

Aeronautical Land Development Deal Points¹

Term of Aeronautical Leases:

Terms should not exceed the time necessary for the tenant to recover its investment in the property plus a reasonable return on that investment. Term should also be related to the term of any debt incurred in the construction and/or investment in improvements to the property. LNAA will generally limit the initial term of leases to no more than 29 years, including extensions, except under certain circumstances. Leases may not exceed 49 years, including extensions, unless specifically approved by the FAA.

Extensions to Initial Term:

Extensions beyond the initial term are permissible, but only in certain circumstances. If the initial term was chosen to address another concern, such as avoiding the FAA approval threshold (e.g., one 25-year term plus a 24-year term, instead of a single 49-year term) or avoiding a term beyond that which was necessary for financing or a reasonable return on investment, extensions must be at the discretion of LNAA. Further, it is necessary for the tenant to make a further capital investment in the property to justify an extension.

Rent and Fees:

LNAA must receive reasonable rent for the use of airport property for aeronautical purposes and must ensure that tenants are not treated in an unjustly discriminatory manner (e.g., by charging rent that is significantly lower than similarly situated tenants). Lease rates will be calculated based on an appraisal completed by a licensed appraiser of the LNAA's choosing. Rent is increased annually based on CPI.

Depending on the nature of the activity authorized under the lease, LNAA may also impose a concession fee or revenue share in exchange for the right to conduct commercial aeronautical services upon the airport.

Airport Sponsor Control:

Under its federal grant obligations, LNAA is required to retain control over airport property. To comply, LNAA will retain rights to approve subleases, the transfer of leasehold rights, approval rights regarding some financing matters, lender-self-help (see below), and changes in use. Also, in many cases, LNAA must retain control over any extension to the agreement.

Development and Construction Approvals:

¹ The items contained herein are for initial informational purposes only and other terms and conditions will be required in formal documentation, including, without limitation any option, development, or lease agreements.

Prior to initiating construction, a tenant must receive approval from LNAA and all applicable governmental authorities. Additional approvals may be required depending on the nature of the tenant's activities.

Financing/Security Interests:

LNAA must preserve authority to review and approve the nature and extent of security interests. Traditional mortgage-holder self-help remedies are generally not acceptable. Specifically, LNAA must have input after tenant default and retain rights to approve replacement tenants.

Avigation Easements:

Avigation easements and waivers of claims based upon aircraft overflights are required. All development must not interfere with operation of the airport, air operations, and with Part 77 surfaces and other protected airspace (e.g., OEI, RPZ, etc.). LNAA approvals must be obtained (see above) prior to construction.

Reversionary Interest:

LNAA must have a reversionary interest in the improvements. Improvements must revert to LNAA ownership at the end of the term of the lease. However, this assumes that the improvements have appropriate usable life remaining (see below). If the improvements are fully depreciated or in an unusable condition, then LNAA may require the outgoing tenant to remove them before the end of the lease.

Maintenance of the Property:

The continued maintenance of the property is a standard requirement of leases. However, in longer-term leases, the condition of the building and/or pavement at the end of the term of the lease is of more of a concern for many reasons, the most significant of which is the reversion of the improvements at the end of the term. Analysis should be conducted as to the useful life of the property and what major items of repair or remediation may be required when the end of the lease term is near. Often, additional capital investment is required partway through the lease term or as a condition of airport sponsor approval of an extension of the initial term of the lease.

Minimum Standards and Rules and Regulations:

If the tenant will be conducting commercial aeronautical activities at ABE, it must comply with LNAA's Minimum Standards for Commercial Aeronautical Activities. Similar standards apply at LNAA's other airports. Regardless of the nature of the tenant's activities, the tenant must also comply with LNAA's Rules and Regulations.

Utilities:

Tenant is responsible for payment of all utility costs, including in most cases the costs of bringing utilities to the development site/leased premises, if necessary.

Insurance:

Tenant is required to carry appropriate insurance for its operations. For commercial aeronautical activities, the relevant insurance requirements are set forth in the Minimum Standards (see above). LNAA must be named as an additional insured on all policies.

Indemnity:

Tenant must broadly indemnify LNAA against damages and losses by tenant and its guests, licensees, employees, etc. Depending on the nature of the tenant's activities, a separate environmental indemnity may also be required.

Other Standard Terms:

Tenants must agree to LNAA's standard terms and conditions, including subordination of the lease agreement to LNAA's federal grant assurance obligations to the FAA, non-discrimination requirements, force majeure, confession of judgment, compliance with laws, default, and others.