



SIGAR

Office of the Special Inspector General
for Afghanistan Reconstruction

December 11, 2017

The Honorable Rex Tillerson
Secretary of State

The Honorable John Bass
U.S. Ambassador to Afghanistan

I am writing to request information regarding the Department of State's plans for the Marriott Kabul Hotel and Kabul Grand Residences, which are co-located across the street from U.S. Embassy Kabul.¹ On November 14, 2016 we issued an alert letter highlighting neglect and abandonment of the site, and serious deficiencies in OPIC's management and oversight of \$85 million in loans to Fathi Taher and his U.S. sponsors for the construction of these facilities.² We reported that OPIC provided the monies for these two projects, but did not conduct direct oversight or receive an objective, independent assessment of construction progress, and that it provided loan disbursements based on inaccurate and potentially fraudulent information, which in turn resulted in a significant loss of U.S. taxpayer dollars. We also noted that the persistence of an apparently abandoned structure so close to the U.S. Embassy Kabul poses a security threat, and that the embassy has had to assume responsibility for security at the project site.

In response to our alert letter, OPIC claimed that its personnel were "discouraged by the U.S. Embassy from attempting to visit the projects because of the deteriorating security situation."³ OPIC also stated that "The project developer also was consulting with a U.S. Embassy Regional Security Officer on design enhancements to improve security for the project."⁴ Finally, OPIC stated that it is "aware of discussions that the project developer has had with several third parties over the past several years, including the U.S. Department of State, which has been interested because of the projects' proximity to the Embassy."⁵

However, more than one year after we informed OPIC of the results of our review, it does not appear that there has been any further progress in constructing these facilities, and the U.S. Embassy in Kabul continues to provide security for the project site. Given the security risk to U.S. personnel and the continuing financial burden placed upon U.S. Embassy Kabul and taxpayers, I am seeking information on Department of State's plan for the future of these projects and the project site. Please provide answers to following questions, with any available supporting documentation, no later than January 2, 2018:

¹ Marriott International agreed to manage the hotel, thereby lending its name to the project. In May 2013, it was reported that Marriott had withdrawn from the project. Nevertheless, in Afghanistan the building is still commonly referred to as "the Marriott Hotel", and on the OPIC website as the "Marriott Kabul Hotel." See, e.g., Kabul loses five-star hotel as security fears dent confidence, *The Times*, May 7, 2013, <http://www.thetimes.co.uk/tto/news/world/asia/afghanistan/article3757537.ece> (accessed Oct. 28, 2016).

² Fathi Taher, a Jordanian citizen, was the primary contractor for both projects. General Systems International LLC was Mr. Taher's co-sponsor for the Marriott Kabul. Apus Apartments LLC was Mr. Taher's co-sponsor for the apartments (see, Letter of John F. Sopko, Special Inspector General for Afghanistan Reconstruction, to Elizabeth L. Littlefield, President and Chief Executive Officer, Overseas Private Investment Corporation (Nov. 14, 2016).

³ Letter of Elizabeth L. Littlefield, President and Chief Executive Officer, Overseas Private Investment Corporation, to John F. Sopko, Special Inspector General for Afghanistan Reconstruction (Nov. 16, 2016).

⁴ *Id.*

⁵ *Id.*

1. What are the Department of State's current plans for the land, structures, and security at the project site and what, if any, are the additional costs associated with the planned course of action?
 - a. To what extent has State consulted with OPIC regarding the future of the site, and what has been the result of these consultations?
2. Who currently owns and/or controls the Kabul Marriott Hotel and Kabul Grand Residences?
 - a. What is the current, and planned, lease arrangement for the land on which the structures were built?
3. What are the total costs that U.S. Embassy Kabul has incurred for securing the project site since November 2016?
 - a. What effect, if any, has the provision of security at the site had on Embassy operations?
4. Please identify any additional, non-security costs associated with the U.S. Embassy's involvement in this OPIC project since November 2016.
5. To what extent has OPIC reimbursed or otherwise provided financial assistance to U.S. Embassy Kabul for the costs associated with providing security for the project site?
6. What arrangements have been made between the Afghan government, OPIC, and/or U.S. Embassy Kabul to provide continued security for the project site until the projects are purchased or completed?
7. If OPIC is unable to find a third party to purchase or complete the projects, what are U.S. Embassy Kabul's plans for the structures and land?
 - a. What, if any, additional costs are associated with the planned course of action?

