

Policy Number: 7-207	Policy Name: Leases
Policy Revision Dates: 6/15/2023 (effective 7/1/2023), 11/17/2022, 6/9/2022, 6/2020, 12/2018, 9/18, 4/18 (effective 7/1/18), 6/09, 6/05, 4/99 (Previous 7-306 Leases of Real Property 1/94, 3/92, 9/90, 1/88 - 7-403 Lease-Back Agreements)	Page 1

7-207 Leases

A. University Use: A university may lease real property as either a landlord or lessor, or as a tenant or lessee.

1. Leases of Real Property

a. All lease agreements and amendments of lease agreements of real property, including lease agreements in connection with any development of capital projects, as defined in board policy 7-102(A)(3) shall be reviewed by the University Governance and Operations Committee and approved by the board before becoming effective, except as provided below:

(1) A university may enter into a lease or lease amendments as landlord or lessor without board approval (except for use of athletic facilities by professional teams), provided all of the following criteria are met:

(a) The lease term including all renewals shall not exceed 120 months;

(b) The annual base lease amount does not exceed \$1,000,000; and

(c) The rental rate meets or exceeds the fair rental value of the property.

(2) A university may enter into leases or lease amendments as tenant or lessee without board approval provided all of the following criteria are met:

(a) The original lease term shall not exceed a total of 60 months;

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- (b) Renewal options in total shall not exceed an additional 60 months;
- (c) The total annual base lease amount does not exceed \$1,000,000;
- (d) The rental rate does not exceed fair rental value; and
- (e) Funds are available.

2. Rental Rates

- a. The rental rates for use of university facilities and properties by off-campus organizations shall be approved by the president of each institution. Rental rates should reflect considerations of the fair market value rates charged by comparable facilities, actual expenses incurred in providing the space (operations, maintenance, and deferred maintenance), and inflation. Each university shall review its established rates annually. A university may offer reduced rental rates to affiliated non-profit organizations.

3. Use of Athletic Facilities by Professional Teams

- a. Each university may authorize the use of university athletic facilities by professional teams. All such uses shall meet the following standards:
 - (1) The use must be consistent with all applicable rules of the National Collegiate Athletic Association (NCAA) and the Athletic Conference in which the university holds membership;
 - (2) The university shall adhere to board policy regarding rental rates;

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- (3) There shall be a written agreement approved as to form by university counsel; and
- (4) The term of the agreement (including any renewals) shall not exceed three years.

B. Commercial Long-Term Leases: A university may seek board approval for a Long-Term Lease that is Commercial in Nature. Such leases are subject to the following additional considerations:

- 1. When considering a Long-Term Lease of University Property that is Commercial in Nature as described in this subsection B:
 - a. Such Long-Term Leases of University Property should, to the extent possible, optimize the value of the property to the university and enhance the institutional mission of the university.
 - b. The university should use financial transactions (whether sale, lease, sale-leaseback or other means) that support the needs of the university to facilitate development of University Property.
 - c. In general, when a transaction is Commercial in Nature, the university should consider Long-Term Leases over the sale of University Property unless the university can demonstrate to the board that a sale will provide a greater long-term benefit.
 - d. Universities shall not engage in Long-Term Leases that are Commercial in Nature if the primary purpose is to remove private land or real property improvements from property tax rolls.
 - e. The university shall document the economic benefits to the university and the State of each such Long-Term Lease, including the university's understanding of the tax treatment

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of the real property and proposed improvements, and shall document how such Long-Term Lease furthers the institutional mission of the university.

