

Morgan Lewis

Life Sciences Real Estate in New Jersey

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Life Sciences Real Estate in New Jersey: Overview

- New Jersey Commercial and Life Sciences Real Estate Market
- Engineering and Construction Considerations
- Environmental Developments in New Jersey
- Leasing and Sale-Leaseback Considerations

The Commercial Real Estate Market

- Presented by **John K. Cunningham**, Executive Managing Director, Colliers International



About Colliers International

- **Colliers International**
 - 61 countries, 480 offices worldwide
 - 15,000 professionals, 5,500 active sales agents
 - \$2.0 billion in revenue
 - **Colliers New Jersey operates in two offices-Parsippany and Princeton**
 - **John Cunningham**
 - Licensed New Jersey real estate salesperson since 1987
 - Specializes in tenant representation services throughout New Jersey and nationally
 - On steering committee for Colliers Life Sciences Practice Group (LSPG)
 - More than 450 completed transactions valued more than \$500 million
- Colliers LSPG**
- Provides innovative real estate solutions to the world's life sciences companies and leading research centers

New Jersey Life Sciences

New Jersey is a core life sciences cluster

- **Highest concentration of scientists in the country**
- **Ranks 4th in total research and development in the nation**
- **400 new medicines/vaccines in clinical trials or awaiting FDA approval**
- **Highly skilled labor pool**
- **Close proximity to financial markets**
- **Home to Princeton, Rutgers UMDNJ, NJIT**
- **Home to 250 biotech companies**
- **Home to 17 of 20 of the world's largest pharmaceutical companies**

Life Sciences Companies in New Jersey

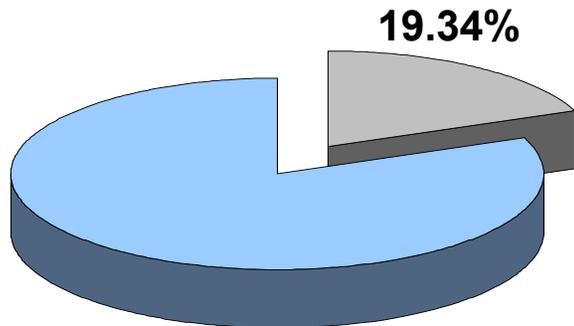
Current Trends/Issues

- **M&A, Consolidation & Outsourcing**
- **Demand Generators: Pharma, Biotech, Manufacturing**
- **Getting the facility your company needs: Existing vs. Build New**
- **State of the New Jersey economy/new administration**

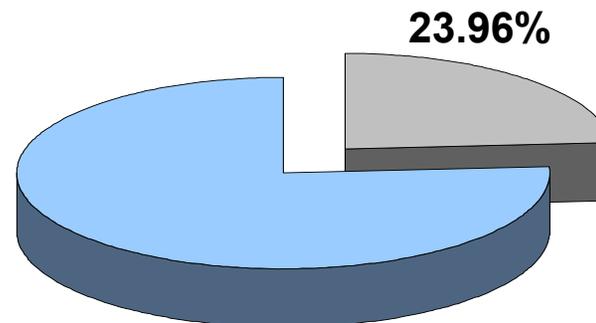
New Jersey Office Market

Total SF	163,324,887
NJ Office Market	
Direct Availability %	19.34%
Direct + Sublet Availability %	23.96%

Direct



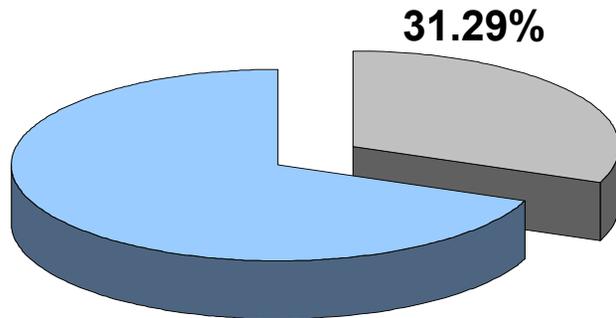
Direct + Sublet



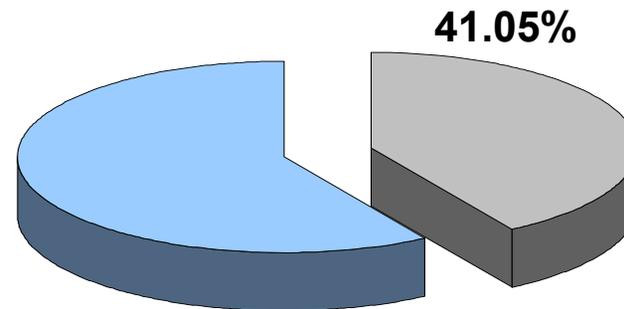
Greater Princeton Life Sciences Market

Total R&D SF	2,763,655
Greater Princeton Area	
Direct Availability %	31.29%
Direct + Sublet Availability %	41.05%

