VIII-4.00 – POLICY ON ACQUISITION, DISPOSITION, AND LEASING OF REAL PROPERTY

(Approved by the Board of Regents on February 1, 1989; Amended on March 1, 1989; Amended on February 9, 2001; Amended on February 22, 2019).

I. GENERAL

Pursuant to Sections 12-104(b)(6), 12-104(g)(1), and 12-104(h) of the Education Article, the Board of Regents ("Board") may acquire, hold, lease, use, encumber, purchase, sell, transfer, exchange, or otherwise dispose of real property on behalf of the University System of Maryland ("System") and any of its Institutions.

II. DEFINITIONS

A. As used in this Policy, "Institution" means a constituent institution or the University System of Maryland Office ("System Office").

B. For purposes of this Policy, an "Acquisition" is a conveyance of real property or an interest therein to the State of Maryland for the use of the System or an Institution. Acquisition of real property may occur by gift, purchase, exchange, or other grant or transfer. Acquisition may be accomplished by deed, easement, Capital Lease, (as defined in Section II.D.), right-of-way, right-of-entry, contract (other than a Lease as defined in Section II.E.) giving the System a right of first refusal or option to purchase, or the exercise of any such right or option. If a transaction conveys to the System or an Institution an interest in real property, the transaction is an Acquisition regardless of the title given the document(s), unless this Policy provides otherwise, and provided that "Acquisition" does not include entering into a Lease as defined in Section II.E. of this policy.

C. For purposes of this Policy, a "Disposition" is a conveyance of real property or an interest therein from the State of Maryland for the use of the System or an Institution. Disposition of real property may occur by gift, sale, exchange, or other grant or transfer. Disposition may be accomplished by deed, Capital Lease (as defined in Section II.D.), easement, right-of-way, right-of-entry, restrictive covenant, license, or contract giving another party a right of first refusal or an option to purchase. If a transaction conveys from the System or an Institution an interest in real property, the transaction is a Disposition subject to this Policy regardless of the title given the document(s), unless this Policy provides otherwise, and provided that "Disposition" does not include entering into a Lease as defined in Section II.E. of this policy.

D. For purposes of this Policy, a "Capital Lease" is a transaction that creates System or State debt. Examples of such transactions include lease- lease backs, sale-lease backs, ground leases, or any other method of acquiring, disposing of, and/or financing real property (including improvements). Any Lease that must be approved by the Board shall be reviewed by the Vice Chancellor for Administration and Finance ("VCAF") to determine whether or not it is a Capital Lease. Capital Leases shall include:

1. A lease pursuant to which the present value of all of the rent payments thereunder is equal to or greater than 90% of the fair market value of the leased property (at the inception of the lease);

2. A lease in which the term of the tenancy equals or exceeds 75% of the estimated economic life of the leased property;

3. A lease in which a bargain purchase option is given to the tenant;

4. A lease that provides for title to the property to pass to the tenant without further payment at the end of the lease term; and

5. Any other transaction with a structure consistent with the definition of Capital Lease in this Policy.

The VCAF shall determine what transactions are Capital Leases. System financing policies shall apply to the financing of Capital Leases.

E. For purposes of this Policy, a "Lease" is an agreement in which the System or an Institution either grants or receives the exclusive right to use, occupy, or possess real property for a certain, limited period of time in exchange for the payment of money or other consideration provided in such agreement. Capital Leases are not Leases under this Policy. Subleases, licenses, and Lease assignments to and Lease assumptions by the System or an Institution are Leases covered by this Policy. A Lease that includes a provision giving the System or an Institution an option to purchase or right of first refusal to purchase is nevertheless a Lease under this Policy. Any transaction in which the System or an Institution gives an option to purchase or right of first refusal to another party is a Disposition under this policy.

III. POLICY

A. When the System or an Institution is the tenant of real property, the System or Institution involved shall ascertain, by application of appropriate due diligence, that the cost is reasonable and consistent with market values of any comparable leased properties that may be available. Competitive proposals shall be sought if practicable.

B. All Acquisitions and Dispositions shall be reviewed and approved by the Board unless specifically exempted or delegated in this Policy or Board-approved Procedures for the Acquisition and Disposition of Real Property.

C. Board review and approval shall be required for the following Leases:

1. Leases in which the System or an Institution is tenant and the consideration is expected to exceed $1,000,000 in any year or the term (including renewal options set forth in the original lease) exceeds ten years; and the aggregate rent exceeds $10 million;

2. Leases in which the System or an Institution is landlord and the term (including tenant renewal options set forth in the original lease) exceeds ten years.

D. Leases not requiring Board approval shall be approved and signed:

1. By the Chancellor, if for the System Office; or

2. By the President of the Institution involved.

E. Approval of an Acquisition, Disposition, or Lease by the Board shall be deemed to delegate to the Chancellor the authority to negotiate such terms and conditions as are necessary and appropriate to implement such approval consistent with the action of the Board, and sign all documents required following review and approval for form and legal sufficiency by the Office of the Attorney General.

F. The Board delegates to the Chancellor (for System-owned properties) and to the Presidents of the Institutions (for their respective properties) the authority to:

1. Grant or accept easements and rights-of-way without review and approval by the Board, if in the Chancellor's or President’s judgment, with the advice of the Office of the Attorney General, the proposed grant and related agreement is not of such significance as to warrant Board review; and

2. Enter into agreements giving the System or an Institution options and rights of first refusal to acquire real property to the extent provided for in Section II.E. of BOR VIII-4.01 “Procedures for the Acquisition and Disposition of Real Property.”

G. In addition, the Board delegates to the Presidents of Institutions the authority to:

1. Grant and sign utility easements that are ancillary to or connected with development projects previously approved by the Board, with the Office of

Attorney General approving the form and legal sufficiency of such easement documents;

2. Grant and sign temporary rights of entry without review and approval by the Board, the Chancellor, or the Office of Attorney General, provided that such rights of entry:

   a) Have terms no longer than four (4) years; and

   b) Obligate the grantee to provide, for the benefit of the Institution, the System, and the State, indemnification (except for public entities that may not lawfully indemnify) and insurance in amounts commensurate with the risk created by the entry;

3. Sign, as may be required under leases:

   a) Estoppel certificates and other similar ancillary certificates; and

   b) Subordination, non-disturbance, and attornment agreements that conform to a form approved by the Office of Attorney General; and

4. Enter into license agreements that are not subject to Board review and approval under Section III.C. above.

H. The Chancellor may, except as otherwise provided by the Board, delegate to other System or Institution officials any duty or responsibility of the Chancellor under this Policy.

I. Pursuant to Section 12-104(g)(2) of the Education Article, the System shall use the proceeds from the sale of its real property only to purchase or improve real property and facilities.

J. This Policy does not apply to naming rights or similar sponsorship agreements, signage agreements, student housing agreements, revocable or temporary licenses, or inter-Institution agreements.

IV. IMPLEMENTATION

A. Implementation of this Policy shall be consistent with BOR Policy VIII-4.01 "Procedures for the Acquisition and Disposition of Real Property," and BOR Policy VIII-4.02 "Procedures for Leasing of Real Property."

B. The Chancellor or the Board may require System institutions to provide reports on Acquisitions, Dispositions, and/or Leases at times and in formats determined by the Chancellor or the Board.

C. The Chancellor shall establish due diligence practices appropriate to the execution of this policy.

D. This Policy shall be effective upon its approval by the Board and replaces any preceding policy under this Board policy number.