

RESOLUTION NO. 2988

**RESOLUTION OF THE BOARD OF PORT COMMISSIONERS
OF THE VENTURA PORT DISTRICT APPROVING AND ADOPTING A
MASTER LEASE/OPTION NEGOTIATION ADMINISTRATION POLICY**

WHEREAS, Ventura Port District ("District") and is a major provider of marine-oriented public services within the City of San Buenaventura, making commercial, tourist and recreational opportunities available to the public; and

WHEREAS, these commercial, tourist and recreational opportunities are, for the most part, provided by long-term ground lease tenants of the District; and

WHEREAS, the District regularly engages in negotiations with its ground lease tenants for changes and modifications to the existing leases and, from time to time, engages in discussions with prospective ground lease tenants relating to undeveloped portions of Ventura Harbor; and

WHEREAS, the Board of Port Commissioners has determined that it is in the best interests of the District, its current ground lease tenants, and prospective ground lease tenants, for the District to adopt a policy outlining the procedures for obtaining, amending and administering ground leases within Ventura Harbor and summarizing the basic ground lease terms the District considers essential to any new or updated long-term ground lease arrangement.

NOW THEREFORE BE IT RESOLVED, that the Board of Port Commissioners of the Ventura Port District hereby approves and adopts the Master Lease/Option Negotiation and Administration Policy in the form attached hereto and incorporated herein by reference; and

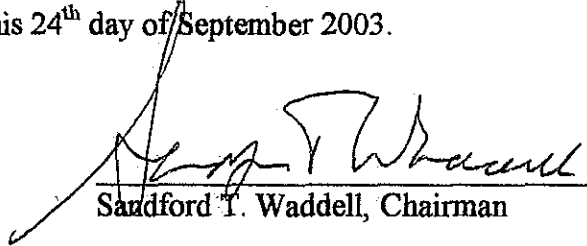
BE IT FURTHER RESOLVED, that the General Manager and other members of the District staff are hereby authorized to provide copies of this Policy to both existing and prospective ground lease tenants to assist those parties in the conduct of their master lease/option negotiations and lease administration affairs; and

BE IT FURTHER RESOLVED, that the General Manager and other members of the District staff are to be guided by this Policy in their conduct of their relations with both existing and prospective ground lease tenants; and

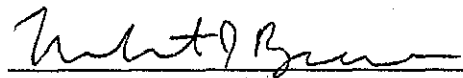


BE IT FURTHER RESOLVED, that the General Manager and staff at the District are hereby authorized and directed to take such other and further actions as may be necessary and appropriate to carry out and implement the purposes of this Resolution.

PASSED AND ADOPTED this 24th day of September 2003.


Sanford T. Waddell, Chairman

ATTEST:



Robert Bravo, Acting Secretary

STATE OF CALIFORNIA)
COUNTY OF VENTURA (ss.
CITY OF SAN BUENAVENTURA)

I, Robert Bravo, Acting Secretary of the Ventura Port District, a public corporation, do hereby certify that the above and foregoing Resolution was duly passed and adopted by the Board of Port Commissioners of said District at a regular meeting thereof held on the 24th day of September, 2003, by the following vote:

AYES: Commissioners McCombs, Bravo and Chairman Waddell
NOES: None
ABSENT: Commissioners Clark and Ortiz

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said District this 24th day of September 2003.


Acting Secretary

(Seal)

MASTER LEASE/OPTION NEGOTIATION AND ADMINISTRATION POLICY

Introduction

The Board of Port Commissioners ("Board") governs the Ventura Port District ("District"). The Board delegates responsibility for the administration of District operations to the General Manager. This delegation includes responsibility for the negotiation and administration of the District's real estate and leasing affairs. This policy only applies to Master Leases in Ventura Harbor and is not applicable to the short-term office, retail and restaurant leases in Ventura Harbor Village administered by District personnel.

