG
REGION 8 OF THE GENERAL SERVICES ADMINISTRATION;
THE STATE HISTORIC PRESERVATION OFFICE OF SOUTH DAKOTA;
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
PRESERVATION, MAINTENANCE, REHABILITATION AND LEASING
OF HISTORIC PROPERTIES

WHEREAS, the General Services Administration's Rocky Mountain Region (GSA) has jurisdiction over, manages and administers buildings in the state of South Dakota, including buildings listed in, and eligible for inclusion in, the National Register of Historic Places (historic properties), buildings not yet eligible but potentially eligible for future inclusion in the National Register of Historic Places (Register), and leased buildings receiving Federal funds; and

WHEREAS, GSA continues to maintain an inventory of properties under its jurisdiction or control, or buildings in which GSA has secured leased space, has determined which of these properties are listed in, eligible for inclusion in, or potentially eligible for inclusion in the Register; and

WHEREAS, GSA is in the process of completing National Register eligibility studies on all buildings over 50 years old and potentially eligible buildings that identify buildings with historic significance, and will comply with Section 106 and Section 110 of the National Historic Preservation Act in the nomination of eligible properties for inclusion in the Register; and

WHEREAS, GSA continues to maintain and produce Building Preservation Plans (BPPs) for many buildings in Appendix I that identify character-defining materials, spaces and features and that detail preservation treatments and provide contract specifications for routine maintenance, rehabilitation, repair and alteration projects that may be performed therein; and

WHEREAS, GSA has determined that its program of preservation, maintenance, rehabilitation and use of historic properties under its jurisdiction or control (preservation and rehabilitation program), its program of constructing new space for tenant agencies (construction program), its program of leasing existing space for tenant agencies (leasing program), and the process by which individual undertakings carried out pursuant to these programs are approved and funded by GSA, and GSA's central office, and by the legislative process of the government of the United States (approval process) may affect historic properties; and

WHEREAS, GSA has consulted with the South Dakota State Historic Preservation Office (SD-SHPO) and the Advisory Council on Historic Preservation (Council), who are signatories to this Programmatic Agreement (Agreement), pursuant to Section 800.14 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f), and Section 110(f) of the same Act (16 U.S.C. 470h-2(f)); and

WHEREAS, GSA has consulted with the SD-SHPO and the Council concerning its responsibilities pursuant to Section 110 of the Act (16 U.S.C. 470h-2), including public participation, identification, evaluation, management, architectural, engineering or cultural significance and has considered the Secretary of the Interior's recommendations for carrying out its responsibilities pursuant to the Act, published jointly by the Secretary of the Interior and the

Council as “The Section 110 Guidelines: Annotated Guidelines for Federal Agency Responsibilities under Section 110 of the National Historic Preservation Act”; and

WHEREAS, GSA has determined that its management of the preservation and rehabilitation program, the construction program, the leasing program, and approval process may provide an opportunity for the parties to this Agreement to participate in a meaningful and timely manner to assist GSA in fulfilling its responsibilities to identify, evaluate and take into account the effect of its undertakings on historic properties pursuant to Section 106 of the Act, as well as providing an opportunity for the SD-SHPO and the Council to assist GSA in fulfilling its responsibilities pursuant to Section 110 of the Act;

NOW, THEREFORE, GSA, the SD-SHPO, and the Council agree that the preservation and rehabilitation program, the construction program, the leasing program and the approval process shall be carried out in accordance with the following stipulations in order that GSA’s Section 106 responsibilities may be initiated or completed in a timely manner and to establish a process to assist GSA in meeting its responsibilities pursuant to Section 110 of the Act.

I. STIPULATIONS

GSA shall ensure that the following measures are carried out:

A. Buildings to Which This Agreement Pertains

1. Appendix I

Appendix I lists all buildings in the State of South Dakota that are federally owned and under the jurisdiction and control of GSA. Said list includes the historic name (and, where different, the current name) of the building; its address or location; its approximate construction date; whether the building is actually listed in or has been determined to be eligible through a consensus determination for inclusion in the Register; its structures number, if applicable (in parentheses); and an indication, where known, of whether or not the building is included in an historic district (and, where known, whether or not said building is a contributing or non-contributing element to that historic district). This list does not include buildings that have been determined ineligible for inclusion in the National Register of Historic Places. This Agreement is understood to apply to all buildings in Appendix I, unless otherwise limited herein. GSA maintains a list of buildings in which GSA has secured leased space. The document is available at <http://www.iolp.gsa.gov/iolp/NationalMap.asp>. If any party to this Agreement requests an evaluation of the historic significance of a building, GSA will address that request within 30 days.