I am submitting this request under the authority of Public Law No. 110-181, and the Inspector General Act of 1978, as amended. Should your staff have any questions about this inquiry, please have them contact Mr. Matthew Dove, Director of Special Projects, at (703) 545-6051 or matthew.d.dove.civ@mail.mil.

Sincerely,



John F. Sopko
Special Inspector General
for Afghanistan Reconstruction



rec'd JAN 18 2017
United States Department of State

Washington, D.C. 20520

JAN 16 2018

Mr. John Sopko
Special Inspector General for Afghanistan Reconstruction
1550 Crystal Drive, 9th Floor
Arlington, VA 22202

Dear Mr. Sopko:

I am writing to address some of the issues that have arisen in connection with your office's requests for information regarding the status of the Grand Hotel/Marriott Hotel property in Kabul, Afghanistan.

As you noted, the property is of significant interest to the U.S. Embassy due to its proximity to the Embassy and the potential security threat it represents. Your office has requested extensive information regarding Embassy Kabul's past and future actions regarding this property. We are happy to provide requested information relating to resources in connection with the use of the property while it was an OPIC project (and thus related to reconstruction assistance).

In 2016, OPIC determined, and notified the TAYL Investors Group, that it had no basis to expect that the project could be completed and operated at a level of profitability that would allow repayment of the material debt. Pursuant to the requirements of the May 14, 2008 Consent Agreement, on March 8, 2017, OPIC notified the Government of Afghanistan that the Hotel Loan was in default and that it was exercising its rights under the Consent Agreement to control all rights of TAYL under the Lease Agreement and to the Parcels (Attachment B). In the March 8 notice, OPIC indicated to the Afghan government that its preferred remedy under the Consent Agreement was to seek a transfer of all of its current rights under the Lease Agreement and Consent Agreement to the Department of State.

Since that time, the U.S. Embassy has essentially assumed control of the hotel project site in order to ensure perimeter security is maintained. This has included the erection of T-walls around the outer perimeter and patrolling the grounds. The Embassy requested MFA approval to close the last gate that opened from the hotel property onto the street, and this was approved and closure completed in November 2017. Also in November, the Land Authority visited the property to verify the boundaries remained intact and no encroachments had been made.

On December 11, 2017, OPIC informed the Minister of Finance via letter (letter attached) that OPIC had exercised its rights under the Consent Agreement, and proposed that the most efficient remedy would be to terminate the lease to TAYL and issue a new land lease to the USG. Also on December 11, the Embassy provided proposed lease terms (attached) to the Ministry of Foreign Affairs for a new land lease with the USG.

Sincerely,



William E. Todd
Acting Director General (M)

Enclosures:

- Tab 1 – Response to Questions
- Tab 2 – OPIC Default Notice with the Consent Agreement to control all rights of TAYL under the Lease Agreement and to the Parcels
- Tab 3 – OPIC Letter to the Afghan Minister of Finance
- Tab 4 – Embassy Kabul's Proposed Lease Terms.

Questions

1. What are the Department of State's current plans for the land, structures, and security at the project site and what, if any, are the additional costs associated with the planned course of action?

(U) The U.S. Embassy currently maintains perimeter control of the property, which augments the Mission's set-back and overall security posture. Any future plans for this property are Department of State "operations-based" and will come under the purview of the OIG should there be a need for an audit.

a. To what extent has State consulted with OPIC regarding the future of the site, and what has been the result of these consultations?

(U) The Overseas Buildings Office (OBO) has had extensive contact with OPIC in Washington, DC regarding the project and the site, and OPIC fully supports termination of the existing lease to TAYL and issuance of a new lease of the property to the USG.

2. Who currently owns and/or controls the Kabul Marriott Hotel and Kabul Grand Residences?

(U) Pursuant to the 2008 Consent Agreement, due to the default of TAYL, OPIC has exercised its rights to control all rights of TAYL under the Lease Agreement and to the parcels. In practical terms, the U.S. Embassy controls access and ensures perimeter security of the property, which is to the benefit of the Mission.

a. What is the current, and planned, lease arrangement for the land on which the structures were built?

