



UNIVERSITY POLICY

SUBJECT: LEGAL SERVICES

TITLE: LEASING UNIVERSITY REAL ESTATE
TO EXTERNAL ENTITIES

CODING: 00-01-90-40:05

ADOPTED: 09/19/06

AMENDED: 09/19/06

LAST REVIEWED: 09/19/06

I. PURPOSE

To establish a policy for the appropriate process for approval of leases of University owned or leased real estate property to others outside the University. Leases of real estate property for the use by the University is governed by University policy, Contract Management, 00-01-90-40:00.

II. ACCOUNTABILITY

Under the direction of the President, the Executive Vice President for Academic and Clinical Affairs, Senior Vice President for Administration and Senior Vice President for Finance shall ensure compliance with this policy. Deans, Vice Presidents and Presidents/CEOs of the Healthcare Units shall implement this policy.

III. BACKGROUND

Under N.J.S.A. 18A:64G-6(n)(1), the University's Board of Trustees has the right to acquire, own, lease, dispose of, use and operate property, whether real, personal or mixed, or any interest therein, which is necessary or desirable for university purposes. In addition, under N.J.S.A. 18A:64G-6(n)(2), in adopting procedures for purchase of equipment, materials, supplies and services, the University must publicly advertise for bids, except for certain exceptions contained in N.J.S.A. 52:34-9 and 10. Included in N.J.S.A. 52:34-9, are exceptions for "c) the lease of such office space, office machinery, specialized equipment, buildings or real property as may be required for the conduct of the State's business; or d) the acquisition of any real property by gift, grant purchase or any other lawful manner in the name of and for the use of the State for the purpose of the administration of the State's business in accordance with the appropriations made therefore when moneys are required for the acquisition". This policy is designed to govern the leasing by UMDNJ as landlord of space to others as tenants.

IV. REFERENCES

- A. Leasing of Facilities [00-01-70-35:00](#)
- B. Legal Commitment Authority [00-01-90-05:00](#)
- C. Contract Management [00-01-90-40:00](#)

V. POLICY

- A. The School, Unit or Department interested in leasing University owned or leased real estate property to tenant outside the University must start by first obtaining approval from the responsible Dean or Vice President. Such approval shall be based on a business plan. The business plan shall include the objectives of the lease, the support required from other effected departments as well as a fair market appraisal for the space to be leased. If

approved, the plan is then forwarded to the Vice President for Finance and Treasurer and other appropriate individuals/offices depending on the type of lessee, outlined below for review and approval.

- B. For lease of property to health care organizations, there shall be an additional review/approval by the business office of the Department or School/Unit followed by a review/approval by the Office of Legal Management confirming that such lease does not violate any state or federal law, rule or regulations, including Medicare and Medicaid rules, antikick back rules or Stark rules.
- C. For University buildings which were financed in whole or in part by tax exempt bonding and/or federal funds, there shall be a review/approval by the University Controller's office that the lease does not violate any IRS rules.
- D. In the event that the leased space is to be used by an entity affiliated with the University for which there is health care, education or research interest of the University, the lease shall be approved by the cognizant Dean, Vice President or President/CEO, Executive Vice President for Academic and Clinical Affairs, Senior Vice President for Administration, Senior Vice President for Finance, Office of Legal Management and the Office for Business Conduct to ensure no conflict of interest.
- E. Once all approvals are received, the leases shall be submitted to the Board of Trustees for approval.
- F. Usage of space by another entity that does not involve a real estate lease shall be considered a license and addressed under the University policy Contract Management, 00-01-90-40:00. This includes such arrangements as use of parking spaces or use of space on a roof for telecommunications.
- G. Where UMDNJ is developing a project that includes retail space, the project approval process shall include the fair market value of the proposed space, leasing criteria, a marketing survey that identifies appropriate business classes for the space, and a business plan that includes the proposed terms of the leases contemplated.

VI. PROCEDURES

Performed by:

School, Unit or Department

Action Taken:

1. Initiates project for leasing to a non-University entity:
 - a. Defines objectives;
 - b. Informs the Dean, Vice President or President/CEO of the project;
 - c. Under the direction of the Dean, Vice President or President/CEO, identifies and obtains support from other departments (See EXHIBIT A -Coordination With Other Departments);
 - d. Coordinates with Director for Facilities Planning and Construction and Assistant Vice President for Operations; and
 - e. Obtains a fair market appraisal or comparison.
 - f. For lease of property to health care organizations, there shall be an additional review/approval by the business office of the Department or School/Unit followed by a review/approval by the Office of Legal Management confirming that such lease does not violate any state or

Performed by:

Action Taken:

