1. Title

Matters Relating to Interests in Real Property

2. Rule and Regulation

Sec. 1 Authority. *Texas Education Code* Section 65.39 provides that "The board of regents of The University of Texas System has the sole and exclusive management and control of the lands set aside and appropriated to, or acquired by, The University of Texas System." *Texas Education Code* Section 65.34 further provides that a contract must be approved by the Board or entered into in accordance with rules of the Board.

Sec. 2 Scope. This Rule governs all Real Estate Contracts, which include Real Estate Sales Contracts, Real Estate Leases, and Easements (as defined below). This Rule does not cover the transfer or acquisition of rights pertaining to the ownership and/or development of mineral interests (such as oil and gas leases, oil and gas transportation pipeline easements, and the transfer of royalty interests) under the administration of the University Lands Office.

To the extent of any conflict between the provisions of this Rule and other provisions of the Regents' *Rules and Regulations*, this Rule shall control with respect to Real Estate Contracts, and Regents' Rules 60101 and 60103 shall control with respect to the acceptance and administration of gifts of real property.

Sec. 3 Title to Real Property Interests. Title to all interests in real property of every kind or nature owned, leased, or otherwise held for the use or benefit of the U.T. System or any U.T. institution shall be held in the name of the "Board of Regents of The University of Texas System."

Sec. 4 Delegation of Authority - Real Property Management.

4.1 Office of General Counsel. The negotiation and execution of Real Estate Contracts shall be done in accordance with all guidelines promulgated by the Office of General Counsel.

4.2 Office of Business Affairs. The Board delegates to the U.T. System's Office of Business Affairs, acting through

its Real Estate Office, authority to collect and account for all rents, mortgages, and other charges relating to real property managed or supervised by the Real Estate Office. All interests in real property owned, leased, or otherwise held by the Board shall be administered and managed by the Real Estate Office, except the following:

(i) Permanent University Fund (PUF) Lands, which shall be administered and managed by the University Lands Office;

(ii) real properties used for Institutional Purposes, which shall be administered and managed by the applicable institution, subject to the requirements of this Rule and U.T. Systemwide Policies. For purposes of this Rule, “Institutional Purposes" shall mean the duties, responsibilities, missions, and purposes of U.T. System and U.T. institutions authorized under the *Texas Education Code*, but shall not include uses principally intended to generate funds for the U.T. institution; and

(iii) real property investments managed by UTIMCO.

4.3 Executive Vice Chancellor for Business Affairs. The Board delegates to the Executive Vice Chancellor for Business Affairs the authority to negotiate, execute, and deliver on behalf of the Board Real Estate Contracts and other associated documents or agreements pertaining to or regarding the transfer, acceptance, or acquisition of interests in real property owned, leased, or controlled (or to be owned, leased, or controlled) by the Board, including real property, subject to limitations in this Rule.

Except as expressly provided otherwise in this Rule, the authority granted in this Section to the Executive Vice Chancellor for Business Affairs includes the authority to:

(i) negotiate, execute, and deliver all instruments necessary and convenient relating to (a) the management, control, purchase, sale, transfer, acquisition, or disposition of any real property or interests in real property owned, leased, or controlled by the Board (including, without limitation, joint, several and undivided interests in the fee title to real

property and the acquisition or sale of mineral interests not administered by the University Lands Office); (b) easements, licenses, access rights, or permits with any length of term and for monetary or nonmonetary consideration; or (c) instruments relating to financing for such real properties, such as estoppel certificates requested by a third-party landlord or lender; and

(ii) negotiate, execute, and deliver documents and agreements commonly and reasonably undertaken in connection with the purchase, sale, lease, transfer, or other acquisition or disposition of real property, such as, without limitation, the engagement of brokers, building and environmental inspectors, appraisers, and attorneys to assist with a particular transaction, provided that the engagement of such services shall be done in accordance with the other provisions of the Regents' Rules and U.T. Systemwide Policies.

4.4 Other Requirements.

4.4.1 The Executive Vice Chancellor for Business Affairs shall consult with the institutional chief business officer or delegate prior to approving and executing any Real Estate Contract or associated instrument relating to real property used or to be used by a U.T. institution for Institutional Purposes.

