

AAPA: Roles of Ground Leases, Development Agreements & Operating Agreements in Port Development Projects

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Port Administration and Legal
Issues Seminar
Boston, Ma
April 9-11, 2013

Common Goals & Objectives for Port Development Projects

- Maximize Revenues from Project
- Enhance Overall Efficiencies of Port Facilities
- Create Jobs for Local Area
- Attract Private Investment for Project
- Stimulate Other Economic Development Opportunities

Important Considerations for Background Investigations

- Need to acquire additional lands or ROW for Project?
- Contamination or Other Environmental Issues?
- Historic or Archeological Resources?
- Other Regulatory Jurisdiction & Approvals?
- Restrictions on Ability to Sell or Lease?
- Any Financial Restrictions?

Other Considerations in Structuring Deal

- Development Model: Port Development v. 3d Party Developer
- Type of Conveyance: Sale v. Lease
- Economic Terms
- Types of Financing to be Used

Operating Agreement

- An operating agreement is essentially a service agreement in which the Port contracts with a third party to provide essential services needed to operate the project.

Options for Operation

- Sell to 3d Party Operator
- Lease to 3d Party Operator
- Operating Agreement with 3d Party Operator

Key Provisions of DDAs

- Defines General Scope of Project
- Specifies Sale or Lease
- Identifies Regulatory Approvals Needed
- Requires Completion of Construction Drawings
- Requires Evidence of Financing

Other Common Terms & Conditions in DDAs

- Permitted Uses of Land
- Schedule of Performance
- Design Review Procedure
- Ground Rules for Development
- Financing Plan
- Public Benefits

Ground Leases

- Ground leases are long term leases in which the lessee has the right to develop the leased premises and the obligation to maintain, repair, replace and pay taxes on the improved land.
- Land & improvements turned over to owner at expiration of lease.

Key Terms & Conditions of Ground Leases

- Description of Premises & Condition of Title
- Term of Lease
- Rent/Participation Rent/Rights of Adjustment
- Restrictions on Financing/Mortgagee Protections
- Obligation to Construct Approved Improvements

Key Terms & Conditions of Ground Leases (Cont.)

- Permitted Uses/Obligation to Operate
- Responsibilities re Contamination
- Responsibilities for Maintenance, Repairs & Replacements
- Condition on Surrender
- Public Benefits
- Others

Public-Private Partnerships

- A great number of different & very complex variations
- Definition: Any time a public entity works collaboratively with a private entity to achieve a common goal
- Usually, each party contributes some level of resources (e.g., land, expertise, services, money) toward that common goal, and each party receives some portion of the benefits from it.

CONCLUSION

- P3 transactions often involve many types of documents, depending on the complexity of the deal.
- They require careful planning and coordination.
- Always work closely with your team of lawyers, financial advisors and other consultants, and speak with one voice.