

**OFFICE OF THE CITY AUDITOR**

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GARY L. BURROUGHS, CPA
City Auditor

December 14, 2004

Phil T. Hester
Director, Parks, Recreation and Marine

At your request, we have performed a review of the Master Lease (#23509) between the City of Long Beach (City) and the Bancap Marina Center, Inc. (Bancap). This Master Lease governs the leases in the Marine Bazaar Complex between Bancap and the following tenants: Stan Miller Yachts, Seal Beach Yacht Club, Stoll Engine Co., Scuba Duba Corp., Alan Andrews Yacht Design, West Marine Products and Schooner or Later. The purpose of our review was to determine whether all payments to the City received from Bancap were in conformity with the terms of the Master Lease and that other contractual obligations were fulfilled in compliance with the Master Lease.

Our review procedures included:


- Obtaining an understanding of the Master Lease and its provisions.
- Discussions with Parks, Recreation and Marine, other City personnel and Bancap management.
- Review of City Billing and Collection system documentation for lease payments received by the City.
- Review of Bancap general ledger, reports, invoices and other supporting documentation to verify reported Net Operation Income.

Based on the results of the review procedures performed, except for not making several monthly interest payments on the deferred base monthly lease payments, we found no exceptions to the terms and conditions of the Master Lease between the City and Bancap.

Sincerely,

Gary Burroughs, CPA
City Auditor

By:


Sam A. Joumbat, CIA
Deputy City Auditor

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Background

Bancap was formed in 1982 as a company that specializes in real estate investment, development and management. On July 1, 1994, the City leased Bancap the space in the Marine Bazaar Complex, commonly referred to as the Alamos Bay Marina Center; the Master Lease expires on June 30, 2019.

Currently, the Master Lease requires a monthly base rent payment of \$8,333.33 and 70% of the Net Operating Income (revenue less base monthly rent payment and other normal business expenses required for management of the leased property. These expenses include management fees, accounting fees, legal fees, taxes, insurance costs, unreimbursed maintenance & utility costs and other costs). Gross rent due the City for FY 2003 and FY 2004 was \$184,521 and \$141,692 respectively. However, due to an overpayment of rent by West Marine Products between May 2000 and July 2002, a rent credit in the amount of \$172,948 was allowed. The credit was applied for the period of January 2003 through July 2004. This resulted in net rent payments to the City in FY 2003 and FY 2004 of \$75,000 and \$78,262 respectively. There are no further rent credits available for future use. Accumulated interest, as of this date, is estimated to be \$1,600.00.

ISSUES AND RECOMMENDATIONS

No. 1 – Interest on Deferred Monthly Base Rent Payments is Not Being Paid

In September 2003, Bancap elected to defer their monthly base rent payment of \$8,333.33 for nine months (Oct. 2003 to June 2004) as allowed by Section 3.2 of the Master Lease. As agreed between Bancap and the City, if after the payment of operating expenses and debt service, there are insufficient funds to pay the monthly base rent, Bancap may defer payment of the monthly base rent and continue such deferral until sufficient funds exist to pay the monthly base rent. Such a situation existed after one tenant, West Marine Products, was recovering an overpayment, as delineated above. Beginning in July 2004, Bancap started paying the monthly base rent again and also began repaying the deferred monthly base rent payments. As of this date, four of the nine deferred payments (\$8,333.33) due the City have been made. However, Bancap has not been making interest payments as required by the Master Lease and a September 29, 2003, written agreement between the City and Bancap.

Recommendation

The City should bill Bancap for interest on the deferred monthly base rent. The billing should be in conformity with the September 29, 2003, agreement between the City and Bancap.

Bancap acknowledges that interest is due the City for the deferment of the monthly base rent and will request the City to calculate the amount of interest due upon completion of paying off the deferred amounts.

No. 2 – Lease Reporting Requirements are Not Being Fulfilled

Section 6.1B states, "Master Lessee shall submit to Lessor by July 1 each year an annual maintenance budget. If Master Lessee anticipates that it will exceed the annual maintenance budget, which it has submitted, then Master Lessee shall provide to Lessor a written explanation and a request for approval of the excess." Article XXI states, "...Master Lessee shall prepare and deliver or cause to be prepared and delivered to Lessor a complete annual financial statement for the Leased Premises, certified to be correct by Master Lessee and prepared and audited by a certified public accountant in accordance with generally accepted accounting principles containing a statement of rents and any credits, setoffs, discounts and the like as well as amortization."

Neither of these reports are being prepared and forwarded to the City as required in the Master Lease.

Recommendation

Parks, Recreation and Marine should ensure all required reports and certifications are requested and received. On an annual basis, Bancap should have the Statement of Project Operation Income & Expense Report certified by a CPA or request and receive a written waiver from Parks, Recreation and Marine.

Bancap expressed that it maybe appropriate for them to request a waiver of the annual certified audit and budget maintenance report.