

SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

POLICIES

ARTICLE 6 - REAL PROPERTY MANAGEMENT

PART 6.0 - LEASES

SECTION 6.01 - LEASING POLICY

PURPOSE: To establish general policies and practices relating to the negotiation of new leases, consent to subleases, assignment of existing leases and amendment of existing leases by the San Diego County Regional Airport Authority (the “**Authority**”).

POLICY STATEMENT:

(1) Negotiation of New Leases.

(a) Leasing Authority. The Authority’s Executive Director or his or her designee (the “**Executive Director**”) shall bring all proposed occupancy permits and grants of privileges and franchises exceeding five years in duration to the Authority’s Board of Directors (the “**Board**”) for approval. Subsequent to approval by the Board, the Executive Director shall enter into and execute on behalf of the Authority all such occupancy permits and grants of privileges and franchises.

The Executive Director may enter into and execute occupancy permits and grants of privileges and franchises not exceeding five years in duration without first bringing the agreements, occupancy permits and grants of privileges and franchises to the Board for approval. The Executive Director shall inform the Board on a regularly scheduled basis of all such agreements, permits and grants entered into and executed on behalf of the Authority without the prior approval of the Board.

(b) Leasing Policy. The Authority shall seek market value when leasing or renting real property and shall reflect market terms and conditions in lease agreements. Although the Authority shall seek market value when leasing or renting real property, in certain cases rent discounts and/or other concessions may be warranted. The Authority shall grant rent discounts and/or other concessions only after consideration of the value of the rent discount or other concession, including, without limitation, the Authority’s participation in development expenses, relative to the market value of the lease.

The Authority shall grant leases of real property on a competitive basis to the prospective tenant that in the opinion of the Authority: (1) proposes a development or utilization that fulfills Authority land use and development criteria for the property; (2) demonstrates an economically feasible program that will produce a market value rental return to the Authority over the term of the lease; and (3) possesses the financial capacity and managerial ability to develop and maintain the property at its highest and best use over the term of the lease.

Authority leases shall reflect percentage rents for land uses that are typically paid on a percentage rent basis and shall reflect flat rents for land uses that are typically paid on a flat rent basis. Percentage rents shall be expressed in terms of a percentage rental rate for gross revenue derived from an identified land use versus a minimum fixed rent for the land and improvements leased or rented. Flat rents shall be expressed in terms of fixed rent for the land and improvements leased or rented. Both percentage rent tenants and flat rent tenants shall be responsible for all expenses associated with development and operation of the premises by the tenant.

Authority leases that reflect percentage rents shall provide for periodic adjustment of minimum rent based on the relative change in the Consumer Price Index and for periodic review of percentage rent and minimum rent based on a current market value. The Executive Director shall determine whether a third party appraisal is necessary to determine such market value.

Authority leases shall provide for arbitration in the event the Authority and the tenant cannot agree on the rent for a rental period. In accordance with applicable sections of the *California Code of Civil Procedure*, three arbiters shall conduct the arbitration. The Authority and the tenant shall each appoint an arbiter. The two arbiters appointed by the Authority and the tenant shall appoint the third arbiter. The three arbiters must be qualified real estate appraisers that are licensed to practice within the state of California.

Authority leases shall reflect a length of term commensurate with the time reasonably required for amortization of the capital investment or reinvestment to be made in the premises by the tenant as a condition of the lease.

The Authority's leases shall, at the option of the Authority, require removal by the tenant of all improvements to the premises attributable to any capital investment or reinvestment in the premises by the tenant upon the terms and conditions set forth by the Executive Director.

(2) Consent to Sublease.

(a) Subleasing Authority. The Executive Director shall bring all proposed subleases exceeding five years in duration to the Board for its prior consent. Subsequent to the Board's prior consent, the Executive Director shall have the authority to consent to all such subleases on behalf of the Authority.

The Executive Director may consent to subleases not exceeding five years in duration without first bringing the subleases to the Board for its prior consent. The Executive Director shall inform the Board on a regularly scheduled basis of all such subleases consented to on behalf of the Authority without the prior consent of the Board.

