USF Board of Trustees
September 10, 2009

Issue: Real Property Policy

Proposed Action

Approve Real Property Policy

Background Information

The Board of Trustees has the responsibility to approve new policies. The Real Property Policy establishes a program for organizational oversight, approval and management of real property of the University and its DSOs and CUs, consistent with Florida Statutes and Federal laws. The purposes of this Policy are 1) establish a framework for active, professional real property management that applies to all types of real property, 2) describe organizational and individual responsibilities in carrying out the real property management program, and 3) delineate the types of transactions covered by this Policy.

It is the policy of the University of South Florida that real property transactions conform to the authority granted by Florida and Federal laws, its Board of Trustees and applicable policies of the Board of Governors, and that the management of real property be conducted in such a manner as to promote the interests of the University. The Policy applies to the University and DSOs and CUs for which it is legally and financially accountable.

This Policy was developed by a workgroup comprised of members from the University and DSOs / CUs and reviewed by the USF Finance Management Council.

Significant Policy Issues for Board to Consider

Real property transactions require significant resources and compliance with State and Federal laws and University policies.

BOT Workgroup Approval: August 20, 2009
Supporting documentation: USF Real Property Policy
Prepared by: Fell L. Stubbs, University Treasurer
974-3298
# UNIVERSITY OF SOUTH FLORIDA SYSTEM

## REAL PROPERTY POLICY

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1.0 DEFINITIONS

Words and terms used herein shall have the same meanings, for the purpose of this Real Property Policy, ascribed to them in Exhibit A attached hereto or elsewhere defined in this Real Property Policy unless the context or use clearly indicates a different meaning.

2.0 PURPOSE AND INTENT

The University of South Florida system is comprised of separately accredited institutions and regional campuses (“USF system”). The Board of Trustees of the USF system is the public body corporate created by Article IX, Section 7 of the Constitution of the State of Florida and empowered by Section 1001.74 Florida Statutes to administer the USF system (the “Trustees” or “Board of Trustees”). As the administering body corporate of the University, the Trustees hold the assets of the University in trust and are responsible for the efficient and effective use of its resources.

Direct Support Organizations are separately incorporated and operate exclusively for the benefit of the USF system. The Trustees, pursuant to 1004.28 Florida Statutes, are authorized to establish, decertify and provide oversight of the University’s Direct Support Organizations (DSOs) and they establish the conditions with which these entities must comply in order to use property of the University. University component units and units for which the University is legally and financially accountable (CUs) will use this Policy’s terms as guidance to help ensure their practices comply with the University’s financial responsibilities.

To fulfill its mission, under the authority of the Trustees, the USF system has a real property management program for the real property of the USF system to attain maximum benefit with an acceptable degree of risk and at an acceptable cost. Direct Support Organizations and CUs are expected to comply with this Policy, to the extent they hold or use University or real property covered by this Policy for those same reasons. All further references in this Policy apply to this property of both covered entities.

The purpose of this document (the “Policy”) is to establish a framework for active, professional real property management that applies to all types of real property of entities covered by this Policy. This Policy states organizational and individual responsibilities in carrying out the real property management program and delineates the types of transactions covered by this Policy.
3.0 STATEMENT OF POLICY

3.1 Permit the purchase, sale or leasing of improved or unimproved real property covered by this Policy or leasing of non-covered real property in a manner that provides the best value. All purchases or sales or leases to other parties of improved or unimproved real property covered by this Policy or leasing of non-covered real property shall be entered into in accordance with applicable law and as provided in this Policy.

3.2 Ensure that the use of real property by USF institutions, regional campuses, colleges, departments, programs, DSOs/CUs and others supports the mission, minimizes financial risk, clarifies the legal responsibilities of the USF entities covered by this Policy and avoids inappropriate use.

3.3 Ensure that real property (consisting of land, buildings, leaseholds, water rights, air rights and mineral rights) of entities covered by this Policy may only be used for activities that support the institution’s mission.

3.4 Exclude real estate transactions entered into for investment purposes from this Policy, as they are covered by the USF investment policies.

3.5 Exempt gifts of real property to the USF system from this Policy if made to the USF Foundation and accepted and disposed of according to the USF Foundation Policy related to real estate gifts. Other gifts of real property to University accredited institutions, regional campuses and DSOs and CUs will be made according to this Policy.

3.6 The University Senior Vice President & CFO, on behalf of the Board of Trustees, interprets this Policy and is responsible for revising it as necessary.

4.0 ENTITIES COVERED BY THIS POLICY

4.1 The Policy applies to all University accredited institutions, regional campuses and DSOs and CUs. In accordance with Florida Statutes and Board of Governors Regulations, as applicable, and University Regulations and Policies, these institutions and entities receive, hold, invest and administer property and make expenditures to or for the benefit of the USF system.

4.2 Real property activities, covered by this Policy, require approval by the appropriate University accredited institution, Regional Campus Board or DSO / CU Board of Directors and, in certain instances defined later in this Policy, review by the Board of Trustees.

