

## **SAN DIEGO UNIFIED PORT DISTRICT**

**SUBJECT: ADMINISTRATIVE PRACTICES – REAL ESTATE LEASING**

**PURPOSE: To Establish Fair and Consistent Guidelines for Leasing the Port's Real Estate Assets**

### **Introduction**

The *Administrative Practices* are practical guidelines that implement BPC Policy No. 355, *District Real Estate Leasing Policy*. The Policy consists of general statements that are intended to encourage private investment; to promote high standards of development, operation and maintenance; and to assure that public trust assets are managed responsibly. The Practices are intended to provide clear guidelines and procedures for implementation of the Policy.

In the event the Port proposes to make changes to the Practices, the Port shall notify the San Diego Port Tenants Association (SDPTA) in advance and will meet and confer in good faith with the SDPTA to discuss the proposed changes. The SDPTA may request a public workshop on the changes. However, in individual lease negotiations, the foregoing does not in any way preclude the Port from negotiating terms that vary in some respects from the Practices as long as the Port and the tenant are in agreement.

The Practices are divided into eight categories as outlined below:

- A. Establishing Rent and Conducting Rent Reviews
- B. Lease Extensions
- C. Leasehold Financing
- D. Assignment of Leasehold Interest
- E. Subleasing
- F. Lease Amendments
- G. Trust Obligations
- H. Transaction Processing Fees and Security Deposits

The Practices follow:

## A. ESTABLISHING RENT AND CONDUCTING RENT REVIEWS

The Port should receive market rent for the leasing of its property, and rent should be adjusted to market periodically during the term of the lease. Market rent should be based on a current appraisal that complies with the *Uniform Standards of Professional Appraisal Practice*, published by the Appraisal Foundation. Port staff may consider other relevant information in arriving at the appropriate rent for a property. Other exceptions to the appraisal requirement are noted below.

Most Port leases are either percentage leases or flat rent leases. In a percentage lease, the Port receives the greater of a minimum rent or percentages of gross income generated by the economic activities that are conducted on the premises. In a flat rent lease, the rent is a fixed amount. Specific practices for percentage rent leases and flat rent leases follow.

*Percentage Rent Leases* – Market percentage rates tend to be relatively constant over time, and market validation of percentage rates for all of the Port's revenue categories by appraisal is a major undertaking. Therefore, for determining percentage rates for new leases and rent reviews for existing leases, the Port should establish benchmark appraisals by general geographic location and property type. The benchmark appraisals should be conducted on an ongoing basis, and should be utilized in determining rent at the rent review date stipulated in the lease.

Minimum rents in new percentage leases and in rent reviews should be set at no less than 75 percent of market rent as determined by appraisal or other relevant information. For substantial redevelopment and new construction, the Port may abate a portion of the minimum rent during construction when it is deemed appropriate.

Percentage rent leases should provide for market rent reviews every ten (10) years with mid-term adjustments to the minimum rent for changes in the consumer price index.

Appraisals of properties that normally rent for percentages of gross revenues (e.g., hotels, restaurants, marinas and retail stores) should consider rents and percentage rates paid on comparable properties, in addition to economic analysis and other appraisal techniques.

*Flat Rent Leases* – For determining market rent for new flat rent leases and for rent reviews in existing leases, individual appraisals that comply with the *Uniform Standards of Professional Appraisal Practice* should be conducted. Port staff may consider other relevant information in arriving at the appropriate rent for a property.

Flat rent leases should provide for market rent reviews every ten (10) years with mid-term adjustments for changes in the consumer price index.

Appraisal Exception – If the cost of an appraisal is not justified by the anticipated rents, other less expensive analysis methods may be employed to establish rent, as long as adequate market information is available to support a reasonable and fair conclusion.

Timely Completion of Rent Review Appraisals – The Port should be prepared to submit its rent proposal to the tenant no less than sixty (60) calendar days in advance of the commencement date of the rental period under review.

