

RESOLUTION NO. 73838

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ESTABLISHING A LONG TERM GROUND LEASING POLICY FOR NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT

WHEREAS, ground lease rental rates at the Norman Y. Mineta San Jose International Airport (“Airport”) are currently set pursuant to Resolution 72250; and

WHEREAS; the long term ground leasing policy in attached Exhibit A applies to all future Airport ground leases with terms longer than seven years; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

A long term ground leasing policy in attached Exhibit A is established for the Norman Y. Mineta San Jose International Airport that sets forth the standard business terms and conditions for the lease of undeveloped ground at the Airport.

ADOPTED this 19th day of June, 2007, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, CORTESE,
LICCARDO, NGUYEN, OLIVERIO, PYLE, WILLIAMS;
REED

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

EXHIBIT A

LONG TERM GROUND LEASING POLICY AT THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT

Use

- Intended use of the property for aviation related uses must be consistent with the City's Airport Master Plan. Aviation related development requiring airside access will receive the highest priority for ground leasing opportunities. Other uses in order of priority shall be: aviation related development not requiring airside access; aviation operation and maintenance support facilities; aviation business and service related facilities; and non-aviation related business and service related facilities not requiring airside access.
- The leased premises shall be delivered "as is" with no warranties as to habitability or use.
- FAA approval will be required for all non-aviation uses.
- The City shall not be responsible for the payment of brokerage fees for the leasing or development of Airport property.

Term

- Applies to ground leases with terms over 7 years (typical minimum term for amortization of any investment); maximum lease term is 30 years for aviation related uses and 40 years for non-aviation uses.
- The length of term will be determined by the amount of the investment in the property and guided by the attached Investment Term Schedule. The Investment Term Schedule investment amounts will increase annually on July 1 pursuant to the CPI.

Rent

- Rental rates for Airport property or Airport controlled property should be established at fair market value as legally permissible.
- Initial ground rent is market rate and established in accordance with the City's then-current policy for setting Airport ground rent.
- Ground rent will increase annually pursuant to the CPI. The premises will be reappraised every 5 years and the rent will be adjusted accordingly. As an alternative to reappraisal, the City can use the value of similar property to

establish the rent adjustment. In no event will the rent ever decrease below the then current rent.

- Tenant shall pay a reduced “construction” rent of one-half the lease rate for up to 12 months (may be less, depending on project scope) or upon receipt of certificate of occupancy, whichever occurs earlier.
- Upon expiration of the original lease term, in the event that the City agrees to re-lease the property to the tenant, the tenant will pay market value rent to the City for both the leased premises and the improvements, should the tenant wish to continue leasing the premises.
- A security deposit equal to two months’ rent in the form of cash or a letter of credit shall be required.

Improvements

- Construction of the proposed improvements must commence within 12 months from the execution date of the ground lease. Failure to commence construction within this time frame will result in liquidated damages and/or termination of the ground lease.
- Tenant shall be responsible for the cost of bringing any utilities required for its operations to the leased premises.
- Ownership of improvements, except for tenant’s personal property and trade fixtures, reverts to the City upon lease expiration, or the City may require demolition and restoration of the site to its original condition.
- The tenant may use and store hazardous materials on the leased premises only to the extent necessary to conduct its operations at the Airport and subject to all applicable laws and permit requirements. The tenant shall be responsible to remediate any releases of hazardous materials caused by the tenant on the leased premises during the term of the lease.
- Any request to mortgage, pledge or otherwise encumber the tenant’s interest in the lease or the improvements shall be subject to the City’s consent, which shall not be unreasonably withheld. Reasonable grounds for denying consent shall include, but are not limited to the following:
 - The tenant proposes to mortgage, pledge or otherwise encumber more than seventy-five percent (75%) of the value of the tenant improvements.
 - The terms of any proposed mortgage or encumbrance will materially and adversely affect the City’s interest in the premises or the tenant improvements.

Sublease/Assignment

- The City reserves the right to terminate the lease and recapture the premises in the event the tenant requests approval of a sublease of all or any portion of the premises or assignment of the lease to any third party that is not an affiliate of the tenant. For the purpose of this provision, “affiliate” shall mean any entity that controls, is controlled by, or is under common control with the tenant. “Control” in this context shall mean the direct or indirect ownership of more than fifty percent (50%) of the voting securities of an entity or possession of the right to vote more than fifty percent (50%) of the voting interest in the ordinary direction of the entity’s affairs.
- If the City decides not to terminate the lease upon receipt of a request for assignment or sublease to any third party that is not an affiliate of the tenant, the City will not unreasonably withhold its consent to the proposed assignment or sublease. Reasonable grounds for denying consent shall include any of the following:
 - The proposed transferee’s intended use of the premises is not for an aviation-related purpose or will materially and adversely affect the City’s interests at the Airport.
 - The proposed transferee’s financial condition is or may be inadequate to support its obligations under the lease.
 - The proposed transferee has failed to meet any legal or contractual obligations to the City or is adverse to the City in any pending litigation.
- Should the City approve a sublease or assignment to any third party that is not an affiliate of the tenant, the City shall receive fifty percent (50%) of any profits the tenant derives from subletting or assigning its interest in the premises.
- Any request by the tenant for approval of a sublease, assignment, mortgage, pledge or other encumbrance to any third party that is not an affiliate of the tenant shall be subject to a \$1,000 administrative fee for costs incurred by such request.

Insurance

- The tenant’s minimum insurance requirements shall be determined by the City’s Risk Manager.

INVESTMENT TERM SCHEDULE

Aviation Related

Dollars Invested	Term
\$1,000,000 - \$3,000,000	8 to 10 years
\$3,000,000 - \$8,000,000	10 to 15 years
\$8,000,000 - \$13,000,000	15 to 20 years
\$13,000,000 - \$18,000,000	20 to 25 years
\$18,000,000 - \$23,000,000	25 to 30 years
Greater than \$23,000,000	Negotiable

Non-Aviation Related

Dollars Invested	Term
\$8,000,000 - \$13,000,000	15 to 20 years
\$13,000,000 - \$18,000,000	20 to 25 years
\$18,000,000 - \$23,000,000	25 to 30 years
\$23,000,000 - \$28,000,000	30 to 35 years
\$28,000,000 - \$33,000,000	35 to 40 years
Greater than \$33,000,000	Negotiable