5.0 ACQUIRING, LEASING AND DISPOSING OF REAL PROPERTY

5.1 The USF system real property (land, buildings, leaseholds, air rights, water rights, and mineral rights) is held in trust by the State of Florida or other State entity, the USF system or DSO/CU, and is managed, as appropriate, by the USF system Board of Trustees, the appropriate
5.2 The Board of Trustees reserves to itself the right to review, in a timely manner, material real property transactions covered by this Policy. Material real property transactions of USF entities covered by this Policy are generally space leases or ground leases with a total cumulative cost over the term of the lease exceeding $5,000,000, privatized development projects exceeding $5,000,000 in construction cost, and the gift, purchase or sale of real property having a value greater than $500,000 or larger than 1 acre.

5.3 The Board of Trustees' review of material real property transactions will be conducted by the Chair of the Board of Trustees or Trustee designee prior to the execution of agreements and follows a review by the University accredited institution, DSO/CU Board, Regional Campus Board, the University Senior Vice President & CFO or the President, as appropriate, to ensure that the use of the facilities supports the mission, minimizes insurance risk, clarifies legal responsibilities and avoids inappropriate use.

5.4 The University Senior Vice President & CFO is responsible for facilitating the Board of Trustees’ prior review of material real property transactions in a timely manner. Upon submission for review, the submitting entity will be notified of the anticipated Board of Trustee review date in a timely manner. Planning for completion of any transaction covered by this Policy should allow at least 30 calendar days for review by the Board of Trustees prior to the execution of agreements or other binding commitment.

5.5 Acquisitions of real property covered by this Policy must support the educational, research or outreach mission. Dispositions of real property may occur when it is determined that the real property is not needed (nor will it be in the future) to fulfill the mission.

5.6 A privatized development project involving private sector owner/operators will be approved only when it is demonstrably more desirable than for the USF entities covered by this Policy to own the project. The privatized development project must serve a USF institutional purpose, serve a demonstrated institutional need, and meet design and construction standards consistent with the approved master plans and architectural standards for the USF entities covered by this Policy. The University Senior Vice President & CFO shall review and approve all privatized development projects of USF entities covered by this Policy prior to the execution of agreements and/or issuance of a request for proposal.

5.7 USF entities covered by this Policy will minimize their exposure to legal and financial claims for damages under applicable laws, including those governing the environment and hazardous materials, by ensuring that all appropriate due diligence is conducted concerning the proposed real property asset, prior to acquisition.

5.8 USF entities covered by this Policy will dispose of property expeditiously and in a manner that maximizes returns, considers public purposes and avoids conflicts of interest.
6.0 **LEASING AND USING USF AND NON-USF SYSTEM REAL PROPERTY**

6.1 USF entities covered by this Policy may lease real property (land or building space) only for institutional purposes. USF system institutions, regional campuses and DSO/CUs are responsible for the proper use of leased property.

6.2 The initial term of the USF system space lease should not exceed 10 years. Requests for exceptions to the initial lease term limitation will be considered according to Section 8. The lease, however, may include options to renew for as many terms as are in the institution’s best interest. Each lease contract must be contingent on the availability of appropriate funds to pay for the lease.

6.3 Property used for public purposes is tax exempt; property used for non-public purposes may be taxable. Provision must be made with respect to who will bear the responsibility for payment of real property taxes. Sections 511 and 512 of the Internal Revenue Code impose a tax on the income of exempt organizations that is derived from any unrelated trade or business regularly carried on. A proposed lease must be evaluated to determine whether it may trigger unrelated business taxable income. The Office of General Counsel should be consulted before the lease transaction structure is finalized.

6.4 Terms and form of space lease(s) and/or sales of improved or unimproved real property of the USF system should be submitted for review and approval in advance in accordance with procedures established by Purchasing and Property Services and/or the Office of General Counsel prior to execution.

7.0 **REAL PROPERTY PURCHASE OR SALE TRANSACTIONS**

7.1 Prior to the approval of the purchase or sale of real property covered by this Policy by USF entities covered by this Policy, the following practices will be considered to ensure that the use of covered facilities supports the institutional mission, minimizes financial and insurance risks, clarifies the legal responsibilities and avoids inappropriate use.

7.2 Each real property purchase or sale transaction covered by this Policy must identify an authorized staff member (e.g. University Senior Vice President & CFO, Senior Vice President or Vice President, Executive Director, University Treasurer, CFO of the DSO/CU, et al) who remains responsible for ensuring:

a. Consistency with the USF Strategic Plan.

b. Responsible decision-making and coordinating communications regarding the transaction at issue.

c. A designated budget source or appropriate funding source for the transaction.

d. Compliance with Florida Statutes and Regulations, as applicable, and University Regulations and Policies.

e. Appraisals for USF system real property acquisitions are obtained from two independent fee appraisers, preferably appraisers with Members of Appraisal Institute (MAI) status, when the value is anticipated to exceed $50,000, and one
appraisal for other purchase or sale transactions. The USF system may use sale or appraisal data from similar properties when the value is anticipated to be less than $50,000.