(U) The U.S. Embassy in December, 2017 provided proposed lease terms to the Ministry of Foreign Affairs (MFA) for a new lease agreement with the USG. This includes: to terminate the land lease to TAYL and enter into a new land lease

6. What arrangements have been made between the Afghan government, OPIC, and/or U.S. Embassy Kabul to provide continued security for the project site until the projects are purchased or completed?

(U) The Embassy has placed two Emergency response teams (ERT) as well as local security guards on the hotel property to prevent unauthorized access. In November 2017 when the MFA provided permission to close the final gate to the street, the Embassy installed five T-walls at the entrance to prevent access. The hotel projects will never be completed or purchased by any other party.

7. If OPIC is unable to find a third party to purchase or complete the projects, what are U.S. Embassy Kabul's plans for the structures and land?

(U) Any future plans for this property are Department of State "operations-based" and will come under the purview of the OIG should there be a need for an audit.

a. What, if any, additional costs are associated with the planned course of action?

(U) Any future plans for this property are Department of State "operations-based" and will come under the purview of the OIG should there be a need for an audit.

Should your staff have any questions about this response, please have them contact Mr. Terry Murphree, Deputy Management Counselor, at murphreetl@state.gov.



February 18, 2017

Commissioner
High Commission of Investment of Afghanistan
Kabul, Afghanistan

Attn: Secretariat of HCI

Re: Default Notice under Consent Agreement with OPIC

Ladies and Gentlemen:

Reference is made to (i) the Consent Agreement, dated as of May 14, 2008 (the "Consent Agreement"), a copy of which is attached hereto as Exhibit A, by and among the High Commission of Investment of Afghanistan ("HCI"), TAYL Investors Group Limited, a limited liability company organized and existing under the laws of the British Virgin Islands ("TAYL"), and Overseas Private Investment Corporation, an agency of the United States of America ("OPIC") with respect to the Lease Agreement between HCI and TAYL dated as of April 23, 2007 (the "Lease Agreement"). All capitalized terms used herein and not otherwise defined have their respective meanings set forth in the Consent Agreement.

OPIC hereby notifies HCI that an "Event of Default" under the Loan Agreement has occurred and is continuing as of the date of this letter. This letter is a Default Notice pursuant to Section 3.2(a) of the Consent Agreement and triggers certain provisions of the Consent Agreement while OPIC is considering what further actions it may take with respect to the Event of Default, including:

1. OPIC's Rights. Pursuant to Section 3.2(a) of the Consent Agreement, OPIC is entitled to exercise any and all rights of TAYL under the Lease Agreement in accordance with its terms. Pursuant to Section 3.2(b) of the Consent Agreement, OPIC has the full right and power to exercise all remedies under the Lease Agreement and make all demands and give all notices and make all requests required or permitted to be made by TAYL under the Lease Agreement.
2. HCI's Obligations. Pursuant to Section 3.2(a) of the Consent Agreement, HCI has agreed to follow all instructions that OPIC may give to it with respect of the Lease Agreement and all receivables thereunder as if such instructions are from TAYL.
3. No Further Exercise by TAYL. Pursuant to Section 3.2(c) of the Consent Agreement TAYL may no longer exercise any of TAYL's rights under the Lease Agreement.

Nothing contained in this letter or in any other communication or contact with, or conduct by or between OPIC and HCI constitutes or be deemed to constitute or be construed as a waiver, modification, alteration, amendment, release, or forbearance of any of the various rights, powers, or remedies of OPIC or TAYL.

Sincerely,

OVERSEAS PRIVATE INVESTMENT CORPORATION



Mary-Ryan Bequai
Managing Director, Portfolio Management Division

CONSENT AGREEMENT

THIS CONSENT AGREEMENT, dated as of May 14, 2008 (this "*Consent Agreement*"), is made by and among the HIGH COMMISSION OF INVESTMENT OF AFGHANISTAN ("*HCI*"), TAYL INVESTORS GROUP LIMITED, a limited liability company organized and existing under the laws of the British Virgin Islands ("*TAYL*"), and OVERSEAS PRIVATE INVESTMENT CORPORATION, an agency of the United States of America ("*OPIC*").

RECITALS

WHEREAS, pursuant to the Lease Agreement between HCI and TAYL dated as of April 23, 2007 (the "*Lease Agreement*"), HCI has agreed to lease to TAYL the Parcels (as defined in the Lease Agreement and hereafter the "*Parcels*") for the construction, operation and maintenance of the Hotel (as defined in the Lease Agreement).