The General Manager is responsible for administering the District's affairs in accordance with policies, rules and regulations established by the Board. The Board has adopted this policy to provide guidance to the General Manager and to establish a framework for better communications with our master tenants to avoid misunderstanding about District Policy.

This document establishes the general policies and practices for the optioning and leasing of real properties owned and administered by the District. The policies and practices established herein may be reviewed and modified by the Board at any time in its discretion. This document is divided into four parts as follows:

- I. Lease negotiation procedures.
- II. Leasing authority.
- III. Lease terms.
- IV. Lease administration.

Though described as a "leasing" policy, the procedures and concepts stated herein apply to the option to lease process as well, which the District will require in connection with a lease of currently undeveloped property or redeveloped property in Ventura Harbor.

I. Lease Negotiation Procedures

The lease negotiation process should begin with preliminary discussions between the General Manager, or his representative, and the prospective tenant in an effort to identify issues and objectives in the proposed lease transaction. The General Manager should then bring the results of these discussions to the Board for consideration and possible determination of the District's position in and strategy for the lease negotiation. The Board, in its discretion, may delegate this responsibility to an ad hoc committee of the Board or the General Manager, but the Board shall retain ultimate authority for approval of any changes to an existing lease or a new lease.

The General Manager and District counsel shall then prepare a draft "term sheet" identifying the business deal points including proposed rent, permitted uses and improvements. The term sheet

should be reviewed by the committee or the Board, as the case may be, prior to presentation to the tenant. The business deal points are to be agreed upon by the District and tenant negotiators and reported to the Board before counsel will be authorized to prepare any lease document. The Board will not, however, formally approve business terms prior to approving the final lease document.

Once authorized, District counsel shall prepare the initial draft of the lease document based upon the term sheet and applicable ground leasing policies and practices in Ventura Harbor.

Once the terms of the lease have been successfully negotiated between the General Manager and the tenant and the draft master lease has been prepared, the lease shall be submitted to the Department of Boating and Waterways, and possibly to the Attorney General and the State Lands Commission if required by the Harbors and Navigation Code. After approval by the required agencies, notices inviting competitive bids and giving notice of the District's intention to authorize the entering into the lease by the adoption of an ordinance shall be given. The Board shall formally consider the lease, but only after the tenant has signed multiple copies of the lease and related lease transaction documents and delivered them to the District pending approval by the Board and the State agencies.

II. Leasing Authority

The authority for negotiating and approving master lease terms is divided between the Board, a committee of the Board, if established in the discretion of the Board, and the General Manager. District counsel shall advise the Board, any committee and the General Manager throughout the lease negotiation process.

The Board, as the governing body of the District, has the ultimate authority with respect to all leases. The Board shall approve all leases, lease extensions or lease amendments. Only the Board may act to bind the District, including commitments to negotiate. The General Manager, a Board committee and counsel shall always make it clear to a prospective tenant during negotiations that any commitments made during the negotiation process are subject to approval by the Board prior to such terms being enforceable.

Prior to commencement of detailed negotiations concerning a new lease, a lease extension, or an amendment to an existing lease, the General Manager will present objectives and lease negotiation issues to the Board. The Board will initially decide whether to pursue lease negotiations and, further, whether to appoint a committee to assist the General Manager in those negotiations. If the Board determines that negotiations should proceed, the Board may also give general policy direction to the negotiators, which might include the General Manager, the committee and counsel.

Finally, in the event there is any disagreement or dispute between the General Manager and the committee about issues arising in preparation for or during the lease negotiation, the Board shall determine how the negotiations shall proceed.

If the Board decides to appoint a committee to assist the General Manager in lease negotiations, the committee member(s) shall meet with and advise the General Manager regarding proposals and general negotiating strategy. The committee members should be the Board contact for the tenant and should participate in negotiations as appropriate as determined by the Board, the committee and the General Manager. Direct contact between master tenants and Board members who are not committee members authorized to participate directly in negotiations, is discouraged.