- federal law, rule or regulations, including Medicare and Medicaid rules, antikick back rules or Stark rules.
- g. For University buildings which were financed in whole or in part by tax exempt bonding and/or federal funds, there shall be a review/approval by the University Controller's office that the lease does not violate any IRS rules.
- h. Obtains the ownership disclosure statements and Executive Order 134 political contribution forms from the prospective tenant.
2. Forwards the completed Business Plan (See EXHIBIT B - Business Plan) to Dean, Vice President or President/CEO for approval.
 3. Reviews and comments on the program and identifies the individual to be responsible for administration of the lease.
 4. Either approves or disapproves the plan. If approved, forwards plan to Vice President for Finance and Treasurer for review and approval.
 5. Reviews and approves or disapproves the Business Plan.
 6. If rent is expected to exceed \$100,000.00 over the term of the lease, approval of the President and Board of Trustees is required.
 7. Executes lease pursuant to University policy Legal Commitment Authority, 00-01-90-05:00 and returns to Vice President for Legal Management.
 8. Distributes originals and copies of lease. (See EXHIBIT D Distribution of Agreements.)
 9. Individual identified by the Dean, Vice President or President/CEO coordinates and administers all activities for internal support under terms of the lease.
 10. Monitors terms under the lease.
- Dean , Vice President
or President/CEO
- Vice President for Finance and
Treasurer
- President, Vice President for Finance
and Treasurer or designee
- Vice President for
Legal Management
- School, Unit or Department

VI. EXHIBITS

- A. Coordination with Other Departments
- B. Business Plan
- C. Checklist of Terms
- D. Distribution of Agreements

By Direction of the President:

Vice President and University Chief of Staff

EXHIBIT A

Coordination with Other Departments

Real Estate Leases

- A. Administration
- B. Facilities Planning and Construction
- C. Physical Plant (Maintenance)
- D. Housekeeping
- E. Accounts Payable
- F. Mail Services
- G. Telecommunications
- H. Risk and Claims Management
- I. Insurance
- J. Environmental Occupational Health and Safety Services
- K. Radiation Safety Services
- L. Public Safety

EXHIBIT B

BUSINESS PLAN

Part A - Narrative

1. The Narrative Section of the Business Plan should provide a brief summary of the important aspects of the contract/agreement. This should identify the following:
 - a. description of service/activity;
 - b. contract term - start and end date as well as renewals and termination;
 - c. resources - identification of the type of expenses needed in conjunction with the contract activity. Financial estimates associated with these items will be detailed in Part B;
 - d. market factors - market trend and regional demand for the contract activity is necessary in determining the financial viability of the activity; and
 - e. other issues - disclosure of any other items involved in the contract that are necessary in understanding the University's involvement and commitment.

Part B - Financial Information

1. The Financial Information Section of the Business Plan should present the anticipated revenues and expenses of the lease.
2. Anticipated revenues should be based on estimated activity less an anticipated bad debt or non-payment of rent factors. Any other revenues should be appropriately defined and identified as to source and use of revenue.
3. Anticipated expenses should include all the costs associated with administration of the leases.
4. Three years audited financial statements to be used in the evaluation of the entity's financial strength and ability to fulfill the conditions of the agreement. Also a financial statement for the financial institution (commercial bank) or source of funding for lease term and any construction costs. Any profit sharing arrangement should identify the distribution criteria. Any revenue shortfall should identify contingency funding plan.

NOTE: The completed Business Plan must be approved by the Vice President for Finance and Treasurer.

EXHIBIT C

Checklist of Terms

REAL ESTATE LEASES

- | | | | |
|-----|--|-----|--|
| 1. | Date | 12. | Repair and Maintenance |
| 2. | Name and addresses of Landlord and Tenant | 13. | Signage |
| 3. | Description of Premises | 14. | Insurance, including business interruption |
| 4. | Term: | 15. | Assignment and Subleasing |
| | a. initial at a maximum of 3 years; and | 16. | Default and Remedies |
| | b. option to renew, absent any defaults and with Landlord's consent. | 17. | Condemnation |
| 5. | Rent: | 18. | Rebuilding upon Destruction or Damage |
| | a. flat; | 19. | Manner of giving notice |
| | b. escalators; | 20. | Termination |
| | c. profit sharing; and | 21. | Governing Law |
| | d. payment: monthly, annually. | 22. | Waiver of Breach |
| 6. | Taxes | 23. | Quiet Possession |
| 7. | Use of Premises | 24. | Severability of Provisions |
| 8. | Utilities | 25. | Entire Agreement |
| 9. | Encumbrances at Leasehold Estate | 26. | Memorandum of Leases |
| 10. | Construction on Premises | 27. | Option to terminate |
| 11. | Alterations on Premises | 28. | Attestation Clause |
| | | 29. | Signatories names |

EXHIBIT D

Distribution Of Agreements

Real Estate Leases

- a. Legal Management - original
- b. Controller's Office – original
- c. Administration - copy
- d. Risk & Claims Management – copy
- e. Facilities Planning & Construction – copy
- f. School or Department – copy