WHEREAS, OPIC and TAYL have entered into a Loan Agreement dated as of September 18, 2007 (the "*Loan Agreement*"), pursuant to which OPIC agreed to make, and TAYL agreed to accept, a loan in the principal amount set forth therein (the "*Loan*");

WHEREAS, the proceeds of the Loan will be used to finance a portion of the cost of the Project (as defined in the Lease Agreement), including the construction and operation of the Hotel;

WHEREAS, pursuant to the Loan Agreement, TAYL has agreed, as collateral security for its obligations under the Loan Agreement and the other agreements and documents executed in connection with the Loan Agreement and the Loan (the "*Financing Documents*"), (i) to grant certain liens in favor of OPIC on designated collateral associated with the Project, and (ii) to assign and transfer to OPIC all right, title and interest of TAYL in the Lease Agreement, to the extent now or hereafter permitted by applicable law; and

WHEREAS, (i) pursuant to the Loan Agreement, OPIC requires the execution and delivery of this Consent Agreement by TAYL and HCI; and (ii) pursuant to the Lease Agreement, TAYL and HCI have agreed that the terms of the Lease Agreement shall be subject to OPIC's rights under this Consent Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and for other valuable consideration, the receipt and adequacy of which are acknowledged, and intending to be legally bound, the parties to this Consent Agreement agree as follows:

1. INTERPRETATION

1.1. Rules of Interpretation.

In this Consent Agreement, unless otherwise indicated or required by the context:

successors, enforceable in accordance with their respective terms. The Lease Agreement remains in full force and effect. HCI has not received any notice of transfer or assignment of or lien granted on the Lease Agreement or TAYL's rights thereunder by TAYL.

2.4. No Litigation; No Breach or Amendment; No Disputes or Liabilities.

(a) There are no pending or, to HCI's knowledge, threatened actions, suits, proceedings or investigations of any kind, including actions or proceedings of or before any governmental authority, court, arbitrator or any other entity to which HCI is a party or is subject, or by which HCI or its revenues, properties or assets are bound which, if adversely determined, could have an adverse effect on its ability to perform its obligations under this Consent Agreement or the Lease Agreement, or which questions, (i) the validity, binding effect or enforceability hereof or of the Lease Agreement, (ii) any action taken or to be taken pursuant hereto or thereto, or (iii) any of the transactions contemplated hereby or thereby.

(b) Neither HCI nor, to its knowledge, TAYL is in default under any covenant or obligation under this Consent Agreement or the Lease Agreement and the execution and delivery of this Consent Agreement by HCI will not give rise to any such default. HCI and, to its knowledge, TAYL have complied with all conditions precedent to the respective obligations of such party to perform under the Lease Agreement. Except as expressly set forth herein, there have been no amendments, supplements or modifications to the Lease Agreement.

(c) No disputes are outstanding, and to its knowledge, no act or omission has occurred that could lead to a dispute, between TAYL and HCI in connection with the Lease Agreement. There are no due and unpaid liabilities of TAYL owing to HCI under the Lease Agreement.

2.5. Representations and Warranties in Lease Agreement; Title to Parcels.

(a) All representations and warranties made by HCI in the Lease Agreement were true and correct in all material respects on and as of the date when made and are true and correct in all material respects on and as of the date of this Consent Agreement. Without limiting the generality of the foregoing, each of the representations and warranties made by HCI in Section 2.1 of the Lease Agreement would continue to be true and correct as of the date hereof if each reference therein to "this Land Lease Agreement" were also to refer to this Consent Agreement.

(b) The Host Government owns and has good, legal and beneficial title to the Parcels, free and clear of all liens.

2.6. Entire Agreement; Prior Lease Agreement.

(a) The Lease Agreement and this Consent Agreement together constitute the entire agreement between TAYL and HCI relating to the Project, and supersede all previous agreements between HCI and TAYL, including all previous lease agreements and consent agreements entered into by HCI and TAYL or its shareholders.

any actions taken by HCI in good faith based upon OPIC's exercise of any of TAYL's rights and privileges under the Lease Agreement.