Also, if appointed, the committee should review all written proposals before presentation to the tenant and should report to the Board on negotiations in closed session along with the General Manager.

As the person charged with responsibility for the administration of all District's activities, the General Manager should be the chief negotiator in all lease negotiations, assisted by a committee, if appointed, and by counsel as required. The General Manager should discuss the negotiating position and strategy with the committee and, if no committee is appointed, directly with the Board.

As the chief negotiator, the General Manager should be responsible for preparing all proposals and term sheets in consultation with District counsel and the committee. The General Manager should also be the primary person responsible for reporting to the Board on the progress of lease negotiations.

The role of District counsel during negotiations is to initially advise the General Manager and the committee on the preparation of the term sheet. Counsel should prepare and review all lease language, and maintain all drafts and revisions on a computer system so that the progress of negotiations can be reconstructed in the future if necessary.

Finally, counsel should participate in negotiations as appropriate and as determined by the General Manager and the committee. Also, unless the lease documents expressly otherwise provide, the District should seek to recover from the tenant the costs and fees incurred by District counsel in the negotiation and lease drafting process, including legal fees.

III. Lease Terms

Unless the circumstances of the particular lease negotiation dictate otherwise, the following concepts should be incorporated in all new master leases and, if appropriate, in all renegotiated or restated ground leases. This listing of lease issue concepts is not intended to be all-inclusive and may be modified or supplemented by the Board in its discretion at any time.

- A. Lease Term.** The term of master leases should be tied to the useful life of existing improvements, or improvements to be constructed, but the maximum term cannot exceed 50 years per Harbors and Navigation Code Sections 6271 and 6304.1. Accordingly, the Board discourages tenants from seeking and will not agree to lease language which might grant the tenant an option to extend a lease beyond the 50-year term. If a lease is to be extended or a new lease negotiated, the District reserves the

right to update, renegotiate and restate all lease terms and to require appropriate consideration for any extension of a lease term or the granting of a new lease.

B. Rent.

1. Minimum annual rent providing a fair return to the District and the tenant shall be subject to adjustment every five years or sooner. Such adjustment should be to an amount equal to not less than 75% of the average total rent (minimum annual and percentage rent) for the previous five-year period.
2. Percentage rent, based on all uses within Ventura Harbor, including slip rental rates, shall likewise be subject to adjustment to market every five years or sooner. If the parties are unable to agree upon appropriate adjusted percentage rental rates, the dispute should be submitted to binding baseball-style arbitration.
3. Appreciation/participation rent should be payable to the District on a financing or refinancing where the loan proceeds exceed the tenant's capital investment in the project and are not to be invested in new capital improvements in the project. Likewise, appreciation/participation rent should be paid when the master lease is sold or assigned as a whole or in increments over time which result in a change of control of the tenant. In that event, the District should share in a percentage of the gross sale proceeds to the extent those proceeds exceed the lessee's investment in the project including acquisition and capital improvement costs.
4. Late payments of rent should be subject to a late charge equal to 10% of the amount due, plus interest from the date due at the rate of 10% per annum or the maximum rate allowed by law, whichever rate is less.

C. Permitted Uses. All leases shall specify the uses that will be permitted on the premises. Unless otherwise agreed by the District, no use shall be granted on an exclusive basis to any tenant. Additional uses should only be allowed in the sole discretion of the District.

D. Security Deposit. The District shall require a security deposit from all new master lease tenants and, if the circumstances of the transaction warrant, a personal guarantee. In the event of a renegotiation with an existing tenant, the requirement of a security deposit and a personal guarantee can be dispensed with in the discretion of the Board, provided that tenant has a superior history of performance under its lease and has demonstrated the financial commitment necessary to make the leasehold operation a success, as determined by the Board in its sole discretion. The amount of security deposits should be subject to adjustment at the same time interval applicable to the adjustment of minimum annual rent.