(b) Subleasing Policy. The Authority shall consent to subleases of real property provided the sublease incorporates and acknowledges the preeminent unsubordinated control of the Authority and, in the opinion of the Authority, the sublessee: (1) proposes a development or utilization that fulfills Authority land use and development criteria for the property; (2) demonstrates an economically feasible program that will produce a market value rental return to the Authority over the term of the sublease; and (3) possesses the financial capacity and managerial ability to develop and maintain the property at its highest and best use over the term of the sublease.

The Authority shall oppose subleases of real property when the sublessor, through the proposed sublease, will profit not on its investment or operation, but on the value of the real property leased from the Authority. Such circumstances arise when the contract rental value of the sublease premises is less than the market rental value of the sublease premises for the duration of the sublease. In such circumstances, the Authority shall not consent to the sublease unless it receives for its consent an amount equal to the difference between the market rental value of the sublease premises for the duration of the sublease and the contract rental value of the sublease premises for the duration of the sublease.

(3) Assignment of Existing Leases.

(a) Lease Assignment Authority. The Executive Director shall bring all proposed assignments of leasehold interests with a remaining term exceeding five years in duration to the Board for its prior consent. Subsequent to approval by the Board, the Executive Director shall consent to all such assignments on behalf of the Authority.

The Executive Director may consent to assignments of leasehold interests with remaining term not exceeding five years in duration without first bringing the assignments to the Board for its prior consent. The Executive Director shall inform the Board on a regularly scheduled basis of all such assignments consented to on behalf of the Authority without the prior consent of the Board.

(b) Lease Assignment Policy. The Authority shall consent to assignment of leasehold interests provided, in the opinion of the Authority, the assignee: (i) proposes a development or utilization that fulfills Authority land use and development criteria for the property; (ii) demonstrates an economically feasible program that will produce a market value rental return to the Authority over the remaining term of the lease; and (iii) possesses the financial capacity and managerial ability to develop and maintain the property at its highest and best use over the remaining term of the lease.

The Authority shall oppose assignments of leasehold interests when the assignor, through the proposed assignment, will profit not on its investment or operation, but on the value of the real property leased from the Authority. Such circumstances arise when the contract rental value of the lease premises is less than the market rental value of the lease premises for the remaining term of the lease. In such circumstances, the Authority shall not consent to the assignment unless it receives for its consent an amount equal to the difference between the market rental value of the lease premises for the remaining term of the lease and the contract rental value of the lease premises for the remaining term of the lease.

In the event the Authority, the assignor and the assignee cannot agree on the market rental value of the lease premises, the Authority shall consent to the assignment and the market rental value of the lease premises shall be referred to arbitration, provided all conditions to such consent set forth in the lease or provided by law have been satisfied. And, in addition, the Authority and assignee agree to pay their respective costs associated with the arbitration.

(4) Amendment of Existing Leases.

(a) Lease Amendment Authority. The Executive Director shall bring all proposed amendments to leases with a remaining term exceeding five years in duration to the Board for

approval. Subsequent to approval by the Board, the Executive Director shall enter into and execute on behalf of the Authority all such amendments.

The Executive Director may enter into and execute on behalf of the Authority amendments to leases with remaining term not exceeding five years in duration without first bringing the amendments to the Board for approval. The Executive Director shall inform the Board on a regularly scheduled basis of all such amendments on behalf of the Authority without the prior approval of the Board.

(b) Lease Amendment Policy. The Authority shall grant amendments to leases of real property provided, in the opinion of the Authority, the lessee: (i) proposes a development or utilization that fulfills Authority land use and development criteria for the property; (ii) demonstrates an economically feasible program that will produce a market value rental return to the Authority over the remaining term of the lease; and (iii) possesses the financial capacity and managerial ability to develop and maintain the property at its highest and best use over the remaining term of the lease.

The Authority shall oppose amendments to leases of real property when the lessee, through the amended lease, will profit not on its investment or operation, but on the value of the real property leased from the Authority. Such circumstances arise when the contract rental value of the lease premises under the Authority's lease is less than the market rental value of the lease premises for the remaining term of the lease. In such circumstances, the Authority shall not grant the amendment unless it receives for its consent an amount equal to the difference between the market rental value of the lease premises for the remaining term of the lease and the contract rental value of the lease premises under the Authority's lease for the remaining term of the lease.

[Resolution No. 2002-02 dated September 20, 2002.]

[Superceded by Resolution No. _____ dated _____.]