(d) To the extent permitted by applicable law, HCI hereby waives any right it may have under the laws of Afghanistan or the laws of any other applicable jurisdiction to require a power-of-attorney or any other document or agreement (other than the provisions hereof) to allow OPIC to exercise the rights and powers described in this Consent Agreement.

3.3. TAYL's Obligations.

Notwithstanding the rights of OPIC under this Consent Agreement, (i) each of TAYL's liabilities and obligations under the Lease Agreement shall remain with TAYL, (ii) any curing of or attempt to cure any of TAYL's breaches under the Lease Agreement shall not be construed as an assumption by OPIC of any covenants, agreements or obligations of TAYL under the Lease Agreement, and (iii) OPIC shall not have any obligations under the Lease Agreement to HCI or to any other Person, except as otherwise provided in Section 4.5.

3.4. No Modification.

Except as otherwise expressly set forth herein, nothing contained in this Consent Agreement shall constitute a modification, waiver or release of any of the terms or provisions of the Lease Agreement.

3.5. Conflicting Notices.

If HCI believes in good faith that there is a conflict between any notice, instruction or other communication given by TAYL under the Lease Agreement, on the one hand, and any notice, instruction or other communication given by OPIC (each an "*OPIC Notice*"), on the other hand, then HCI (i) shall notify OPIC and TAYL and, (ii) unless otherwise directed by OPIC within seven (7) days of the date such notification is delivered, give effect to the OPIC Notice only. TAYL hereby consents to HCI giving effect to the OPIC Notice as contemplated by this Section 3.5.

4. AGREEMENTS.

HCI hereby irrevocably agrees as follows, and TAYL hereby consents to the same:

4.1. No Actions.

HCI shall not, without prior understanding with OPIC:

(a) cancel or terminate, or suspend performance under, the Lease Agreement or consent to or accept any cancellation, termination or suspension of the Lease Agreement by TAYL except as set forth in Section 4.1(b);

(b) exercise any of its rights under the Lease Agreement to cancel or terminate, or suspend performance under the Lease Agreement unless HCI shall have:

the original Lease Agreement before giving effect to such rejection, termination or transfer and shall contain the same conditions, agreements, terms, provisions and limitations as the original Lease Agreement (except for any requirements which have been fulfilled by TAYL and its successors prior to such rejection, termination or transfer). This Consent Agreement shall apply *mutatis mutandis* to any such replacement Lease Agreement.

4.4. Lease Agreement Clarifications.

Notwithstanding anything in the Lease Agreement to the contrary, HCI and TAYL agree that:

- (i) All references to "Exhibit A" in the Lease Agreement shall be deemed to mean the description of the Parcels attached hereto as Annex I;
- (ii) All references to "the Consent Agreement" shall be deemed to mean this Consent Agreement; and
- (iii) All notices provided by HCI to TAYL under the Lease Agreement shall be delivered as specified in this Consent Agreement, or to such other address or number as TAYL shall have last specified by notice to HCI

4.5. Transfer to OPIC or Third-Party Transferee; New Lease.

(a) At any time after receipt by (x) HCI of a Default Notice, or (y) OPIC of written notice from HCI pursuant to Section 4.1(b), then, to the extent permitted by applicable law, OPIC may, in its sole discretion to the extent permitted by applicable law, either:

- (i) transfer or assign its rights and interests and the rights and interests of TAYL under the Lease Agreement to any purchaser or transferee of the Project, or
- (ii) request in writing HCI to, and HCI shall, (A) terminate the Lease Agreement, and (B) enter into a new lease agreement ("*New Lease*") on the same or substantially the same terms of the Lease Agreement, with OPIC or any third party designated by OPIC in writing. HCI hereby consents to OPIC, or any third party nominated by OPIC, at OPIC's option, entering into a New Lease as "lessee" thereunder.

(b) Upon any transfer or assignment of the Lease Agreement pursuant to Section 4.5(a):

- (i) OPIC, any affiliate of OPIC or any third party to whom such rights are transferred by OPIC (each an "*OPIC Transferee*") shall assume and succeed to all of TAYL's right, title, interest and obligations under and in connection with the Lease Agreement and shall be obligated to perform all of the terms and conditions of the Lease Agreement; provided that (A) neither OPIC nor any OPIC Transferee shall be responsible for liability of TAYL arising out of any act or omission of TAYL prior to such transfer or assignment, (B) HCI shall be entitled to receive payment of the Unpaid Amounts then due and payable (other than amounts contested in good faith in accordance with the terms

5. MISCELLANEOUS.

5.1. No Waiver; Remedies Cumulative.

No failure or delay by any party hereto in exercising any right, power or remedy under the Lease Agreement or this Consent Agreement shall operate as a waiver thereof or otherwise impair any of its rights, powers or remedies. No waiver of any such right shall be effective unless given in writing. The rights or remedies provided for herein are cumulative and are not exclusive of any other rights, powers or remedies provided by law.