4.4.2 The authority granted by this Rule to negotiate, execute, and deliver binding contracts and other associated agreements or instruments related to the acquisition of real property for Institutional Purposes applies only (i) if the real property is within a Campus Master Plan approved by the Board or (ii) the matter is an Easement or other similar agreement necessary to implement institutional projects or to serve real property owned or controlled by the Board.

Sec. 5 Delegation of Authority - PUF Lands. The Board delegates to the Executive Vice Chancellor for Business Affairs the authority to:

(i) execute and deliver on behalf of the Board contracts pertaining to or conveying interests in PUF Lands and in mineral interests in other lands owned or controlled by the Board; and

(ii) to take any action on behalf of the Board as may be necessary or desirable with regard to the management and administration of oil and gas leases and other instruments issued by the Board for Lease of University Lands regarding PUF Lands, including without limitation, promulgating forms and requiring submission of documents, records, or reports to verify gross production and disposition and market value of the production.

This authority includes all instruments necessary and convenient relating to the management, acquisition, and disposition of PUF Lands, including mineral interests, and of mineral interests in other lands owned or controlled by the Board, and licenses and surface rights for activities on PUF Lands.

Sec. 6 Delegation of Authority - Real Estate Leases. The Board delegates to each President of a U.T. institution the authority to sign Real Estate Leases, renewals, and amendments, and ancillary documents related to Real Estate Leases, renewals, and amendments for the purpose of leasing as tenant or licensing as licensee space for Institutional Purposes; provided that:

(i) the maximum initial term for each such agreement is 10 years or less, and at the end of 10 years or later there is no penalty or fee for ending the agreement; any extension or renewal term must be 10 years or less and must be under the control of the Board (i.e., the Board has the right to elect or not to elect to extend or renew the then existing term under the agreement), and there is no penalty or fee for ending the agreement at the expiration of the 10-year term or later;

(ii) the agreement contains no options to purchase the property in question;

(iii) the agreement does not require or involve the construction or substantial completion of a new building

or the substantial replacement or reconstruction of an existing building;

(iv) the President consults with the chief business officer of the institution prior to approving and executing any Real Estate Lease;

(v) the Real Estate Lease complies with applicable law, Regents' Rules, and U.T. Systemwide Policies; and

(vi) if approval by the Real Estate Office, the Office of General Counsel, or the Board is required under this Rule, the President may not sign a Real Estate Lease until the Real Estate Office or the Office of General Counsel has notified the U.T. institution either that (a) the contract has been approved by the appropriate U.T. office or the Board, as applicable; or (b) the contract may be executed subject to compliance with Section 8.2 below.

Sec. 7 Delegation of Authority - Gifts of Land. The Board delegates to the Office of External Affairs, Communications and Advancement Services the administration of real property received by the Board through a bequest, an interest in an account held in trust, a gift to establish or modify an endowment (other than the PUF), a fund functioning as an endowment, or a life income or annuity fund. The Office of External Affairs, Communications and Advancement Services shall promptly notify the Real Estate Office and the University Lands Office of gifts of surface and mineral estates in real property received, processed, and administered pursuant to this Section, to be managed by either the Real Estate Office or University Lands Office. This Section shall not apply to current purpose gifts of surface and mineral estates in real property (other than gifts received through a bequest or a trust) or additions to an existing endowment, a fund functioning as an endowment, or a life income or annuity fund if the addition does not change or modify the purpose of the endowment or fund.

The Real Estate Office and the University Lands Office shall, in accordance with applicable Regents' Rules, accept and administer the receipt of all gifts of surface and mineral estates in real property that are not processed and administered in accordance with the preceding paragraph,

unless the property is used as campus property by the institution. Once the property is owned or controlled by the Board, the institution shall administer and manage such real property as is used for Institutional Purposes.

Sec. 8 Authority Levels. The Authority Levels for Real Estate Contracts for each U.T. institution are established by Regents' Rule 10501 and U.T. Systemwide Policy UTS145, *Processing of Contracts*. Contracts in excess of Authority Levels shall be subject to the following:

8.1 A U.T. institution officer or employee must obtain (i) prior review and approval of the System Real Estate Contract by the Real Estate Office and the Office of General Counsel, and (ii) authorization from the Board to exceed the Authority Level of the institution.