2. Changes to Appendix I

- (a) Additions: Whenever GSA proposes to acquire or assume management responsibilities for a building or site within the State of South Dakota, GSA shall promptly comply with 36 CFR Part 800 with respect to its acquisition. If a building so acquired is determined, in accordance with 36 CFR Part 800.4(c), to be eligible for inclusion in the Register, GSA will consult with the SD-SHPO and the Council to determine whether the terms of this Agreement shall apply to the management of the building. If the signatories agree to the applicability of the terms of

this Agreement to the management of the building, GSA shall provide to the SD-SHPO and the Council a revised Appendix I reflecting this change via the annual report.

- (b) Deletions: Should GSA determine, in accordance with 36 CFR Part 800.4(c), that a building included in Appendix I is determined to be ineligible for inclusion in the Register, then the terms of this Agreement shall no longer apply to such building; GSA shall notify the SD-SHPO and the Council of such a finding and submit to the SD-SHPO and the Council a revised Appendix I reflecting this change.

B. Historic Preservation Staff

1. Professional qualifications: GSA shall employ a Regional Historic Preservation Officer (RHPO) and staff (hereinafter "historic preservation staff") who meets the professional qualifications and standards enumerated within the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 Federal Register p. 44738-39; September 29, 1983) or (http://www.nps.gov/history/local-law/arch_stnds_9.htm), or reference GSA Position Description 880M227. GSA shall ensure that the work of its historic preservation staff is carried out under the direct or indirect supervision of the RHPO, or his/her qualified designee. Where the required professional experience is not available within the historic preservation staff, GSA shall contract with additional, similarly qualified specialists whose services shall be provided to the historic preservation staff under the direction of the RHPO.
2. Compliance responsibility: GSA shall assign to the historic preservation staff the responsibility of managing its compliance with the terms of this Agreement.
3. Review by historic preservation staff: GSA shall ensure that its historic preservation staff reviews and approves all routine maintenance, rehabilitation, repair and alteration undertakings planned for any historic building, archeology for any site subject to new construction, or effects within close proximity to cultural/historic resources. Historic preservation staff review will be undertaken at the earliest stages in planning, and may extend through the life of the undertaking. The RHPO or qualified staff will supervise all undertakings and is responsible for all undertakings subject to review.

C. General Standards for Maintenance and Rehabilitation Undertakings

1. Secretary of the Interior's Standards: GSA shall ensure that historic buildings included in Appendix I will be maintained and rehabilitated in accordance with the recommended approaches in the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitation of Historic Buildings (National Park Service, 1992).
2. Development of BPPs: GSA shall ensure that work affecting GSA's historic buildings is consistent with the BPP recommendations for each building. GSA shall ensure that the recommended procedures set forth in the BPPs are consistent with the standards outlined in Stipulation C.1, supra.

D. Undertaking Review for Historic and Leased Buildings

1. Undertakings excluded from review by the SD-SHPO and the Council (see Appendix III): GSA may carry out undertakings listed in Appendix III, and on properties determined not eligible for inclusion in the Register, without further review pursuant to 36 CFR Part 800, provided that GSA ensures that they are reviewed as provided in Stipulation B.2, supra., and that they are carried out in a manner consistent with the standards set forth at Stipulation C, supra.
2. Lease actions excluded from review by the SD-SHPO and the Council in Appendix IV: GSA may carry out undertakings listed in Appendix IV without further review pursuant to 36 CFR Part 800, provided that GSA ensures that they are reviewed as provided in Stipulation B.3, supra., and that they are carried out in a manner consistent with the standards set forth at Stipulation C, supra. All other lease actions or undertakings will be reviewed pursuant to 36 CFR Part 800. All lease actions are subject to EO 12072 and EO 13006.
3. Undertakings not excluded from review by the SD-SHPO in historic buildings: GSA shall ensure that any undertaking that consists of an interior or exterior alteration not otherwise excluded from review pursuant to Stipulations D.1. and D.2, supra., and that affects a building included in Appendix I, will be reviewed in accordance with 36 CFR Part 800.
4. Oversight of undertaking in historic buildings: GSA historic preservation staff will provide training for all building management staff, as necessary, in addition to telephone consultation and site visits, to ensure that undertakings carried out pursuant to this Stipulation comply with the standards for maintenance and rehabilitation listed in Stipulation C, supra.

