

PARKING, PEDESTRIAN, UTILITY LINE, PARTY WALL, AND ENCROACHMENT
AGREEMENT PERTAINING TO THE WESTERN MICHIGAN UNIVERSITY
IF-1 DUNBAR HALL RENOVATION

1. Date. The date of this Agreement is as of _____, 20____.

2. Parties. The parties to this Agreement are the BOARD OF TRUSTEES OF WESTERN MICHIGAN UNIVERSITY, a Michigan constitutional body corporate, whose address is Western Michigan University, Kalamazoo, Michigan 49008-5131 (the "Educational Institution"), and the STATE BUILDING AUTHORITY, a public corporation organized and existing under the authority of Act No. 183, Public Acts of Michigan, 1964, as amended, whose address is Richard H. Austin State Office Building, 430 W. Allegan Street, 1st Floor, Lansing, Michigan 48922 (the "Authority").

3. Background and Certain Definitions. Together with the State of Michigan and the Educational Institution, the Authority is involved in funding and causing the renovation of an Educational Institution building known as the IF-1 Dunbar Hall Renovation. In connection with this transaction, a parcel of real estate that will receive funding under the IF-1 Dunbar Hall Renovation has been conveyed by the Educational Institution to the Authority (the "Authority Parcel" described in attached Exhibit A). Concurrently with the Educational Institution's conveyance of the Authority Parcel to the Authority, the Authority Parcel has been leased back to the Educational Institution by the Authority under the terms and conditions of a lease dated on or about the date of this Agreement (the "Lease"). As set forth in this Agreement, the parties have agreed that, upon an Event of Default under the Lease, certain easements and agreements will spring into existence to address parking, pedestrian traffic, Utility Lines, party walls, and encroachments in connection with the Authority Parcel and in connection with certain real estate owned by the Educational Institution (the "Educational Institution Parcel" described in attached Exhibit B). This Agreement sets forth the terms and conditions of these springing easements pertaining to parking, pedestrian traffic, Utility Lines, party walls, and encroachments. In this Agreement, the term "Event of Default" has the meaning given to it in the Lease (where, generally, an "Event of Default" is any default under the terms and conditions of the Lease, including a failure to pay rent as specified by the Lease). The term "Utility Lines" means existing and/or future lines, pipes, cables, and routes for utilities including, without limitation, water, heating hot water, storm sewer, sanitary sewer, electricity, gas, telephone, emergency telephone, fire alarm, data communication, and steam.

4. Consideration. Each party acknowledges that the consideration for its receipt of rights under this Agreement is the granting of rights under this Agreement to the other party.

5. Springing Parking Facilities Easement. The Educational Institution, for itself and its successors and assigns, grants to the Authority, and to the Authority's successors and assigns, to take effect immediately and automatically upon the occurrence of an Event of Default under the Lease, an appurtenant and nonexclusive easement for parking spaces proximate to, and for the benefit of, the Authority Parcel (the "Parking Facilities"). If parking spaces do not exist on the Educational Institution Parcel on the date of the Event of Default under the Lease, this paragraph and the following paragraph of this Agreement are null and void. If parking spaces exist on the Educational Institution Parcel on the date of the Event of Default under the Lease, the Educational Institution will use its best efforts, in good faith, to identify a number of parking spaces sufficient to serve the reasonable day-to-day needs of the Authority Parcel, and such identified spaces will constitute the Parking Facilities that are the subject of this paragraph and the following paragraph. The Parking Facilities may be located on any portion or portions of the Educational Institution Parcel, at the discretion of the Educational Institution; provided, however, that the location of the Parking Facilities must be reasonably convenient to the Authority Parcel. The precise location of the Parking Facilities must be designated by the Educational Institution at the time that the parking easement springs into existence (and not later than 120 days after the Event of Default giving rise to the easement). The Authority's use of the Parking Facilities is subject to the Educational Institution's reasonably exercised discretion in the establishment and maintenance of parking fees and parking regulations; provided, however, that the Educational Institution's fees and regulations must not make it unreasonably burdensome or unfeasible for the Authority to use the Parking Facilities.

6. Maintenance of Parking Facilities. After the Parking Facilities easement springs into existence, the Educational Institution, at its expense, will maintain (or cause to be maintained) the Parking Facilities in serviceable condition in view of their intended use and in a manner that does not unreasonably interfere with the use of the Authority Parcel. After the Parking Facilities easement springs into existence, if the Educational Institution fails to maintain (or cause to be maintained) the Parking Facilities in serviceable condition, and/or the maintenance unreasonably interferes with the use of the Authority Parcel, the Authority may give written notice to the Educational Institution specifying the maintenance failure and/or the unreasonable interference. If, within twenty (20) days after receipt of the Authority's written notice, the Educational Institution fails to proceed with due diligence to perform maintenance and/or cease interference, the Authority may, at its option, spend its own funds (in amounts that are reasonable in light of the objectives) to effect maintenance and/or alleviate interference, and the Educational Institution will promptly reimburse the Authority for all such expenditures.