Rent Arbitration – Port leases shall provide for binding “baseball arbitration” when the Port and the tenant cannot agree on the new rent for a rental period under review. In baseball arbitration, a panel of three arbitrators must select by majority vote either the Port’s rent proposal or the tenant’s rent proposal, whichever is judged to be the closest to market rent, as the rent for the next rental period of the lease. The Port and tenant each shall select one arbitrator and the two arbitrators will mutually select the third arbitrator. All arbitrators must be qualified real estate appraisers and licensed to practice in the state of California.

Appraisal Assumptions Regarding Status of Property –The appraisal should reflect the value of the land as-if vacant and available for new development. The appraisal should assume that all regulatory approvals that allow the existing use have been obtained, and there should be no discount for costs and time delays associated with obtaining the regulatory approvals.

The appraisal should be consistent with the highest and best use of the property, as if vacant, on the date of value. Market conditions may support a highest and best use that differs from the existing use.

Notwithstanding the above, the appraisal must be consistent with the use restrictions and other contractual burdens placed on the land by the terms of the ground lease.

Appraisal of Maritime Properties - Properties that are managed by the Maritime Division, that are used for maritime purposes, should be appraised by comparison with other seaport and/or maritime industrial properties, and should consider total potential revenues including but not limited to wharfage and dockage.

## B. LEASE EXTENSIONS

The Port should utilize the lease extension process to (a) promote capital investment, (b) encourage redevelopment, and (c) update out-of-date leases. This section provides a narrative explanation of the process the Port should follow in determining whether a proposed development qualifies for an extended lease term, the length of the extended term, and whether there should be compensation to the Port for extending the term. A decision tree flowchart outlining the general process to be followed when a tenant requests a lease extension is presented in this section.

### **Lease Extension Practice and Decision Criteria**

*Tenant Requests a Lease Extension* – The submission package should include the following information:

- Description of the development concept and the proposed project following the guidelines stated in UPD Form 736, *Guideline for Tenant Project Plan Submittal*. Request for approval in concept as described in UPD 736 is the minimum requirement.
- A statement that the property will be in compliance with the Port Master Plan.
- Evidence that the tenant qualifies as a “tenant in good standing” (defined below).
- Any proposed changes to ownership.
- Description of the development team and its qualifications.
- Proposed lease extension terms (including if applicable minimum rent, percentage rent by use, and compensation to the Port for deferral of its reversionary improvement value as provided in this section), and justification for such terms.
- Financial feasibility of the extension including pro forma cash flows (if applicable).
- Anticipated development cost with repair and maintenance, and furniture, fixture and equipment items clearly delineated.
- Justification that the existing operator is capable of optimizing the use and return to the Port, thereby negating the need for a Request for Proposal process.
- Justification that the tenant has the expertise and financial capability to develop and operate the property, when the proposed development is different from the existing use.

*Proposal Consistent with Master Plan* – Initially, the Port should determine if the proposal is consistent with the Port Master Plan. Inherent in this decision is the assumption that the planning process utilized in developing the Master Plan

evaluated the potential for the highest and best use for the property, the goals of the Port and the input of the local community. If the proposal is not consistent with the Master Plan, the Port should not negotiate a lease extension.

*Proposal Consistent with the Port's Vision for Future Use of the Property* – If the proposal is consistent with the Master Plan but is not consistent with the Port's vision for the future use of the property, the Port should not negotiate a lease extension.

*Qualification as a "tenant in good standing"* – To qualify for a lease extension, the tenant should be considered a "tenant in good standing." The criteria should include a review of the tenant's history with respect to the following:

- Maintenance of the leasehold in good condition, free of deferred maintenance
- Prompt payment history
- Compliance with the provisions of the current lease, including use provisions, insurance requirements and regulatory permitting processes
- Maximization of the gross revenue of the tenant's business
- Maintenance of accurate financial records that are accessible to the Port
- Compliance with Port policies on public accommodation and non-discriminatory employment and contracting