E. Management in Accordance with Accepted BPPs

1. BPPs completed to date: GSA has completed BPPs in accordance with GSA administrative policy (GSA Order ADM 1020.2, "Procedures for Historic Properties"). These BPPs are listed in Appendix II as of the date of the execution of this Agreement.
2. BPPs completed subsequent to Agreement date: Review by the SHPO shall be based upon an evaluation of the identification and evaluation of the significant materials, features, and areas of the historic buildings, their original appearance and present condition, the appropriateness of the preservation zones that have been applied to the interior and exterior of the building, and the specifications enumerated for the preservation or rehabilitation of character-defining features and spaces. Should the SHPO concur with the findings enumerated within the BPP, the SHPO shall notify GSA of their concurrence; if GSA has not received notification to the contrary from the SHPO in 30 calendar days of their receipt of a BPP, GSA shall assume that the SHPO has reviewed and accepted the BPP. In an annual report, GSA shall provide the SHPO and Council an amendment to Appendix II of the Agreement to reflect BPPs that have been reviewed and accepted by the SHPO. The SHPO shall retain a copy of the BPPs for their reference; GSA will provide updated information to the SHPO for inclusion in their copy of the BPP as it becomes available. GSA will make the building(s)

that are the subject of a BPP available to the SHPO for an independent site visit by the SHPO.

3. Undertakings consistent with BPP recommendations: GSA will ensure that maintenance, rehabilitation and related management activities carried out on or in an historic building included in Appendix II will be in accord with the recommended approaches in that historic building's BPP are reviewed in accordance with Stipulation B.3, supra., and GSA need not submit such activities for review by the SD-SHPO pursuant to 36 CFR Part 800.
4. Undertakings inconsistent with the BPP recommendations: GSA will ensure that maintenance, rehabilitation and related management activities carried out on or in an historic building included in Appendix II that are not in accord with the recommended approaches in that historic building's BPP will be reviewed by the SD-SHPO within 30 calendar days once complete information is received in accordance with 36 CFR Part 800, unless said undertaking would otherwise be excluded from review pursuant to Stipulation D, supra.
5. Undertakings not delineated in BPP recommendations that must be reviewed by the SD-SHPO: GSA shall ensure that any undertaking that consists of an interior or exterior alteration not otherwise listed in Appendix III or Appendix IV, and that affects an historic building, will be reviewed in accordance with 36 CFR Part 800.
6. Undertakings not delineated in BPP recommendations but excluded from review by the SD-SHPO and the Council: GSA may carry out undertakings listed in Appendix III without further review pursuant to 36 CFR Part 800, provided that GSA ensures that they are reviewed as provided in Stipulation B.2, supra., and that they are carried out in a manner consistent with the standards set forth in Stipulation C, supra.
7. Notification: GSA shall notify the SD-SHPO when planning for all other undertakings that are not otherwise subject to the terms of this Agreement and have the potential to affect historic properties or sites. GSA shall notify the SD-SHPO, in writing, when it has initiated discussions or consultations with interested parties potentially impacted by the project. Such notification shall include general information about the scope and nature of the project, its potential effect on historic properties, and the status of GSA's review of the project pursuant to Section 106 of the National Historic Preservation Act.

F. Undertakings Not Covered By This Agreement

Those undertakings that call for the construction of new buildings, additions to historic buildings included in Appendix I, significant ground disturbance, or archeological investigation, are not covered by this Agreement. GSA will comply with 36 CFR Part 800 with respect to each undertaking.

