



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Orlando Airports District Office  
5950 Hazeltine National Dr., Suite 400  
Orlando, FL 32822-5003

Phone: (407) 812-5003

Fax: (407) 812-6978

[Current Date]

[Name and Address]

Dear [Name]:

RE: Federal Aviation Administration (FAA) Lease Requirements

As a result of recent legislative emphasis on rates and charges, revenue diversion, and fair market value requirements, some airport owners have become more concerned with their compliance obligations associated with non-aeronautical leases. In order to enhance awareness of those obligations, we have developed a checklist entitled "Lease Review" and a compilation of required Standard Clauses entitled "Specific Leasing Requirements" to facilitate development of leases in full conformance with Federal requirements. Both have been enclosed for your use.

The **main** issues to be considered in any agreement are assurances that the contract:

1. Does not grant or deny rights to use the airport facilities contrary to the requirements of law and applicable obligations to the U. S. Government; and
2. Does not negatively impact current or future aeronautical usage, or restrict the owner's ability to meet obligations to the U. S. Government (including fair market value requirements).

The form of the written instrument used to grant airport privileges is the sole purview of the airport owner.

We request that you submit the completed checklist/certification with any lease submitted to this office for review and that copies be retained in your files, with the associated executed lease agreement, for quick reference.

**Please note: You are not required to submit aeronautical leases to this office for review and, in fact, we would request that you do so only in unusual circumstances where you need specific guidance.**

Please contact us if you have any questions.

Sincerely,

[Signatory]  
[Title]

2 Enclosures

ORL-ADO:[Originator]:[Typist]:[Date]:[File Name]

[Filing Location]

## LEASE REVIEW

**Instructions:** Fill in the requested information and place a check in the boxes for which the requirements have been satisfied.

### Basic Information:

Airport: \_\_\_\_\_ Date: \_\_\_\_\_

Lessee: \_\_\_\_\_

Location On Airport: \_\_\_\_\_

Term: \_\_\_\_\_ Years With \_\_\_\_\_ Option(s) Of \_\_\_\_\_ Years(s)

- The lease is consistent with the Airport Layout Plan approved by the Federal Aviation Administration on the following date: \_\_\_\_\_.
- The lease is environmentally compatible with airport operations.

### Appraisal Requirements:

- Appraisal dated \_\_\_\_\_ reflects current Fair Market Value.
- Fair Market Rental value reflects \_\_\_\_\_ % of Fair Market Value.
- Rental \$ \_\_\_\_\_ per \_\_\_\_\_ (month or year)
- Other (% of sales, etc.) \_\_\_\_\_.

### Mandatory Clauses:

- Escalation
- Non-Discrimination
- Airport Protection
  - Right Of Flight/Noise
  - Far Part 77 Height Restrictions
  - Creation Of No Hazards
- Property Rights Reserved
- Exclusive Rights (aviation leases only)

I, \_\_\_\_\_, have reviewed the enclosed lease and certify that the lease meets the requirements set forth by the Federal Aviation Administration. I further understand that failure to support fair market rental value or to comply with the required clauses could jeopardize federal funding.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

---

### Recommended Clauses (Not Mandatory):

- A. Use Defined
  - B. Subordination
  - C. Tax Responsibility
  - D. Maintenance & Repair
  - E. Indemnification
  - F. Insurance Requirements
  - G. Subleases
  - H. Inspection Of Premises
  - I. Default
  - J. Delinquent Payments
  - K. Severability
  - L. Damage Assessment Procedure
  - M. Mediation
  - N. Ownership Of Improvements
  - O. Lessor's Interest (not subject to lessee's liens)
-

## Specific Leasing Requirements

**General.** Regarding rental rates, the Federal Aviation Administration (FAA) is unilaterally opposed to excessively low (or no) rent for land which in a sense belongs to the public, regardless of whether it is considered aviation or non-aviation use land.

Public lands will not be made available for private enterprise without obtaining a fair market return. No private individual, or firm, has a right to the use of publicly funded airport land for personal gain without paying their fair share of the maintenance, development and operation of the facility. Having invested substantial public funds in the capital airport plant, the public owner and the FAA have thereby created a business opportunity for privately owned aviation services and non-aviation uses which otherwise would not exist. Therefore, the Sponsor has both a right and obligation to command a reasonable return on their investment.