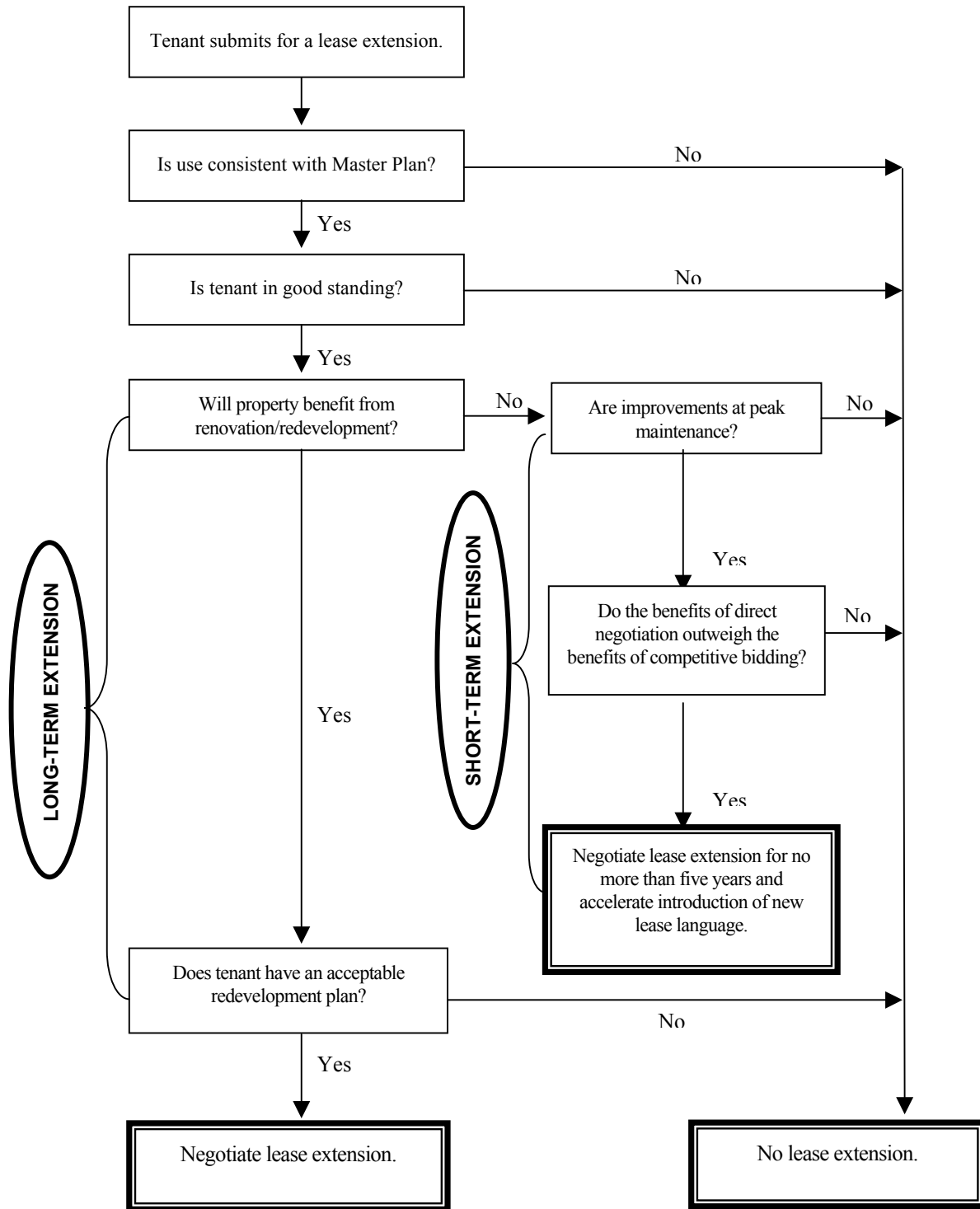
If the existing tenant does not meet the requirements for a "tenant in good standing," then no lease extension should be negotiated.

*Benefit from Renovation or Redevelopment* – Renovation or redevelopment contemplates making capital improvements to the property that would allow for business expansion, modernization of facilities, aesthetic enhancement; or that maintain or increase the existing revenue stream to the Port by expansion of the existing improvements or repositioning the property to a higher standard of quality.

*Acceptable Development Plan Presented by the Tenant* – If the property would benefit from renovation or redevelopment, the Port must decide if the existing tenant has presented an acceptable redevelopment plan. The Port and the tenant would then enter into negotiations that would result either in a plan acceptable to the Port, or a decision that the existing tenant is not capable of implementing an acceptable redevelopment plan.