G. Dispute Resolution

1. SD-SHPO and Council Objections: Should the SD-SHPO or the Council object to any action or decision of GSA pursuant to this Agreement or relating to its

subject matter, GSA will consult with the objecting party to resolve the objection. If GSA determines that such objection cannot be resolved, GSA will forward all documentation relevant to the dispute to the Council, including GSA's recommended resolution of the objection. Within 30 calendar days after receipt of all pertinent documentation, the Council will either:

- (a) Provide GSA with recommendations, which GSA will take into account in reaching a final decision regarding the dispute; or
- (b) Notify GSA that it will comment pursuant to 36 CFR §800.7(c), and proceed to comment on the subject in dispute. GSA will take any Council comment provided in response to such a request into account in accordance with 36 CFR §800.7(c)(4) with reference to the subject of the dispute.

Any recommendation or comment provided by the Council will be understood to pertain only to the subjects of the dispute, and the responsibility of GSA to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

2. Public objections: At any time during implementation of the measures stipulated in this Agreement should an objection to any such measure or its manner of implementation be raised by a member of the public, GSA shall take the objection into account and consult, as needed, with the objecting party, the SD-SHPO, or the Council to resolve the objection.
3. If the Council fails to provide recommendations or to comment within the specified time period, GSA may implement the Undertaking subject to dispute under this Stipulation in accordance with its recommended resolution.

H. Public Outreach

GSA shall fulfill the requirements of Subpart A of 36 CFR Part 800, which requires Federal agencies to involve consulting parties as described in 36 CFR §800.2(c) in findings and determinations made during the Section 106 process. GSA shall coordinate consultations, as appropriate, with the requirements of other statutes such as the National Environmental Policy Act (NEPA), the Native American Graves Protection and Repatriation Act (NAGPRA), the American Indian Religious Freedom Act (AIRFA), the Archeological Resources Protection Act (ARPA), and agency-specific legislation.

I. Emergencies

1. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 and this Agreement.
2. In the event the GSA proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, GSA shall:

- (a) Notify the appropriate SHPO/Tribal Historic Preservation Officer (THPO) and any Indian tribe or Native Hawaiian Organization that may attach religious or cultural significance to historic properties likely to be affected prior to the undertaking and afford them an opportunity to comment within 7 days of notification. If GSA determines that circumstances do not permit 7 days for comment, the agency official shall notify the SHPO/THPO and the Indian tribe or Native Hawaiian Organization and invite comments within the time available. GSA shall take into account any comments received in reaching a decision on how to proceed with the emergency undertaking.
- (b) These emergency procedures apply only to undertakings that will be implemented within 30 days after the disaster or the appropriate authority has formally declared an emergency. GSA may request an extension of the period of applicability from the SHPO/THPO prior to the expiration of the 30 days.
- (c) Within 30 calendar days following the emergency procedures, GSA will provide the SHPO/THPO and any appropriate Native American Tribes or Native Hawaiian Organizations with a written report documenting the actions taken to minimize effects, the work's present status, and the planned treatment of the property. This action will be included in the report developed in accordance with Stipulation L, infra.

J. Amendment

Any party to this Agreement may propose to the other parties that it be amended, whereupon the parties will consult in accordance with 36 CFR 800.14 to consider such an amendment.

K. Termination

Any party to this Agreement may terminate it by providing 60 days' written notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that will avoid termination. In the event of termination, GSA shall comply with 36 CFR Part 800 with regard to individual undertakings covered by this Agreement.

L. Reporting

- 1. Schedule and content: GSA shall prepare and provide the SD-SHPO and the Council, on or before November 1 of each year, an annual report addressing, at a minimum, the following topics:
 - (a) A general summary of how this Agreement has been implemented during the preceding year;
 - (b) A listing of projects reviewed and carried out in accordance with Stipulation D, supra;