7. Springing Mutual Pedestrian Easements. The Educational Institution, for itself and its successors and assigns, grants to the Authority, and to the Authority's successors and assigns, to take effect immediately and automatically upon the occurrence of an Event of Default under the Lease, an appurtenant and nonexclusive easement for the benefit of the Authority Parcel for pedestrian ingress, pedestrian egress, and pedestrian passage on, over, upon, through, and across the Educational Institution Parcel for the purposes of allowing pedestrians (a) to walk freely between the Educational Institution Parcel and the Authority Parcel, (b) to walk freely between

public streets and the Authority Parcel, by way of the Educational Institution Parcel; and (c) to continue to use passageways, entranceways, corridors, tunnels, stairwells, hallways, ramps, roads, and/or sidewalks on the Educational Institution Parcel that are necessary and/or convenient for ingress to and egress from the Authority Parcel; provided, however, that the Educational Institution may, from time to time, regulate pedestrian passage on, over, upon, through, and across the Educational Institution Parcel in a manner that is consistent with the Educational Institution's utilization, from time to time, of the Educational Institution Parcel. The Authority, for itself and its successors and assigns, grants to the Educational Institution, and to the Educational Institution's successors and assigns, to take effect immediately and automatically upon the occurrence of an Event of Default under the Lease, an appurtenant and nonexclusive easement for the benefit of the Educational Institution Parcel for pedestrian ingress, pedestrian egress, and pedestrian passage on, over, upon, through, and across the Authority Parcel for the purposes of allowing pedestrians to walk freely between the Educational Institution Parcel and the Authority Parcel; provided, however, that the Authority may, from time to time, regulate pedestrian passage on, over, upon, through, and across the Authority Parcel in a manner that is consistent with the Authority's utilization, from time to time, of the Authority Parcel.

8. Maintenance of Pedestrian Easements. After the pedestrian easements spring into existence, the Educational Institution, at its expense, will maintain (or cause to be maintained) the Educational Institution Parcel in serviceable condition in view of its intended use by pedestrians, and in a manner that does not unreasonably interfere with pedestrian use of the Authority Parcel.

9. Springing Mutual Utility Line Easements. The Educational Institution, for itself and its successors and assigns, grants to the Authority, and to the Authority's successors and assigns, to take effect immediately and automatically upon the occurrence of an Event of Default under the Lease, an appurtenant and nonexclusive easement for the benefit of the Authority Parcel for purposes of installing, constructing, connecting to, operating, maintaining, repairing and replacing Utility Lines on, over, upon, through, under, and across the Educational Institution Parcel; subject, however, to the following conditions: (a) the Authority may not utilize the Utility Line easement in a manner that unreasonably interferes with the Educational Institution's use of the Educational Institution Parcel; (b) the Authority will use its best efforts, in good faith, to utilize the Utility Line easement in a manner that does not interfere with current or future improvements on the Educational Institution Parcel; (c) the Authority will use its best efforts, in good faith, to coordinate Authority Utility Lines with Educational Institution Utility Lines to promote the efficient use of Utility Lines and to discourage the duplication of Utility Lines; (d) any installing, constructing, connecting to, operating, maintaining, repairing and/or replacing Utility Lines by the Authority will not be at the Educational Institution's expense; and (e) any damage to the Educational Institution Parcel caused by the Authority's use of this Utility Line easement will be promptly repaired but not at the Educational Institution's expense. Similarly, the Authority, for itself and its successors and assigns, grants to the Educational Institution, and to the Educational Institution's successors and assigns, to take effect immediately and automatically upon the occurrence of an Event of Default under the Lease, an appurtenant and nonexclusive easement for the benefit of the Educational Institution Parcel for purposes of installing, constructing, connecting to, operating, maintaining, repairing and replacing Utility Lines on, over, upon, through, under, and across the Authority Parcel; subject, however, to the following conditions: (a) the Educational Institution may not utilize the Utility Line easement in a manner that unreasonably interferes with

the Authority's use of the Authority Parcel; (b) the Educational Institution will use its best efforts, in good faith, to utilize the Utility Line easement in a manner that does not interfere with current or future improvements on the Authority Parcel; (c) the Educational Institution will use its best efforts, in good faith, to coordinate Educational Institution Utility Lines with Authority Utility Lines to promote the efficient use of Utility Lines and to discourage the duplication of Utility Lines; (d) any installing, constructing, connecting to, operating, maintaining, repairing and/or replacing Utility Lines by the Educational Institution will be at the Educational Institution's expense; and (e) any damage to the Authority Parcel caused by the Educational Institution's use of this Utility Line easement will be promptly repaired by the Educational Institution at the Educational Institution's expense.