*Process for Extending Leases* – If a proposed project is consistent with both the Port Master Plan and the Port's vision for the future use of the property, and the proposal meets the other criteria described above, the Port should negotiate a new lease based on the following flow chart and requirements:

# LEASE EXTENSION PROCESS



## Lease Extension Negotiation

If the Port and tenant agree to an acceptable redevelopment plan, lease extension negotiations should proceed, with the following considerations:

Calculation of Extended Term – The extended lease term should be based on the magnitude of capital improvements to be made by the tenant and the economic life expectancy of the development. The Port may wish to consider other relevant information in determining if a longer lease term is warranted, such as if the investment is expected to generate above average returns to the Port, or will reposition the property to a higher standard of quality. A method of calculating the potential lease term is outlined below:

- (a) *Determination of the estimated total replacement cost of the leasehold improvements as renovated/redeveloped.* Cost figures can be determined utilizing resources such as tables provided by Marshall Valuation Service (or other industry standard cost estimating resources), or known development costs of comparable projects.
- (b) *Determination of the economic life of the fully redeveloped project.* The maximum lease term should be consistent with economic life expectancy. Life expectancy guidelines are presented in a table at the end of this section.
- (c) *Computation of the ratio of capital improvements to total replacement cost.*
- (d) *Determination of the additional lease term by multiplying the ratio obtained in (c) by the economic life expectancy obtained in (b).* The term in an extended lease shall not exceed the economic life expectancy of the development.

Qualifying Capital Investment – “Capital Investment” for purposes of calculating the lease extension term should only include expenditures that usually increase the value (efficiency, productivity, or use utility) or the useful life of the improvements; cannot reasonably be amortized during the existing remaining term; are not recurring in nature; and are: (a) \$100,000 or more, or (b) 10% of the value of the improvements or more. It should specifically exclude deferred maintenance and expenditures for repairs to keep the existing improvements in good condition. Items that separately would not qualify for lease term extension may be considered collectively as part of an overall plan of renovation or redevelopment. In a renovation or redevelopment project, qualifying capital investment may include, at the sole discretion of the Port, the value of superior improvement condition. The intent is to recognize the efforts of a tenant who maintains improvements in like-new condition in the latter stages of the lease term. The value of superior improvement condition may be measured by documented costs, or by replacement cost and depreciation tables such as those

published by Marshall Valuation Service. Public art expenditures should be included as capital investment. Non-realty property may be given consideration depending on property type. An example of this would be the purchase by industrial tenants of specialized fixtures or equipment that are necessary for its operation. If lease term is granted for an investment in non-realty property, the new lease should include a provision requiring that the non-realty property (or an equivalent replacement as approved by the Port) remain in place for the entire lease term. Purchase of Port-owned improvements may be considered a qualifying capital investment. The cost of environmental cleanup is specifically excluded as a qualifying capital investment.

*Payment for Deferral of the Port's Reversionary Interest* – The standard Port lease gives the Port the right to assume ownership of the improvements at the end of the lease. During the lease, this reversionary interest in the improvements may have a value that can be estimated using accepted appraisal techniques. In exchange for granting a lease extension, the tenant should recognize that the Port may be deferring the realization of a valuable reversionary interest in the existing improvements. Subject to the “twenty-percent rule” described below, the tenant should compensate the Port by an amount equal to the value of the interest being deferred. This amount can either be paid in full at the commencement of the lease, or can be incorporated as additional rent with interest over a specified period of time.

If there is an economic benefit to the Port, such as higher rent or the prevention of deteriorating rent, as a result of an investment by the tenant and the term extension, the economic benefit should be used to offset all or part of the compensation for deferral of the reversionary interest.

In estimating the reversionary improvement value, care should be taken to avoid crediting the Port with value components that are related to superior management on the part of the tenant, including going-concern value, goodwill, and above-average maintenance; and for furniture, fixtures and equipment.

