



Issues in Real Estate and Leasing



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Assignment Clauses

TYPICAL ASSIGNMENT & SUBLEASE CLAUSE

Tenant shall not sublease or assign the leased premises or the Lease without the Port's consent, which shall not be unreasonably withheld, delayed or conditioned.

Assignment & Subleasing Provisions

What constitutes an assignment or transfer?

- Any change in control? 50% or more ownership interest? Pledge, mortgage, etc.?

What if Tenant wants to assign to an affiliate company?

- Subsidiary, company within the same ownership structure, etc.
- Does Port require same review and approval?
- What type of approval action is required?
- How does Port ensure that lease premises will be managed in the same manner as original tenant?

What is the timeline for the Port's review and approval of assignments?

- Deadline on agency's approval?
- Materials to be submitted by tenants for review

Assignment & Subleasing Provisions

Limits on Timing of Assignment or Transfer

- Allowable upon lease execution
- Limits at the end of the lease term

Subleasing Issues

- Restrictions on percentage of property to be subleased
- Required sublease provisions
- Separate approval of sublease agreement required?
- Assignment of sublease rent

Use Covenants & Restrictions

Continuous Use Clause

- “The Lessee must continuously use and operate the Premises during the Term and the Lessee’s agreement to do so is a material inducement to the Port’s agreement to enter into this Lease.”
- What about periodic vacancies and re-leasing of the property (if Tenant is Developer/not Operator?)
- What if Tenant wants/needs to pause operations?
- Port remedies?

Use Covenants & Restrictions

Required Maritime Use Clauses

- “The Lessee and the Port agree that a primary purpose and an essential consideration for this Lease is for the Port to promote, facilitate, aid, and enhance commerce, shipping, and navigation in the Port Area by providing for the Operation and Maintenance, design, construction, finance, and lease of facilities on the Premises pursuant to this Lease.”
- “The Lessee and the Port agree that consistent with that primary purpose and essential consideration, the Lessee under this Lease has an affirmative obligation to use the Premises for the Project Uses.”
- “The Lessee and the Port agree that at least 80% of business activity generated by the Lessee on the Premises, on an annual basis, will be attributable to the operation and facilitation of a temperature controlled logistics facility.”

Lease Negotiation Strategies

How do you effectively negotiate leases with tenants and users?

- Start with template agreement and negotiate terms within agreement *OR* detailed term sheet (signed or unsigned)

What is the role of attorneys in early negotiating sessions?