5.2. Waiver of Jury Trial.

EACH OF HCI, OPIC, AND TAYL HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP AMONG THEM ESTABLISHED BY THIS CONSENT AGREEMENT, THE LEASE AGREEMENT AND ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT ENTERED INTO IN CONNECTION WITH THIS CONSENT AGREEMENT OR THE LEASE AGREEMENT.

5.3. Waiver of Litigation Payments; Immunity

(a) If any action or lawsuit is initiated by or on behalf of OPIC in Afghanistan or elsewhere against HCI with respect to this Consent Agreement, HCI, to the fullest extent permissible under applicable law, irrevocably waives its right to, and agrees not to request, plead, or claim that OPIC or its respective successors, transfers, and assigns (any such Person, a "*Plaintiff*") post, pay, or offer, any cautio judicatum solvi bond, litigation bond, or any other bond, fee, payment, or security measure provided for by any provision of law applicable to such action or lawsuit (any such bond, fee, payment, or measure, a "*Litigation Payment*"), and HCI further waives any objection that it may now or hereafter have to a Plaintiff's claim that such Plaintiff should be exempt or immune from posting, paying, making or offering any such Litigation Payment.

(b) If any action or lawsuit is initiated by or on behalf of HCI in Afghanistan or elsewhere against OPIC with respect to this Consent Agreement, OPIC, to the fullest extent permissible under applicable law, irrevocably waives its right to, and agrees not to request, plead, or claim that HCI or its respective successors, transfers, and assigns (any such Person, a "*Plaintiff*") post, pay, or offer, any cautio judicatum solvi bond, litigation bond, or any other bond, fee, payment, or security measure provided for by any provision of law applicable to such action or lawsuit (any such bond, fee, payment, or measure, a "*Litigation Payment*"), and OPIC further waives any objection that it may now or hereafter have to a Plaintiff's claim that such Plaintiff should be exempt or immune from posting, paying, making or offering any such Litigation Payment.

(c) HCI irrevocably and unconditionally acknowledges and agrees that in any proceedings brought against it or the Host Government within or outside of Afghanistan in connection with (i) this Consent Agreement, (ii) the Lease Agreement, (iii) any New Lease, or (iv) any documents executed in connection with, or the transactions contemplated by, any of the foregoing, no claim of immunity, including sovereign

direct negotiations to arrive at such solutions. Upon the written request of one Party, a committee shall be established consisting of the senior representatives of each Party. Such committee shall negotiate and spend its best effort to settle the dispute within fifteen (15) days upon the submission of the dispute to the committee.

(b) Any dispute arising out of or relating to this Consent Agreement, including any question regarding the existence, validity, termination or interpretation, and including any dispute which cannot be amicably resolved by the Parties as referred in Section 5.7(a), shall be settled by arbitration proceedings conducted under the Arbitral Rules of the International Chamber of Commerce ("ICC") at London, England, as currently in force, before one arbitrator which shall be appointed by the International Court of Arbitration. The arbitration shall be in the English language and the Arbitrator shall be fluent in the English language. Any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof or application may be made in such court for a judicial acceptance of the award or decision and an order of enforcement. Each Party waives any defense of sovereign immunity in connection with the arbitration, any proceedings relating thereto, and the execution of any award or judgment therefor.