- E. Security for Completion of Construction.** The District shall require that all tenants post security to cover the estimated cost of constructing improvements on the premises, the planning and design of which has been approved by the District, and District's overhead and out-of-pocket expenses should District be required to assume control of the project. The amount of such security will normally be 125% of construction cost. Such security should be in the form of a bond, a letter of credit, or other forms of security reasonably satisfactory to the District.
- F. Additional Security for Lease Performance.** As a matter of policy and to ensure tenant's performance under any master lease, the District requires that the tenant execute a quitclaim deed and an absolute and irrevocable assignment of rents in favor of the District to be held by the District in accordance with the terms of such documents. Such documents cannot be recorded and implemented by the District unless and until there has been a failure of the tenant to comply with the lease and action by the District to terminate the rights of the tenant thereunder. The District understands the assignment of rents will be subordinated to any leasehold financing needed by tenant.
- G. Lessor's Breach.** Should it be determined that the District has breached the lease, then the remedies available to the lessee shall be limited to an action at law for compensatory monetary damages, but not consequential damages. No equitable relief or termination of the lease shall be permitted.
- H. Maintenance and Repair.** Lessee shall be solely responsible for the upkeep and maintenance of the premises, including revetted slopes within the premises. The maintenance obligation shall be one of maintaining the premises and improvements in a "first class" condition. With respect to existing improvements not previously required to be maintained in "first class" condition, however, the maintenance obligation shall be to keep the premises and improvements in good condition and repair, on par with, if not better than, similar marine environment operations in the counties of San Luis Obispo, Santa Barbara, Ventura, Los Angeles and San Diego. All newly-constructed or renovated improvements shall be subject to the "first class" standard for maintenance. District shall have the right, but not the obligation, to cure maintenance defaults by the tenant and expenditures incurred by District in that process shall become additional rent due and payable to District.
- I. Interim Modernization.** For any lease in excess of 30 years, and depending upon the age and condition of improvements on the premises, the District may require that between the 30th and 35th years of the lease term, the tenant shall undertake a modernization program to upgrade improvements (including infrastructure) to ensure that such improvements will remain attractive and structurally sound for the balance of the lease term and beyond. The District will consider a reasonable refinancing program to assist the tenant in funding the cost of the required modernization. The details of the modernization program should be based on engineering studies and inspections paid for by the tenant and approved by the District.

- J. Surrender.** District will reserve right/option to compel tenant to remove all improvements at lease expiration/termination and to provide appropriate security to ensure costs of removal are funded.
- K. Water Depth.** All tenants with a water area within the premises shall be responsible for maintaining adequate water depth within that water area to support the water-oriented operations conducted under the lease. Likewise, the District shall take all commercially-reasonable and prudent actions to maintain the common fairways within the Harbor at a reasonable depth, taking into account the District's financial limitations, governmental processing and permit requirements as well as the potential impact on all business operations within the Harbor.
- L. Leasehold Encumbrancing.** The District recognizes that the cost of developing leaseholds and constructing improvements will require leasehold financing. The District will not permit pledging of fee title as security for such financing; but, subject to reasonable limitations, the District will consider approval of the pledging of tenant's leasehold estate in order to obtain funds necessary to construct District-approved improvements and to complete an interim modernization program. The total amount of such indebtedness, however, should not exceed 75% of the fair market value of tenant's leasehold interest as determined by a District approved appraisal and the projected net operating income derived from the leasehold should be at a coverage ratio determined by the Board, in its discretion, to be appropriate.
- M. Other Refinancing.** All encumbrances of a tenant's leasehold are subject to the prior approval of the District. The District discourages, but is willing to consider in its discretion, requests from tenants to refinance their leaseholds, but only after the tenant and the lender have negotiated and conditionally signed loan documents which are submitted to the District for approval. Refinancings not related to funding capital improvements to be constructed on the premises or refinancing existing debt structure are subject to approval by the District in its sole discretion and, further, subject to the appreciation rent policy of the District.
- N. Insurance.** Tenant shall obtain adequate insurance to cover all operations conducted on the premises. All insurance language shall be submitted to the District's insurance carrier for review, approval and comment before approval and execution of the lease by the District. Insurance coverage shall be subject to review and adjustment concurrently with the adjustment of minimum annual rent.
- O. Indemnity.** Tenants shall be required to indemnify the District against any and all claims arising out of tenants' performance under the ground lease and all activities conducted on or related to the premises by the tenant or its subtenants. The District will not agree to make such indemnity mutual.