A conceptual method of calculating the value of the deferral of the reversionary interest in percentage rent leases would be as follows:

- (a) *Value of Deferred Reversionary Interest* – The reversionary improvement value can be estimated by projecting the operating income and expenses, based on the existing development, to the end of the existing lease term, using market-supported assumptions about operating income, expenses and inflation; separating the projected net operating income at the end of the existing lease term into land and improvement components; and capitalizing the net income attributable to improvements into an indication of reversionary improvement value. The present value of the reversionary improvement value at the end of the existing lease term can then be calculated. Following the same

procedures, the present value of the reversionary improvement value at the end of the extended lease term can be calculated. The value of the Port's deferral of the reversionary improvement value is the difference between the present value at the end of the existing term and the present value at the end of the extended term, and represents the amount to be compensated to the Port, subject to any offsetting economic benefit described below. The reversionary values should reflect the expected future condition of the existing improvements prior to the new investment in both calculations.

- (b) *Value of Economic Benefit to the Port* – The difference between the present value of the rent to the Port for the proposed development, projected over the remainder of the existing term, and the present value of the rent to the Port for the existing development projected over the remainder of the existing term, is a measure of the economic benefit to the Port resulting from the investment by the tenant. The economic benefit should be used to offset all or part of the value of the compensation for deferral of the Port's reversionary improvement value.

A conceptual method of calculating the value of the deferral of the reversionary interest in flat rent leases would be as follows:

- (a) *Value of Deferred Reversionary Interest* – The projected replacement cost of the improvements at the end of the existing term can be estimated by trending the current replacement cost by the anticipated rate of inflation. The projected reversionary improvement value can be estimated by subtracting depreciation from the projected replacement cost. The present value of the reversionary improvement value at the end of the existing term can then be calculated. Following the same procedures, the present value of the reversionary improvement value at the end of the extended lease term can be calculated. The value of the Port's deferral of the reversionary improvement value is the difference between the present value at the end of the existing term and the present value at the end of the extended term, and represents the amount to be compensated to the Port.
- (b) *Value of Economic Benefit to Port* – The present value of increased rent through the end of the current rental period, negotiated as part of a lease extension, shall be used to offset compensation for deferral of the reversionary improvement value in flat rent leases.

"Twenty Percent Rule" – No payment for deferral of the Port's reversionary interest will be required if a timely request for term extension is made prior to the last twenty (20) percent of the existing lease term, including any options. The criteria for a timely request are stated below.

Timely Submission by Tenant and Response by Port – The “twenty percent rule” described above makes it necessary to define a timely submission by a tenant for a lease extension.

Port staff will respond to a request for a lease extension within thirty (30) calendar days following receipt of a request for a lease extension. The initial response shall either recommend the proposal for project review and California Environmental Quality Act (CEQA) review, or request additional information that the Port believes was not included or was not adequately addressed in the initial submittal. The Tenant may re-submit within sixty (60) calendar days of the Port’s initial response. Port staff will respond to the re-submittal within thirty (30) calendar days. If the project is recommended for project review and CEQA review, the date of the initial submission will be the effective date for determining whether the request was made before the last twenty (20) percent of the lease term. The lease term includes the initial term, any previously-granted extensions, and any options whether or not exercised. If the proposed project is not recommended or subsequently is not approved by the Board, the tenant will not be assumed to have met the “twenty percent rule.”

Market Rent – The rent in an extended lease should be updated to the current market rent as negotiated between the tenant and the Port.

New Lease Provisions – Upon negotiation of the extended lease term, the new rent and the amount of payment, if any, for deferral of the Port’s reversionary interest in the improvements, the existing lease shall be superseded by a new lease incorporating the Port’s current standard lease terms. The tenant’s liability for hazardous materials in the prior lease shall continue in the new lease.

“Basket of Issues” – While it is desirable to have a “standard” negotiation process, the lease extension process involves a “basket of issues” with each tenant. The Port should be willing to negotiate each extension separately and take into account the unique circumstances of each request.