- f. Board review of proposed Long-Term Leases that are Commercial in Nature shall include a review of any payment to the university in lieu of taxes, the property tax impacts on other taxing jurisdictions, and any service agreements, including payments, with relevant governmental entities.
 - g. Board review of proposed Long-Term Leases will include a review of appropriate community outreach and coordination with community partners and relevant governmental entities.
2. All Long-Term Leases that are Commercial in Nature as described in this subsection B shall be non-binding until reviewed by the University Governance and Operations Committee and approved by the board as follows, and as applicable, reports may be given in executive session:
- a. Notification. The university shall provide written notification to the board office, for their distribution to the University Governance and Operations Committee chair and vice chair as appropriate, on its intent to solicit proposals or to enter into transactions with possible partners for Long-Term Leases on University Property that will be Commercial in Nature. The report shall include the preliminary development concept, if any associated with the Long-Term Lease.
 - b. Preliminary Presentation of Proposal. Following entering into a letter of intent or other agreement to provide exclusive rights under a Long-Term Lease that is anticipated to be Commercial in Nature, a university shall present its preliminary lease plan to the University Governance and Operations Committee in executive session as appropriate. The presentation shall include the following elements, as appropriate to the scope and structure of the transaction:

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- (1) Conformance with the principles and requirements outlined in subsection B, paragraph 1.
 - (2) Preliminary transaction timing and project schedules.
 - (3) Preliminary financial terms and conditions, including income and cost estimates, as applicable.
 - (4) Other information as coordinated with the executive director of the board.
- c. Final Lease Terms. The university shall request a final review of the terms of the Long-Term Lease that is Commercial in Nature from the University Governance and Operations Committee and approval of such lease terms from the board, unless the approval process is otherwise modified or specified by board resolution. The final lease transaction submitted to the committee and the board shall include the following elements, including the assumptions and methodology used to determine, as appropriate:
- (1) Provisions regarding future transfer or sale of the lease or the leasehold interest, as appropriate.
 - (2) Risk assessment.
 - (3) Transaction description.
 - (4) Description of how the project enhances or furthers the mission of the university.
 - (5) Type of lease transaction.
 - (6) Transaction schedule.
 - (7) Development schedule.

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- (8) Term of the lease.
- (9) Measurable performance standards and lease remedy provisions if established performance standards are not met.
- (10) Identification of parties.
- (11) Community outreach and coordination with relevant government entities, including agreements if applicable.
- (12) Structure, including payment schedule.
- (13) Valuation methodology.
- (14) Anticipated tax status of the property.
- (15) Information regarding reporting and oversight responsibilities of designees representing board and/or university interests with respect to Master Leases.
 - (a) Master Leases entered into and/or revised after June 12, 2020, shall contain a provision that describes the process for approval and reporting of financial information.
 - (b) Master Leases entered into after June 12, 2020, shall identify the process and requirements pursuant to which tenants under Master Leases may enter into subleases.
 - (c) Designees representing the board and/or a university who serve on a governing board of a third party with whom the university has a Master Lease (“third party governing board”)

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must segregate their responsibility to such third party governing board from their responsibility to the board and/or university and must follow applicable State law and board and university policies governing conflicts of interest, as well as the conflict of interest policies of such third party. At the time the board or university designee is exercising governance responsibilities for such third party governing board, the designee may not at the same time take official action on behalf of the university in connection with the Master Lease. Any approval or decision required or requested of the university or board in connection with such Master Lease must be made outside of such third party governing board governance activities and must follow the terms and conditions of the Master Lease. Operational responsibilities shall also be separated from governance responsibilities of the third party.

(16) Other information as requested by the executive director of the board.

3. Ongoing Monitoring and Reporting. At a time agreed to by the executive director of the board, the university shall at least annually report on the status of all executed Long-Term Leases that are Commercial in Nature subject to subsection B. The report shall categorize projects by location and will include the status of completed, in progress, and planned improvements, including standards and requirements identified in the agreement and other anticipated outcomes identified when the final lease plan was submitted for approval.
4. All leases entered into shall be reported to the board office annually in accordance with procedures developed by the executive director of the board.

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- C. Waivers: A university may request a waiver of this board policy as long as it is in the best interest of the university and it complies with applicable State laws.