8.2 If the Real Estate Office and the Office of General Counsel have previously reviewed and approved a Real Estate Contract having a total cost or monetary value in excess of the U.T. institution's Authority Level, a U.T. officer authorized under this Rule to sign the type of contract in question is authorized, prior to obtaining Board approval, to execute the Real Estate Contract if the Real Estate Contract (i) is promptly submitted for Board approval, and (ii) contains a provision, approved by the Office of General Counsel, to the effect that such portion of the obligations of the institution under the contract that are in excess of the institution's Authority Level are not binding unless and until the contract is approved by the Board.

Real Estate Leases negotiated or documented by the Texas Facilities Commission on behalf of a U.T. institution in excess of the institution's Authority Level must be approved by the Board.

Sec. 9 Contract Terms and Valuations

9.1 Total Cost or Monetary Value. The Total Cost or Monetary Value of a Real Estate Contract and examples are found in Definitions, below.

9.2 Extensions and Renewals. All potential extensions or renewals provided for in a Real Estate Contract (whether

automatic or requiring action by a party) shall be deemed exercised for purposes of calculating the total cost or monetary value of the contract.

9.3 Amendments.

9.3.1 For the purpose of calculating the total cost or monetary value of a Real Estate Contract, the total cost or monetary value of any amendment or modification to the Real Estate Contract shall be calculated on a cumulative basis with the total cost or monetary value actually incurred, received, or payable under the Real Estate Contract (or reasonably estimated as permitted in this Rule) prior to such amendment or modification.

9.3.2 Amendments to a Real Estate Contract do not require approval by the Board unless

(i) for a Real Estate Contract not previously approved by the Board, the amendment increases the cumulative total cost or monetary value of the Real Estate Contract (as amended by any prior amendments) above the Authority Level of the institution;

(ii) for a Real Estate Contract previously approved by the Board, any amendments thereto cumulatively increase the total cost or monetary value of the contract previously approved by the Board to an amount greater than 125% of the total cost or monetary value approved by the Board, unless such cumulative increases in the total cost or monetary value are less than the Authority Level of the institution (in which case Board approval is not required); or

(iii) Board approval is otherwise required by these Rules because of the particular provisions of the amendment.

9.4 Contracts for the Same Property. Any new Real Estate Contract pertaining to substantially the same real property

that was the subject of a prior Real Estate Contract between the same parties or their successors in interest shall be treated as an extension, renewal, or modification of the prior Real Estate Contract for purposes of this calculation, except in such instances where the real property in question had been totally vacated by the occupant of the real property under the prior Real Estate Contract for a period of three consecutive months or more following the expiration or termination of the prior Real Estate Contract.

9.5 Assurance of Authority. No officer or employee of U.T. System or any U.T. institution, as an individual or as a member of any association or agency, has the power to bind U.T. System or any U.T. institution by a Real Estate Contract unless the review and execution thereof is done in accordance with this Rule. The officer or employee executing any Real Estate Contract shall be responsible for assuring that he or she has the requisite authority to act on behalf of the Board and that such authority is being exercised in compliance with applicable law, the Regents' Rules, and U.T. Systemwide Policies. Such officer or employee is strongly encouraged to contact the Executive Vice Chancellor for Business Affairs or the Vice Chancellor and General Counsel with any questions regarding the nature and scope of the officer's or employee's authority.

9.6 Certification. Documents executed on behalf of the Board pursuant to authority granted under the Regents' Rules shall not require further certification or attestation.

Sec. 10 Record Keeping. The Board designates the Real Estate Office as the central repository for all Real Estate Contracts. Promptly following the execution of a Real Estate Contract by a U.T. institution, the institution shall deliver to the Real Estate Office a full, complete, and accurate electronic copy of the contract, regardless of whether such contract required the review and approval of the Real Estate Office and/or the Office of General Counsel. The Real Estate Office shall promulgate policies and processes for the maintenance of such Real Estate Contracts as part of the permanent records of its office, consistent with and subject to U.T. System's general record retention policies, but in no event shall a Real Estate Contract be maintained for a period of less than four

years following the expiration or sooner termination of the Real Estate Contract.