Short-Term Lease Negotiation – An existing tenant may qualify for an extended term under the criteria outlined above, but the property may not qualify as the highest and best use under the Port Master Plan, or may not be consistent with the Port’s vision for the future use of the site. In other cases, all the criteria for a long-term lease extension may have been met but the property may not benefit from renovation or redevelopment (i.e., the improvements are in excellent condition and represent highest and best use). In either event, upon lease expiration, the Port may consider a new short-term lease with the existing tenant with the following four considerations:

- (i) Lease Term – The lease term should be no more than five years. This will create a term short enough to enable the Port to periodically evaluate if the current use remains the highest and best use of the property consistent with the Port’s goals and objectives and the Port Master Plan.

- (ii) *Payment for Port-Owned Improvements* The tenant should pay market rent for improvements it occupies that are owned by the Port after expiration of the existing lease term.
- (iii) *Ground Rent* – The ground rent would be updated to the current market rent as negotiated between the tenant and the Port.
- (iv) *New Lease* – A new lease shall be executed including the Port’s current standard lease language.

*Recommended Life Expectancy Guidelines* – The length of a new or extended lease term should be based on the reasonable life expectancy of the improvements. Life expectancies vary by use. Improvements that are subject to relatively high physical deterioration or functional obsolescence caused by market changes have relatively short life expectancies. Improvements that are physically more substantial and less affected by market changes have relatively long life expectancies. The guidelines shown below were developed based on practical experience and observations, and by reference to the life expectancy tables published by *Marshall Valuation Service*.

#### ECONOMIC LIFE EXPECTANCY GUIDELINES

Property Type	Life Expectancy
Hotel	40 to 66 Years
Restaurant	30 to 40 Years
Retail Sales	30 to 45 Years
Commercial Office	30 Years
Land Service Station	20 Years
Marine Service Station	20 Years
Marina	40 Years
Sportfishing Landing	20 Years
Boat Excursion Landing	15 Years
Boatyard	30 Years
Shipyard	50 Years
Lumberyard	25 Years
Airport Industrial	25 Years
Other Industrial	50 Years
Yacht Club	35 to 45 Years

### C. LEASEHOLD FINANCING

Consent to Financing Subject to Specific Criteria – The required minimum documentation to be submitted by the tenant in support of a request of the Port to consent to new financing and standards for financing consent are as follows:

- Initial documentation should include the term sheet, application or commitment, cash flow projections, appraisal submitted to the lender, and the most recent annual financial statements of the tenant (if it is a percentage lease) for at least the past two years.
- When available, final loan documents should be provided.
- Maximum loan proceeds should not be in excess of the greater of 75% loan-to-value as determined by the lender's appraisal, or the amount of repayment of existing financing (provided that such financing was initially consented to by the Port).
- A loan should have an amortization term that does not exceed the remaining ground lease term.
- A lessee should acknowledge that it will not seek rent relief as a result of not being able to meet its debt service or debt repayment obligations.
- In lieu of a share of the proceeds of refinancing, the Port shall have the right to adjust the rent to market rent.
- There should not be any restrictions on how the tenant utilizes the proceeds of financing (as long as the Port is satisfied that proper underwriting guidelines are met).

If the Port staff is satisfied that the above criteria have been met, its recommendation for consent to the new financing shall not be unreasonably withheld.

Timely Response to Request for Leasehold Financing – Port Staff should have completed its recommendation on consent to the financing of a leasehold interest within forty-five (45) calendar days of receipt of all required information. Staff's recommendation for consent shall not be unreasonably withheld.

#### D. ASSIGNMENT OF LEASEHOLD INTEREST

Consent to Assignment Subject to Specific Criteria – The required documentation to be submitted by the tenant in support of a request of the Port to consent to an assignment of the leasehold and standards for assignment consent are as follows:

- The tenant shall complete UPD Form No. 317, *Lessee's and Sublessee's Questionnaire for All Leases (and Subleases of More than Five Years)*.
- If new financing is involved in the sale, the proposed tenant shall provide the information required above under *Leasehold Financing*.
- The Port must be satisfied that the lessee possesses the financial capacity, a good reputation and managerial ability to operate successfully on the leased premises.
- In lieu of a share of the proceeds of sale, the Port shall have the right to adjust the rent to market rent as a condition of its consent. This right does not apply to an assignment that changes the method of holding title but does not change the proportional ownership interests of the individuals, nor does it apply to transfers between spouses or immediate family members.