5.8. Notices.

Each notice, demand, report, or other communication provided for in this Consent Agreement and under the Lease Agreement shall be in writing, shall be delivered by one of the following methods, shall be sent to the intended recipient at the address for notices specified below (or to such other address or number as each party shall have last specified by notice to the other parties), and shall be deemed duly given (i) if hand delivered, upon delivery as evidenced by receipt therefor, (ii) if sent by registered mail (return receipt requested), upon delivery as evidenced by receipt therefor, (iii) if sent by international courier, two (2) business days after being sent, and (iv) if sent by facsimile transmission (with a copy by mail to follow, receipt of which copy shall not be required to effect notice), upon telephonic confirmation of receipt, addressed as follows:

If to HCI:
High Commission of Investment of Afghanistan
Opposite to Ministry of Foreign Affairs/AISA,
Kabul-Afghanistan
Attn: Secretariat of HCI
Fax: +93 (0) 20-210 3402
Phone: +93 (0)-20-210 3404

5.10. Execution in Counterparts.

This Consent Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument and any of the parties may execute this Consent Agreement by signing any such counterpart.

Lease History

1. The Ministry of Foreign Affairs of the Transitional Islamic Government of Afghanistan ("MFA"), Arian Afghan Airlines ("Ariana") and TAYL Investor Group ("TAYL"), being the shareholders of TAYL Investors Group Limited at that time, entered into a Conditional Lease Agreement dated October 31, 2002 (the "Conditional Lease Agreement") for three parcels located on Great Massoud Road, directly across from the United States Embassy and the Ministry of Public Health, of which one parcel was owned by Ariana and two parcels were owned by MFA (collectively, the "Parcels").
2. Prior to the execution of the Original Lease Agreement (defined below), the Transitional Islamic Government of Afghanistan consolidated control of the Parcels and was thereafter represented by the High Commission of Investment of Afghanistan ("HCI").
3. Within the framework of the Conditional Lease Agreement, the parties thereto agreed that the Parcels should be leased to TAYL, and on or about March 13, 2003, TAYL and HCI entered into a lease for the Parcels (the "Original Land Lease Agreement").
4. TAYL and the Ministry of Finance of the Transitional Islamic Government of Afghanistan entered into Addendum No. 1 to Land Lease Agreement dated February 26, 2003.
5. The Ministry of Defense of the Transitional Islamic Government of Afghanistan has asserted certain claims to the Parcels, but subsequently delegated all of its rights to the distribution of the Parcels to the HCI pursuant to a letter agreement dated November 15, 2003.
6. On April 23, 2007, HCI and TAYL agreed that the Conditional Lease Agreement and the Original Land Lease Agreement were terminated and entered into the Land Lease Agreement dated April 23, 2007 (the "Land Lease") with respect to the Parcels.
7. In connection with the Land Lease, HCI, TAYL and Overseas Private Investment Corporation entered into the Consent Agreement dated as of May 14, 2008.
8. A portion of TAYL's rights under the Land Lease was assigned by TAYL to Kabul Grand Residences LLC ("KGR") and TAYL's obligations under the Land Lease with respect to such portion were assumed by KGR pursuant to the Assignment and Assumption of Lease dated as of November 4, 2011 between TAYL BVI and KGR.

OVERSEAS PRIVATE INVESTMENT CORPORATION
WASHINGTON, D.C. 20527-0001, U.S.A.



December 11, 2017

OFFICE OF THE
PRESIDENT

H.E. Minister Eklil Hakimi, Minister of Finance
Ministry of Finance
Pashtoonistan Watt
Kabul, Afghanistan

Dear Minister Hakimi:

We appreciate your offer when we met in Washington in October for your assistance in addressing our requests to the Government of Afghanistan (the "GoA") regarding the exercise of our rights with respect to the Kabul Grand Hotel Project and the Kabul Grand Residences (the "Project"). Our request is for you to expedite, or, as you had suggested in our meeting, to ask President Ghani to help expedite, the transfer of the land leased by TAYL Investor Group ("TAYL") to the U.S. Government ("USG") through a new lease on the property associated with the Project.

Background

Discussions with the GoA regarding the development of the Project adjacent to the U.S. Embassy date back to 2002, when the three parcels that comprise the property where the Project is located were leased to TAYL, the developer of the Project, under a Conditional Lease Agreement dated October 31, 2002 (the "Conditional Lease Agreement") executed by the Ministry of Foreign Affairs (the "MFA") and Ariana Afghan Airlines. By March 2003, the GoA had consolidated control of the three parcels under the GoA's High Commission of Investment (the "HCI") and executed a full Land Lease Agreement with TAYL on March 13, 2003 (the "Original Lease Agreement"). The MoF also signed an Addendum No.1 to Land Lease Agreement with TAYL on February 26, 2003 confirming certain rights and obligations of the parties with respect to the development of the Project.