Sec. 11 Consultation with Real Estate Office. Upon the request of a U.T. institution, the Real Estate Office will consult with, advise, and assist the institution concerning a Real Estate Contract, regardless of the length of term, total cost, or monetary value of the contract.

3. Definitions

Real Estate Sales Contracts - A contract for the purchase, sale, exchange, transfer, or acquisition of any fee interests in real property by U.T. System and U.T. institutions.

Real Estate Leases - A contract for the lease, sublease, license, or use of real property by U.T. System and/or U.T. institutions, whether as landlord, tenant, sublandlord, subtenant, licensee, licensor, or otherwise.

Easements - The grant or acquisition by U.T. System and/or U.T. institutions of the right to cross or use real property for a specific purpose that is not terminable at the will of the grantor.

Real Estate Contracts - Real Estate Sales Contracts, Real Estate Leases, and Easements are collectively referred to in this Rule as “Real Estate Contracts.” The term includes (i) all amendments and modifications of the foregoing, and (ii) ancillary agreements to such contracts, such as (by way of example only) estoppel certificates and nondisturbance agreements for leases.

Total Cost or Monetary Value - For a Real Estate Contract, it is the net cumulative sum of all costs and expenses to be paid or all monies to be received by a U.T. institution over the term of the Real Estate Contract.

- For example, if a U.T. institution leased real property as tenant for a total rental of $950,000 and were contractually obligated to build or reimburse landlord for improvements to the premises costing an additional $100,000 above the rental, the contract would have a total cost or monetary value of $1,050,000 to the U.T. institution; however, if the landlord were obligated to pay for the improvements and received no

additional monies from the U.T. institution other than the rental, the total cost or monetary value to the U.T. institution would be $950,000.

- Total cost or monetary value includes, without limitation, expenditures for real estate brokerage commissions, expenditures to build or pay for improvements to real property not included within the rental for the real property, and reasonably anticipated operating expenses (however denominated) in excess of the base rental payable by a tenant to the landlord over the term of a Real Estate Lease.

- Total cost or monetary value also includes (i) all operational expenses payable by the institution directly to persons not parties to the Real Estate Contract, such as utility charges or janitorial costs to a third-party service provider, and (ii) items such as ad valorem taxes that are paid directly by the institution to the governmental taxing authority.

- If all or part of the consideration payable under a Real Estate Contract is of an unspecified monetary value, the institution shall make a reasoned determination of whether the total cost or monetary value of the contract, in the light of the current and reasonably anticipated circumstances, is more or less than the institution's Authority Level and shall use such determination for the purposes of this Rule. The officer or employee of the institution making such determination shall prepare a written statement outlining the basis of such determination and such determination shall be preserved as part of the record of the transaction.

- Nonmonetary consideration (for example, the receipt of services or benefits that further an Institutional Purpose) shall be considered at its fair market value for purposes of calculating the total cost or monetary value of a Real Estate Contract. If any material part of the fair market value compensation paid or received by a U.T. institution under a Real Estate Contract is nonmonetary consideration, (i) the contract must be reviewed and approved by the Real Estate Office, and (ii) the Executive Vice Chancellor of Business Affairs, with the help of the institution, shall determine the value of such nonmonetary compensation. If the consideration received by a U.T. institution under a Real Estate Contract is below fair market value, or if the consideration paid by a U.T. institution is above fair market value, the Board shall make the final determination as to the value of

the consideration paid or adequacy of the consideration received by the institution.

4. Relevant Federal and State Statutes

Texas Education Code Section 65.34 – Contracts

Texas Education Code Section 65.39 – Management of Lands Other Than Permanent University Fund Lands

5. Relevant System Policies, Procedures, and Forms

Regents' *Rules and Regulations*, Rule 10501 – Delegation to Act on Behalf of the Board

Regents' *Rules and Regulations*, Rule 60101 – Acceptance and Administration of Gifts

Regents' *Rules and Regulations*, Rule 60103 – Guidelines for Acceptance of Gifts of Real Property

The University of Texas Systemwide Policy UTS145 – Processing of Contracts

Procedures for Seeking Relief from Rate and Damage Schedule Applicable to Easements and Other Interests on University Lands

6. System Administration Office(s) Responsible for Rule

Office of Business Affairs

7. Dates Approved or Amended

Regents' Rules Revision History