10. Maintenance of Utility Lines. After the Utility Line easements spring into existence, the Educational Institution, at its expense, will maintain (or cause to be maintained) Educational Institution Utility Lines in serviceable condition in view of their intended use and in a manner that does not unreasonably interfere with the use of the Authority Parcel. After the Utility Line easements spring into existence, if the Educational Institution fails to maintain (or cause to be maintained) Educational Institution Utility Lines in serviceable condition, and/or the maintenance unreasonably interferes with the use of the Authority Parcel, the Authority may give written notice to the Educational Institution specifying the maintenance failure and/or the unreasonable interference. If, within twenty (20) days after receipt of the Authority's written notice, the Educational Institution fails to proceed with due diligence to perform maintenance and/or cease interference, the Authority may, at its option, spend its own funds (in amounts that are reasonable in light of the objectives) to effect maintenance and/or alleviate interference, and the Educational Institution will promptly reimburse the Authority for all such expenditures.

11. Springing Party Wall Agreement. In this Agreement, the term "Party Wall" means a common boundary line between real estate improvements on the Authority Parcel and real estate improvements on the Educational Institution Parcel. For example (but without limiting the generality of the definition), a Party Wall would exist if (a) a building or other walled structure on the Authority Parcel and a building or other walled structure on the Educational Institution Parcel share a common wall, and/or (b) a passageway, entranceway, corridor, tunnel, stairwell, hallway, ramp, road, and/or sidewalk on one Parcel connects, interfaces, and/or adjoins with an improvement on the other Parcel. The following Party Wall agreement (consisting of the following subparagraphs) will take effect immediately and automatically upon the occurrence of an Event of Default under the Lease:

- (a) Either party, at its discretion, may maintain and repair a Party Wall in any reasonable manner; provided that such maintenance and/or repair does not, from the vantage point of the other party's Parcel, materially alter the structure, function, or appearance of the Party Wall.
- (b) If a party causes damage or destruction to a Party Wall, the damaging party must repair (or cause to be repaired) the damage in a manner that does not, from the vantage point of the other party's Parcel, materially alter the structure, function, or appearance of the Party Wall.

- (c) If a Party Wall is damaged or destroyed and neither party is a material cause of the damage or destruction, then the parties may re-build, abandon, re-design, expand, contract, or otherwise address the damage in any mutually agreeable manner. If the parties reach no mutual agreement within ninety (90) days after the date of the damage (or, if longer, within ninety days after applicable insurance is adjusted), then the Party Wall must be repaired substantially to its pre-damage condition, and the cost of the repair must be borne equally by the parties.

12. Springing Encroachments Agreement. In this Agreement, the term "Encroachment" means Authority real estate (such as an overhang, eave, building, sidewalk, roadway, tree, or landscaping) located on the Educational Institution Parcel, or, conversely, Educational Institution real estate (such as an overhang, eave, building, sidewalk, roadway, tree, or landscaping) located on the Authority Parcel. After the occurrence of an Event of Default under the Lease, each party will tolerate the Encroachments of the other party if the following conditions are met: (a) no part of an Encroachment is more than ten (10) feet distant from its rightful Parcel, (b) no part of an Encroachment interferes materially with the use and enjoyment by the non-encroaching party of the non-encroaching party's Parcel, and (c) the encroaching party, at its expense, maintains its Encroachments.

13. Use of Educational Institution Parcel. This Agreement does not restrict the Educational Institution in its use, development, expansion, contraction, and/or improvement of the Educational Institution Parcel; provided, however, that the Educational Institution may not use, develop, expand, contract, and/or improve the Educational Institution Parcel in a manner that materially obstructs the reasonable establishment, operation, and maintenance of the easements and agreements contemplated by this Agreement (easements and agreements that address parking, pedestrian traffic, Utility Lines, party walls, and encroachments in connection with the Authority Parcel and the Educational Institution Parcel). In this context, the "expansion" of the Educational Institution Parcel means the expansion of the boundaries of the Educational Institution Parcel, construction of additional improvements within the boundaries of the Educational Institution Parcel, and/or the acquisition of additional Educational Institution owned property within the boundaries of the Educational Institution Parcel. The "contraction" of the Educational Institution Parcel means the contraction of the boundaries of the Educational Institution Parcel, removal of improvements within the boundaries of the Educational Institution Parcel, and/or the sale of Educational Institution owned property within the boundaries of the Educational Institution Parcel.