- (c) A listing of projects reviewed and carried out in accordance with Stipulation E, supra;
 - (d) A summary of any problems or issues relating to this Agreement that have arisen in the course of the year;
 - (e) GSA's assessment of the effectiveness of this Agreement; and
 - (f) Any recommendations GSA may have for improving this Agreement.
2. Public Access: GSA shall ensure that this annual report is made available for public inspection, that potentially interested members of the public are made aware of its availability, and that interested members of the public are invited to provide comments to GSA, the SD-SHPO and the Council regarding the maintenance and rehabilitation program, and the effectiveness of this Agreement, subject to federal security requirements.
3. SD-SHPO and Council Comments: At the request of the SD-SHPO or the Council, GSA will provide access to reasonably available follow-up material and will consult with the SD-SHPO or the Council, or both, as necessary, to answer any questions about projects that are carried out pursuant to this Agreement and that are included in the annual report. At the request of any party to this Agreement, GSA will meet to address questions or comments that the SD-SHPO, the Council, or the public may wish to make. Based on this discussion, the parties to this Agreement will continue the Agreement as written, amend this Agreement, or terminate this Agreement.

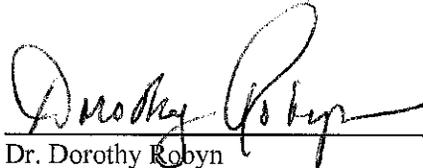
M. Effective Date of Agreement

This Agreement shall take effect on the date of the last signatory hereto. The Agreement will expire in five years from the date of its signing, or before, if terminated in accordance with Section K of this Agreement. At the five year date, GSA and the SD-SHPO will review the Agreement to consider opportunities for improvements to extend or renew the Agreement. If, after five years, this Agreement still meets the needs of the SD-SHPO, GSA, and the Council, this Agreement shall continue upon written agreement of all parties.

*[Remainder of page intentionally left blank.
Signature page to follow.]*

Execution of this Agreement and implementation of its terms evidences that GSA has afforded the Council a reasonable opportunity to comment on the undertakings and their effects on historic properties and that GSA has taken into account the effects of the undertakings on historic properties.

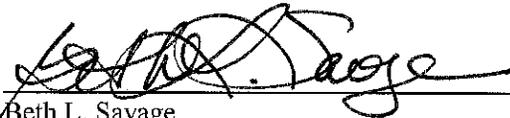
The parties hereto execute this Programmatic Agreement on the dates hereinafter identified.



Dr. Dorothy Robyn
Public Buildings Service Commissioner
General Services Administration

11/19/12

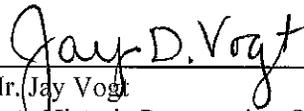
Date



Beth L. Savage
Federal Preservation Officer
General Services Administration

11/2/12

Date



Mr. Jay Vogt
State Historic Preservation Officer
State of South Dakota

11-29-2012

Date



John M. Fowler
Executive Director
Advisory Council on Historic Preservation

12/11/12

Date

Appendix I

All Federally Owned GSA Properties in the State of South Dakota

This appendix may be revised with the written agreement of the Council, the SD-SHPO, and GSA without a revision being made to the underlying PA. Any such revision will be documented in the annual report described in Stipulation L.

Location Name	City	Construction Date	National Register	Historic District
U.S. Courthouse	Sioux Falls	1-January-1895	On Register	Yes
FB/PO/CT	Pierre	1-January-1965	Not On Register	
Federal Building/Courthouse	Rapid City	1-January-1973	Not On Register	
Federal Building	Huron	1-January-1977	Not On Register	
Federal Building	Aberdeen	1-January-1973	Not On Register	

Appendix II

Completed Building Preservation Plans

This appendix may be revised with the written agreement of the Council, the SD-SHPO, and GSA without a revision being made to the underlying PA. Any such revision will be documented in the annual report described in Stipulation L.

Building Number	Building Name	City	Date Published
SD0021	Federal Building/ Courthouse	Sioux Falls, SD	12/2010

Appendix III

Undertakings Excluded from Review by the SD-SHPO and the Council

This appendix may be revised with the written agreement of the Council, the SD-SHPO, and GSA without a revision being made to the underlying PA. Any such revision will be documented in the annual report described in Stipulation L.