Direct



Direct + Sublet



New Jersey State Incentive Programs

- **Business Employment Incentive Program (BEIP)**
- **Business Retention and Relocation Assistance Act Grant (BRRAG)**
- **Life Science & Technology Tax Credit Programs**
- **Urban Transit Hub Tax Credit**
- **Workforce Training and Programs**
- **Net Operating Loss**

Engineering & Construction Considerations

- Presented by **Bill Hunter**,
Vice President of Life
Science Real Estate,
ProTecs, Inc.



Overview

- Significant amounts of second & third generation space in the marketplace (i.e., mature marketplace)
- Depth of differing “clean environment” research and manufacturing space
 - Pharmaceutical (branded & generic), biotechnology, medical device, contract services & semiconductor
- Varying degrees of compliance & certification
 - cGMP, cGLP, AAALAC, ISO Class 8 – 4 (Class 100k to 10)
- Varying degrees of landlord & township sophistication & experience in asset class

Key Design/Fitout Considerations

- What are you starting with?
- Keep design & improvements as generic as possible
 - Enhance subleasing options / flexibility
- Be suspicious of advertised “certifications”
 - cGMP, cGLP, AAALAC, ISO Class 8 – 4 (Class 100k to 10)
- First cost vs. operating cost considerations
- Know your township! Approval times vary
- Avoid “Project Creep”

Landlord Considerations

- NNN leases vs. full service
- Who is responsible for implementing the improvements?
- Legacy office leases
 - Appropriate design/construction review fees
 - Avoid obligatory service contracts & mandatory vendor arrangements
- Multi-tenant considerations
 - Airflow cross-contamination, solvent storage & capacity issues, sprinkler maintenance
 - Expansion capabilities with minimal operational impact

Environmental Developments in New Jersey



Licensed Site Remediation Professional (LSRP) Program

- Created by May 7, 2009 enactment of Site Remediation Reform Act (SRRRA)
- Licensing program for LSRPs
- LSRPs authorized to sign and certify reports through site investigation and cleanup process
- In most situations, New Jersey Department of Environmental Protection (NJDEP) will not review/approve reports, or issue No Further Action (NFA) letters or covenants not to sue

LSRP Power

- Determine financial assurance requirements
- Issue Response Action Outcomes (RAOs)
- Upon issuance of RAO, covenant not to sue by NJDEP automatically attaches

LSRP Responsibilities

- Affirmative obligation to report knowledge of contamination to NJDEP in many different situations
- Review and approvals subject to audit by NJDEP within three years
- LSRPs can lose license if they fail to adhere to NJDEP Technical Requirements

Application of LSRP Program

- All investigations and remediation in State of New Jersey
- Including Industrial Site Recovery Act (ISRA)
 - To get through closing, LSRP will issue a Remediation Certification (replaces Remediation Agreement)
 - Will include establishment of financial assurance
- All new cleanups, and existing cleanups after May 7, 2012

Public Outreach Rules

- NJDEP adopted rules in September 2008 requiring public outreach for remedial investigations and remediation
- Must post signs at site or send letters to property owners and tenants within 200 feet of facility
- Notify NJDEP of any sensitive receptors in the area (residences, potable wells, schools, parks, etc.)

Covenants Not to Sue in No Further Action Letters

- Signed by former Governor Corzine on January 17, 2010
- Effective immediately and retroactive to enactment of SRRA
- NFAs issued without covenant not to sue are deemed to have covenant by operation of law

Lease Considerations

- Presented by **J.J. Broderick**, Partner & Leader of Corporate Real Estate Practice, Morgan, Lewis & Bockius LLP



Sale Leaseback

- Triple Net Lease vs. “Hell or High Water” or Bondable Lease
- As-Is
- Personal Property, Equipment

Tenant Improvements

Tenant Improvements in Laboratory or Vivarium Space

- Very expensive
- Who owns?
- Tenant says paying through rent or its contribution
- Landlord wants to keep because second-generation laboratory/vivarium so profitable

Restoration

- Tenant wants option to leave or take tenant improvements and alterations
- Landlord wants option to keep or cause tenant to remove