Further, a no rent or excessively low rent lease (Aviation or Non-aviation) will not meet the requirement of the Sponsor's assurance contained in current grant agreements, which reads in part:

"Sponsor will maintain a fee and rental structure consistent with assurances 22 and 23 for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible under the circumstances existing at that particular airport, taking into account such factors as the volume of traffic and economy of collection."

A fair market rental value (historically 8% to 12% of fair market value) should be assessed for grounds within the leasing area. The fair market rental value of land to be leased should be determined by an acceptable market analysis, usually formal appraisals. Such leases must bring a fair market return to the airport.

As an alternative to or in addition to charging a fee for all land under lease, many airport owners are charging a percentage of the gross income of the fixed based operator (FBO). This method may result in a fair return on the land and allows the airport to grow as the FBO grows. Regardless of the rates or methods used, they must remain non-discriminatory. (This will be further addressed in the escalating clauses section.)

Please note, fuel flowage fees are considered a pass through actually paid by aircraft operators and, therefore, are not considered applicable to rent. A fuel flowage fee should be applied equally to all airport tenants, whether commercial or private. Further, the fee should be applied to all fuel delivered to the airport for economy of collection.

**FAA approved Airport Layout Plan (ALP):** An approved ALP, required by federal statute, depicts the entire property, identifies the present facility and the plans for future development. The ALP reflects agreement between FAA and the airport owner as to the proposed allocation of areas of the airport to specific operational and support functional usage. Thus the ALP becomes the controlling instrument in both aviation and non-aviation development. As it relates to leasing, it readily identifies those areas that may be leased to conduct non-aviation enterprises.

**Lease clauses required by FAA:**

## **Nondiscrimination**

"The tenant for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that the tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, Airport Owner shall have the right to terminate the lease and to re-enter and as if said lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights."

## **Airport Protection**

"It shall be a condition of this lease, that the lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.

That the Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Federal Aviation Regulations, Part 77.

That the Lessee expressly agrees for itself, its successors and assigns, to prevent any use of the hereinafter described real property which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard."

## **Property Rights Reserved**

"This lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which the Airport Owner acquired the subject property from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the lease of said lands from the Airport

Owner, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by the Airport Owner pertaining to the \_\_\_\_\_ Airport."

**Exclusive Rights** (required in aviation leases only)

"Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this agreement are non-exclusive and the Lessor herein reserves the right to grant similar privileges to another Lessee or other Lessees on other parts of the airport."

**Escalation Clauses.**

Since the annual cost of satisfactorily operating and maintaining an airport will most likely increase throughout the term of the lease, provisions should be made to insure that fair market rental value rates remain current throughout the life of the lease. Accordingly, rental rates should be adjusted at a minimum of 5 year increments. An escalating clause or other means of automatically adjusting must be incorporated into long term leases to provide for this adjustment. A local, state or federal cost of living index can be utilized as the basis for determining the increase. The following is a sample clause:

"Lessor and lessee recognize and agree that the purchasing power of the United States dollar is evidenced by the (name of appropriate index). In 199\_, and every five years thereafter, the parties hereto will compare the price index for said year with the price index for (state year the lease is executed) and the annual rental payments shall be increased (or decreased) in the same proportion as said price index has increased (or decreased) with the price index for (state the year the lease is executed)."

**Other Acceptable Methods of Adjusting Lease Rates**

"This lease shall be subject to review and re-evaluation at the end of each \_\_\_ year period, by the airport owner and the rent may be adjusted according to their action, not to exceed the Consumer Price Index rate during the \_\_\_\_\_ month period." or

"Land less improvements will be appraised every 5 years and the adjusted rental will be based on \_\_\_\_\_ percent (normally 10-12%) of appraised value. If disputed, lessor obtains appraisal at his own expense and lessor/lessee equally share expense for review appraisal that establishes fair market value."

Consideration may be given relating to percentages of gross sales, etc. Due to escalating land values in the southeast over the previous years many leases of this nature fail to command a fair market rental rate throughout the life of the lease if the airport is located in a high growth area. Caution should be used when entering into this arrangement.

**References Relating to Both Aviation and Non-aviation Leases:**

- FAA Advisory Circular 150/5190-1A, Minimum Standards and Commercial Aeronautical Activities on Public Airports, dated 12/16/85.
- FAA Order 5190.1A, Exclusive Rights at Airports, dated 10/10/85.
- FAA Order 5190.6A, Airport Compliance Requirements, dated 10/2/89.