- A. Maintenance painting (except color changes in restoration zones);
- B. Wood refinishing and restoration using natural, organic or soy gel strippers;
- C. Cleaning and waxing floors;
- D. Non-abrasive masonry cleaning, repair, and matching mortar repointing conducted in accordance with Preservation Brief #2;
- E. Repairs to historic windows using in-kind materials, but not including window replacement;
- F. Repair or replacement of non-historic flat roofs; or in-kind repair or replacement of historic roofing materials;
- G. Landscaping in previously landscaped or otherwise disturbed areas where there is no evidence that archeological resources may be present, including in-kind paving repair, and minor plant removal and replacement in landscaped areas visible to the public;
- H. Installation of antennas not visible from the public space and not anchored to historic materials;
- I. Installation of carpeting that does not damage historic flooring material, such as perimeter tack strips or carpet tile;
- J. Minor security improvements that are non-visible, reversible, or do not damage or alter historic finishes, or affect restoration zones, and replacing existing equipment in same locations;
- K. Installation of interior window coverings;
- L. Lighting in non-historic interior areas;
- M. Heating, ventilation and air conditioning systems repairs, or plumbing and electrical repairs, which will not alter historic fixtures or finishes or affect restoration zones;
- N. Alterations where the effects are confined to renovation zones as defined in BPPs; such alterations may include the installation of a suspended ceiling in a non-decorative office space (so long as it does not alter windows, the

fundamental relationship of the window to the wall or ceiling, or view into or out of the space through the windows) or the installation of non-electrified anti-roosting bird deterrence systems or anti-roosting bird netting in courtyards or service areas;

- O. Elevator upgrades, where the following conditions can be met:
 - a) Historic elevator cab finishes and hardware will be retained and restored where they exist;
 - b) New code-complying hardware and signage shall be compatible in materials and design and shall be installed with minimal disruption of historic fabric;
 - c) GSA may replicate historic elevator cabs in significant public spaces identified as restoration zones. When funding constraints preclude replication of all elevator cabs in a building's restoration zones, GSA may elect selective cab replication, based on relative visibility, significance, and architectural integrity of the elevators and elevator lobbies being upgraded; replication will be based on the original historic designs, when available, and will be consistent with code and other applicable requirements; where code or other requirements prohibit replication, contemporary designs sympathetic with existing building fabric and finishes will be used; and
 - d) In rehabilitation and renovation zones as defined in BPPs, non-historic elevator cabs may be replaced with contemporary cabs designed to be sympathetic with existing fabric and finishes;
- P. Fire alarm detection/suppression upgrades, where the following conditions can be met:
 - a) New installations will be located on flat undecorated plaster;
 - b) New alarm pull stations that must be located along a wall with a decorative stone, metal, wood or ceramic surface will be installed on a freestanding pedestal or on the wall without penetrating the historic material;
 - c) Wiring will be concealed in walls and ceilings when possible; and
 - d) In restoration zones, ceilings will not be dropped to conceal detection and suppression systems;
- Q. Accessibility modifications for persons with disabilities, where the following conditions can be met:
 - a) The modification is carried out in restoration zones and is limited to the installation of temporary ramps that will remain in place for a period not to exceed one year and will be removed no later than one year following the date of installation, unless otherwise agreed to by the parties to this Agreement; and

- b) The modification only affects rehabilitation and renovation zones and is incidental to other building system upgrades and does not alter historic design or finishes, other than relocation of system components to wall heights mandated by the Architectural Barriers Act Accessibility Standard adopted by GSA (see 41 CFR § 102-76.65);
- R. Undertakings not involving significant public spaces or exterior work on buildings under 45 years old; and
- S. All undertakings on building(s) greater than 45 years old and determined ineligible, unless undertaking involves exterior work in an historic district, or in a significant public space.

Appendix IV

Lease Actions Excluded from Review by the SD-SHPO and the Council

- A. Leases of storage and warehouse space of 2,000 square feet or less;
- B. Leases for wareyards of unlimited size;
- C. Leases of parking spaces;
- D. Short-term leases of two (2) years or less;
- E. Leases that include laboratory space;
- F. Emergency/disaster leases (*i.e.*, replacement lease due to fire, flood, or any other natural disaster that destroyed the existing leased building);
- G. Leases for the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security space (these are leases GSA needs to expedite due to disaster relief):
 - a) Land leases;
 - b) Succeeding/superseding leases; and
 - c) Lease extensions.