Wires - removal

Liability

Landlord/Sublandlord Liability

- No consequential, indirect, special or punitive damages
- No liability for loss of business/work product

Sublandlord Liability

- Limited to sublandlord's interest in overlease

Tenant's Liability-Holdover

- Tenant, like landlord, wants no consequential, indirect, special, or punitive damages
- Landlord typically insists on consequential damages for holdover

Operating Expenses – Additional Rent

- Inflation base year
- Cap on controllable expenses
- Capital Expenditures
 - Landlord -7 year amortization
 - Tenant's position - New laws/savings devices

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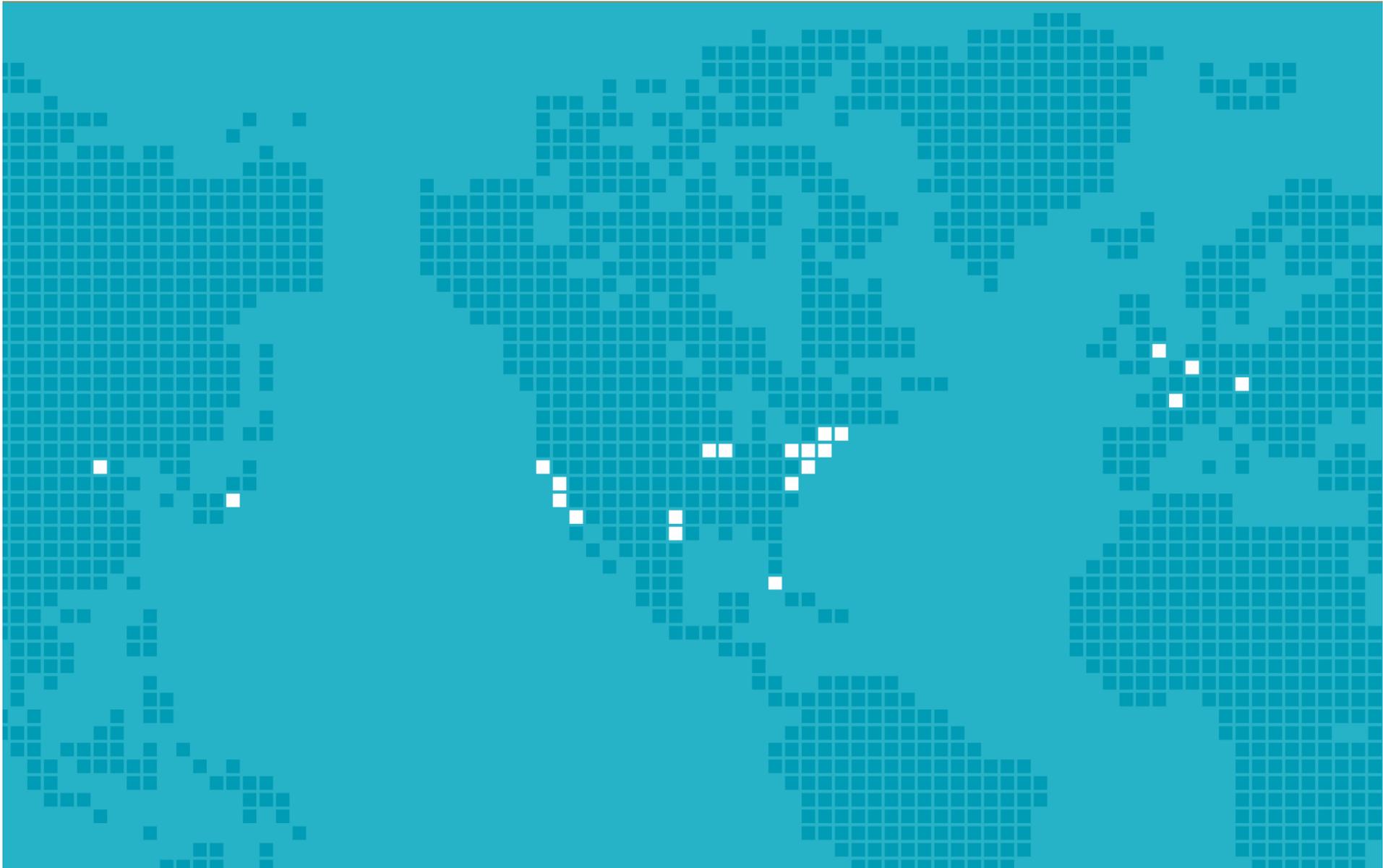
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Q&A

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