The initial investors in TAYL were unable to pursue the Project and OPIC worked to find new investors to come in to commence construction of the Project. As discussions with new investors progressed, the Conditional Lease Agreement and the Original Lease Agreement were terminated and replaced on December 31, 2003 with a new Land Lease Agreement (the "Lease Agreement") on terms similar to the Original Lease Agreement between TAYL and the HCI. By the end of 2007, the new investor group had assumed control of TAYL and all rights to develop

The U.S. Embassy has been working with the MFA, the MoF and the HEC to address OPIC's request. We understand that the request reached the highest levels of the GoA when President Ghani chaired a meeting of the HEC in late July, and that the proposal is viewed favorably. However, since the HCI has been disbanded, we understand that the MFA has had difficulty confirming details regarding the consolidation of the parcels under the HCI that is referenced in the Original Lease Agreement, the Lease Agreement and the Consent Agreement.

Before entering into a very substantial loan package, both TAYL and OPIC relied on representations that the GoA properly consolidated the parcels under the control of the HCI and that the HCI had authority to enter into the Lease Agreement and Consent Agreement on the GoA's behalf. We are confident that the GoA will continue to honor those representations and agreements and assist in expediting the transfer of the land to the USG per our request.

Conclusion

If you have further questions regarding our request the appropriate contact at OPIC for discussing the status of the Project is Mark Paist, our Associate General Counsel for Project Finance (mpaist@opic.gov). The appropriate contact at the U.S. Embassy for discussing the lease is Management Counselor Terry Murphree.

As was mentioned when we met, progress on a resolution of this Project is important to OPIC in considering further investments in Afghanistan, as it demonstrates our ability to validly enforce the legal rights granted under the loan documentation and address our exposure to defaulted projects generally.

Sincerely,



Ray W. Washburne
President & CEO

cc: Mr. Sifat Rahimee
Mr. Mark Paist
Mr. Terry Murphree

PROPOSED STEPS AND LEASE TERMS FOR GRAND HOTEL PROPERTY

STATUS OF PROJECT

Starting in 2003, TAYL and its affiliates borrowed more than US\$100,000,000 from OPIC for the purpose of constructing a hotel and residential complex. Construction on the project was stopped in 2014 and TAYL and its affiliates also stopped making payments under OPIC's loans to the Project. In 2016, OPIC notified TAYL that it had failed to show that the project could be completed and operated at a level of profitability that would allow repayment of the existing amounts. Pursuant to the requirements of the Consent Agreement, on March 8, 2017, OPIC provided notice to the Government of Afghanistan that the Hotel Loan was in default and that it was exercising its rights under the Consent Agreement to assume full control of all rights to the Parcels under the Lease Agreement. OPIC wishes to dispose of the land and buildings by transferring its interest in the property to the Department of State.

LAND ACQUISITIONS BY U.S. GOVERNMENT

Since 2003, the Department of State has been steadily expanding Embassy operations and facilities in Kabul. The Embassy continues to grow, consolidate, and expand its office, residential and support facilities. In 2008, the Department began a period of successfully working with the Government of Afghanistan to acquire additional land adjoining the Embassy compound to accommodate the new construction and development. The hotel property was never involved in the expansion plans. All of the prior land acquisitions were accomplished through long term lease, short term lease with renewal rights, or property exchange.

PROPOSED ACTION

The Department, pursuant to OPIC's wishes, proposes to terminate the land lease to TAYL and enter into a new land lease agreement, unconnected to the Hotel projects, in the same format as recent land leases granted to the Department, i.e., 50 year term, rent free, no-cost renewals, unrestricted rights to use for diplomatic purposes, and the right to assign and transfer in the future. The existing buildings have no commercial value to the Department. They do not meet our safety and security standards and will be demolished for safety reasons since they continue to deteriorate and may partially collapse over time.

Once the new lease is approved in principle, the Embassy would facilitate completion of appropriate documentation for the Government of Afghanistan, Department of State, and OPIC. To the extent that the Government of Afghanistan and the U.S. Department of State are unsuccessful in reaching an agreement with respect to the Parcels, OPIC reserves all of its rights under the Consent Agreement and Lease Agreement with respect to the Parcels in order to address the outstanding defaults.