- P. Assignments.** The District recognizes that, from time to time, master leases will be assigned, conveyed or sold. The District does, however, have a genuine and legitimate interest in ensuring that the assignee has not only the business expertise and financial stability to ensure that the leasehold operation is a success, but also that the business reputation of the proposed assignee fits into the recreational and commercial environment of Ventura Harbor. Accordingly, all proposed assignments of the leasehold must be submitted to District for its prior written approval. Both the tenant and the proposed assignee must provide such information and documents as the District may reasonably require, including a substantial security deposit and personal guaranties. Further, the lease should provide that the District will have the option to recapture the premises on essentially the same terms and conditions as proposed, subject to having adequate time to obtain financing.
- Q. Tenant Requests.** The District recognizes that during the term of a master lease occasions will arise where the District, as lessor, will be requested to review and approve actions by the tenant. Such matters would include, but not be limited to, the review of and approval of plans and designs for new improvements, encumbrances, subleases, assignments and perhaps other requests. In such instances, the lease shall provide that the District is to be paid a reasonable fee based on the anticipated amount of staff time that will be required to process the request, plus the District's out-of-pocket expenses paid to third parties (i.e., attorneys, accountants and other consultants) who are retained in order to assist the District in properly processing the request. Further, such tenant requests will not be processed if there is a rental deficiency then existing or other unresolved breaches.
- R. Operating Hours and Procedures.** The District is required by law to maintain reasonable control and oversight of the operating hours and procedures of its tenants. Such hours of operation and procedures are to be approved by the General Manager and any change must likewise be approved by the General Manager, subject to referral to the Board.

IV. Lease Administration

The District recognizes that during the lease term, many instances will arise where the lease may need to be modified and the District should regularly evaluate and reevaluate its administrative practices. To assist District staff in dealing with these instances, the Board suggests the following:

- A. Lease Audits.** In order to ensure that the District receives the return in the form of minimum and percentage rents negotiated by the parties under the ground lease, the Board recommends that all master leases be audited on no less than a five year rotating basis. All leases should contain provisions that require the tenant to pay the costs of the audit if a discrepancy to the detriment of the District is discovered which exceeds 2%. Further, any changes in record keeping or other financial practices recommended by the auditor shall be promptly implemented by the tenant.

- B. Lease Amendments.** The District should consider any reasonable requests for amendments to leases. However, any and all costs and expenses incurred in connection with a request for a lease amendment by a tenant shall be paid by the tenant. Likewise, a reasonable processing fee should also be assessed. Payment of these fees should be a condition precedent to the effectiveness of any lease amendment. No lease amendment may extend the lease term beyond 50 years.
- C. Financial Stability of Tenants.** Though the District recognizes that commercial leaseholds such as exist in Ventura Harbor are very valuable assets and could be pledged as security for loans, such financings are and should be discouraged unless the proceeds are to be used to improve the leasehold or to reimburse the tenant for capital expenditures previously made by the tenant. Any requests for refinancing should be scrupulously reviewed by the District and staff to ensure that the tenant maintains a significant economic stake in the leasehold to ensure the tenant's unqualified commitment to maximizing revenues for the benefit of both the District and the tenant. Withdrawals of equity by a tenant are discouraged.