f. Prior to the USF system’s acquisition of real property, a qualified contractor, acceptable to the Office of General Counsel, shall perform an environmental review on each parcel of real property to determine if there are any environmental problems affecting the property and, if the environmental review indicates concerns, additional investigations will be performed as recommended including a Phase I, Phase II or Phase III audit. During this preliminary phase, obtain documentation for the property provided by the seller, a title survey, soil and other surveys and tests, and verification of legal access.

g. Review and representations for USF system real property acquisitions are provided to the Office of General Counsel who will ensure that all relevant legal conditions outlined in the purchase agreement have been satisfied prior to closing, such as environmental investigations, surveys, title reviews, building evaluations, and necessary University, governmental or corporate approvals.

h. The Office of General Counsel along with any retained outside counsel will provide legal representation for the USF system at the closing of purchases or sales of the USF system real property and ensure that deeds and any supplemental legal documents are prepared or reviewed.

i. The University Treasurer or CFO of the DSO/CU will provide fiscal oversight for the real property acquisitions or sales covered by this Policy at the closing. At closing, the Office of General Counsel and the University Treasurer or CFO of the DSO/CU verify payment or receipt of sale proceeds, orders title insurance, ensure payment of any required real estate taxes and special assessments due at closing, and submit conveyance instruments to be recorded in the normal course of business.

j. Following the USF system real property closing, the Office of General Counsel will file the Statement of Owner of Real Estate Claimed to be Exempt from Taxation with the appropriate city and county offices for properties acquired.

k. The acquisition or sale of USF system real property is then reported by the University Senior Vice President & CFO, other Senior Vice President or President, as appropriate within the University community.

8.0 EXCEPTIONS TO POLICY

8.1 Exceptions to some of the requirements specified in this Policy may occasionally occur. The University Senior Vice President & CFO and the authorized staff member in Section 7.2 above and respective DSO or CU Board, if applicable, shall be informed immediately of any potential exception.

8.2 Each proposal for exception shall be reviewed by the University Senior Vice President & CFO and other officials he/she deems appropriate. Exceptions may be temporary or more permanent; they may be self-correcting, require specific action or require no action. If specific
action is required, the University Senior Vice President & CFO will determine the course of action that will correct exceptions.

8.3 The Board of Trustees and the DSO or CU Board, as appropriate, will review exceptions and the course of action to correct the exceptions. The Board of Trustees of the USF system reserves to itself the exclusive right to revise or grant exceptions to the USF Real Property Policy. As long as an exception to the Policy continues, it will be re-evaluated by the Board of Trustees of the USF system and the respective DSO or CU Board at least on an annual basis.
“Board” means the governing body for the USF system and its campuses, as declared in a policy statement adopted by the USF system Board of Trustees. “Board” of the USF system shall include the Executive Committee, provided that the Board has delegated appropriate authority to an Executive Committee.

“Board” of the DSO or CU means the governing body for such entity and shall include the Executive Committee, provided that the Board has delegated appropriate authority to an Executive Committee.

CFO of the DSO or CU means the designated senior finance officer of the DSO or CU or authorized officers or Executive Committees of the Boards of Directors of the DSOs or CUs;

“CU” means Component Unit of the University, which are entities for which the USF system is financially accountable or any organization where the nature and significance of their relationship with the USF system is such that exclusion from the USF system financial statements would render such statements misleading or incomplete. It does not include programs, whose assets are the legal and financial responsibility of an entity other than the University. Certain programs housed at the University are separately created by Florida Statutes and regulations as programs whose assets are the property of an entity other than the University. While those programs are not included in the definition of “component units”, their assets may be recorded in the University’s financial statements. Therefore, those programs, consistent with applicable statutes/regulations by which they are governed and their own prudent, effective investment practices and guidelines, will use this Policy’s terms as guidance to help ensure their practices comply with the University’s financial responsibilities;

“DSO” means Direct Support Organization, pursuant to Section 1004.28 Florida Statutes, as certified by the USF system Board of Trustees;

“Executive Committee” means the Executive Committee of the USF system, DSO or CU Board, provided that the Board has delegated appropriate authority to an Executive Committee;

“Lease” means a contractual arrangement whereby a USF entity covered by the Policy is the lessee.

“Office of General Counsel” means the University General Counsel, Office of the University General Counsel, outside counsel retained by the Office of General Counsel or counsel of the DSO/CU.

“Statutes” mean the Federal and State of Florida laws and regulations, the State of Florida Administrative Code Rules of the Department of Education applicable to the USF system, the
Board of Governors’ regulations/policies, and any Statutes and Rules applicable to DSOs and CUs, including Section 1004.28 and any applicable USF system regulations;

“Trustees” means the USF system Board of Trustees;

“University Senior Vice President & CFO” of the USF system means the designated senior finance officer of the USF system;

“University of South Florida system” means two separately accredited institutions (the University of South Florida and USF St. Petersburg), regional campuses, and component units of the University of South Florida system.