Timely Response to Request for Assignment of Leasehold Interest – Port Staff should have completed its recommendation on consent to the assignment of a leasehold interest within forty-five (45) calendar days of receipt of all required information. Staff's recommendation for consent shall not be unreasonably withheld.

## **E. SUBLEASING**

A tenant may sublease all or part of its leased premises to a qualified subtenant, subject to consent by the Port. The appropriate Port-supplied Sublease Questionnaire form must be completed and submitted to the Port. Consent by the Port must be obtained prior to occupancy by the sublessee.

*Sublease Consent Criteria* – Staff's recommendation for consent to a sublease shall be made in accordance with the following criteria:

- The Port must be satisfied that the sublessee will use the property in a manner that is consistent with uses allowed by the lease.
- The Port must be satisfied that the sublessee possesses the financial capacity, a good reputation and managerial ability to operate successfully on the subleased premises.
- The Port reserves the right to adjust the rent the Port receives to market for the subleased portion of the property.
- The Port must be satisfied that the sublease transaction will not have a significant negative impact on the Port.

*Timely Response by the Port* – For a short-term sublease (five years or less), Port staff should respond with its recommendation regarding consent within thirty (30) calendar days of receipt of all necessary information, and for a long-term sublease (more than five years), Port staff should respond within sixty (60) days.

## F. LEASE AMENDMENTS

A tenant may request amendments to a lease that could range from minor changes to extensive revisions. The Port's consent to a request for lease amendment may be contingent upon updating sections of the lease to incorporate current standard lease provisions, and may include an adjustment to market rent, depending upon the extent of the proposed tenant requested revisions.

Lease Amendment Consent Criteria – Staff's recommendation for consent to a lease amendment shall be made in accordance with the following minimum criteria:

- The allowed uses of the property stated in the amended lease must be in compliance with the Port Master Plan and with the Port's vision for the future use of the property.
- Amended sections of the lease must conform with the Port's standard lease language in effect when the request for a lease amendment is made.
- For a change in the method of holding title that does not change the proportional ownership of the individuals, or that represents a transfer between spouses or immediate family members, a complete lease update and rent adjustment would not be made. Standard provisions regarding hazardous materials, underground storage tanks and above-ground storage tanks should be added (unless they are already in the lease).
- In some cases (e.g., changing from a sole proprietorship to a limited liability company), it may be advisable to have the principals personally guarantee lease performance.
- A proposed lease amendment for financing or for a transfer or a partial or full interest in the leasehold would be governed by Sections C and D of these Practices.

Timely Response by the Port – For a short-term lease (five years or less), Port staff should respond with its recommendation regarding consent within thirty (30) calendar days of receipt of all necessary information, and for a long-term lease (more than five years), Port staff should respond within sixty (60) days.

## **G. TRUST OBLIGATIONS**

Special Consideration Under the Port District Act – For tenants claiming special treatment under the Port District Act, the Port should determine market rents consistent with the property's land use. Any discount to market rent or other concession should be supported by a tenant's written proposal that would outline why the discount is warranted, if there is a public benefit, the financial rationale for the request and the proposed economic terms. The proposal should be presented to the Board of Port Commissioners, which would determine if a concession is warranted.

## **H. TRANSACTION PROCESSING FEES AND SECURITY DEPOSITS**

Transaction Processing Fees - With exceptions noted below, the Port shall charge a transaction processing fee of five hundred dollars (\$500.00). Exceptions include (i) rent reviews, (ii) transactions that benefit the Port (e.g., a new or renewal lease that will result in additional rent to the Port), or (iii) transactions that benefit the Port's properties (e.g., an easement for utilities that will serve Port tenants).

Security Deposits - The standard security deposit for a new rental agreement is three months' rent. A security deposit may be waived for a short-term rental of property that supports a tenant's long-term lease. The security deposit may be reduced for a tenant that has been in good standing for five or more years. For a tenant making a substantial investment in improvements, the security deposit will be refunded upon completion of the improvements.

**REPORT OF  
YACHT CLUB LEASING POLICY  
AD HOC SUBCOMMITTEE**

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**RECOMMENDATION TO THE BOARD OF PORT COMMISSIONERS  
OF THE SAN DIEGO UNIFIED PORT DISTRICT**

At its December 8, 2003 meeting, the Subcommittee voted to recommend that the Board adopt a resolution directing staff to supplement the BPC Policy 355 leasing practices as follows:

1. The present yacht club leases shall be amended to delete the rent review provision for 2006 and substitute a rent adjustment equal to the change in the Consumer Price Index for the Los Angeles area for the years 2001 - 2005.
  
2. Upon the grant of a new lease, whether after expiration of the current lease or by reason of the satisfaction of option requirements for redevelopment of the leasehold that result in a new lease earlier than expiration of the current lease, rent shall be paid at the greater of Fair Market Rent or Minimum Rent. Fair Market Rent shall be percentage rent calculated as follows:
  - (a) From the commencement of the new lease to December 31, 2011, 8.25% of gross revenues;
  - (b) From January 1, 2012 through December 31, 2012, 8.80% of gross revenues;
  - (c) From January 1, 2013 through December 31, 2013, 9.35% of gross revenues;
  - (d) From January 1, 2014 through December 31, 2014, 9.90% of gross revenues;
  - (e) From January 1, 2015 through December 31, 2015, 10.45% of gross revenues;
  - (f) From January 1, 2016 through December 31, 2016, 11.0% of gross revenues;

- (g) From January 1, 2017 through December 31, 2026, Fair Market Rent shall be calculated by multiplying gross revenues by a blended rate adjusted by an appraisal of the concession rates on each revenue category; the new blended rate shall be adjusted by applying an adjustment as follows:

(The sum of all current concession rates plus the sum of all changes to the concession rates divided by the sum of all concession rates) multiplied by the current blended rate will equal the new blended rate. The current concession rate is comprised of the following: dues @ 5.0%; slips, dry storage and lockers @ 22.0%; member food and beverage @ 3.0% and 5.0% respectively; catered food @ 7.0%; catered beverage @ 7.0%; and ships store @ 10.0%. The sum of all concession rates equals 59.0%

Example: Currently, the blended rate is 11.0% and the sum of the concession rates is 59.0%. If, for example, the slips, dry storage and locker concession rate increases by 2.0% (from 22.0% to 24.0%), the computation of the new blended rate would be expressed arithmetically:

$$[(59+2) \div 59] \times 11.0\% = 1.0338 \times 11.0\% = 11.37\%$$

- (h) On January 1, 2027 and each succeeding tenth anniversary thereafter, the concession rates shall be reappraised and adjusted as set forth in (g) above.
- (i) Minimum Rent starting on January 1, 2022 and every ten years thereafter shall be adjusted by the corresponding increase in the Consumer Price Index for the Los Angeles area for the prior ten years from the minimum rent in effect in 2012. For purposes of determining the CPI base for calculating the Minimum Rent in 2022, the Fair Market Rent in 2012 shall be adjusted by the appropriate CPI increase over the 10-year period. The increase shall not be less than 3.0% per annum nor greater than 5.0% per annum. In any year immediately following a rent adjustment as the result of an appraisal of the concession rates, the rent for that year and each successive year shall be determined by the greater of 75.0% of the actual rent paid the prior year or the Minimum Rent or the Fair Market Rent; and

- (j) For purposes of calculating rent, gross revenues shall only include: dues, member food and beverage, catered food and beverage, slips, dry storage and lockers and ships store. Gross revenues shall not include revenues for junior sailing programs, outstation locations not on Port property, initiation fees or interest income as well as any amounts set aside by the yacht clubs for capital improvements or the debt on capital improvements, whether such amounts are collected as special assessments, dues, percentage of slip rents, or otherwise.
- 3. New yacht club leases shall be for a maximum term of 40 years provided all the requirements for achieving maximum lease term are met.
- 4. Financial statements detailing operating revenues and sources, cash flows, capital reserves and capital expenditures, as well as sources of capital amounts, shall be provided annually no later than 120 days following the end of each club's fiscal year.