14. Indemnification. The Educational Institution, for itself and its successors and assigns, shall indemnify, defend, and hold harmless the Authority, and its successors and assigns, against all of the Authority's losses, injuries or damages arising out of the exercise by the Educational Institution (or by its successors, assigns, students, agents, employees, tenants, licensees, and/or invitees) of the Educational Institution's easement rights under this Agreement.

15. Termination. This Agreement and all easements described in this Agreement are immediately and automatically terminated, null, and void upon fee title to the Authority Parcel re-vesting in the Educational Institution after termination of the Lease.

16. Binding Nature. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and assigns. Further, this Agreement runs with the land and binds and inures to the benefit of the Educational Institution Parcel and the Authority Parcel.

17. Notices. Any notice or other writing given pursuant to this Agreement will be sufficiently given when hand delivered, mailed by registered mail, mailed by certified mail, mailed by first class mail, or mailed by overnight mail (such as UPS or Federal Express) to the following addresses, or to such other address as a party may give to the other party by written notice of change of address:

Educational
Institution: Western Michigan University
Kalamazoo, Michigan 49008-5131
Attention: President

Authority: State Building Authority
Richard H. Austin State Office Building
430 W. Allegan Street, 1st Floor
Lansing, Michigan 48922
Attention: Executive Director

18. Severability. If any provision of this Agreement, or the application of this Agreement to any party or circumstance, is, for any reason and to any extent, invalid or unenforceable, such provision or application is to that extent stricken from the Agreement, and the remainder of the Agreement, and/or the application of the provision to other persons or circumstances, is not affected.

19. Transfer Tax Exemption. This instrument is exempt from county and state transfer taxes pursuant to MCLA § 207.505(h) and MCLA § 207.526(h)(i), respectively.

The parties have caused this Agreement to be executed and delivered as of the date set forth in paragraph 1 above.

[Signatures begin on the following page.]

STATE BUILDING AUTHORITY,
a public corporation

Andrew Boettcher, Executive Director

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

The foregoing instrument was acknowledged before me in Ingham County, Michigan this ____ day of _____, 20____, by Andrew Boettcher, the Executive Director of the State Building Authority, a public corporation, on behalf of the public corporation.

_____, Notary Public
_____ County, Michigan
My Commission Expires: _____
Acting in Ingham County, Michigan

BOARD OF TRUSTEES OF WESTERN
MICHIGAN UNIVERSITY, a Michigan
constitutional body corporate

By: _____

Its: Treasurer

By: _____

Its: Assistant Treasurer

STATE OF MICHIGAN)
)ss.
COUNTY OF KALAMAZOO)

The foregoing instrument was acknowledged before me in Kalamazoo County, Michigan, this
____ day of _____, 20__ by _____, as Treasurer of the Board of Trustees of
Western Michigan University, a Michigan constitutional body corporate, on behalf of the constitutional
body corporate.

Notary Public

County, Michigan
Acting in Kalamazoo County, Michigan
My Commission Expires: _____

STATE OF MICHIGAN)
)ss.
COUNTY OF KALAMAZOO)

The foregoing instrument was acknowledged before me in Kalamazoo County, Michigan, this _____ day of _____, 20____ by _____, as Assistant Treasurer of the Board of Trustees of Western Michigan University, a Michigan constitutional body corporate, on behalf of the constitutional body corporate.

Notary Public

County, Michigan
Acting in Kalamazoo County, Michigan
My Commission Expires: _____

This instrument drafted by
and after recording return to:

John T. Schuring
Dickinson Wright PLLC
200 Ottawa Ave., N.W.
Suite 1000
Grand Rapid, MI 49503

EXHIBIT A

Authority Parcel Relating to Western Michigan University IF-1 Dunbar Hall Renovation

Legal Description

A parcel of land situated in the City of Kalamazoo, County of Kalamazoo, State of Michigan, and described as follows to-wit:

A parcel of land situated in the South one-half of Section 20, Town 2 South, Range 11 West, City of Kalamazoo, Kalamazoo County, Michigan more particularly described as commencing at the North one-quarter corner of Section 20, thence S88°33'59"E, along the North line of Section 20, 992.94 feet; thence S00°00'00"E 3102.51 feet to the point of beginning; thence N00°00'00"W 32.91 feet; thence N89°08'27"W 67.32 feet; thence N01°01'17"E 148.25 feet; thence S88°58'43"E 144.92 feet to the extension of a building wall; thence S44°35'44"E, along said building wall and its extension, 94.57 feet; thence S89°19'48"E 128.09 feet; thence S00°56'19"W 113.94 feet; thence N89°19'46"W 272.85 feet to the point of beginning.

EXHIBIT B

Educational Institution Parcel Relating to Western Michigan University IF-1 Dunbar Hall Renovation

The "Educational Institution Parcel" is the real estate owned from time to time by the Educational Institution within the following described boundaries, which boundaries may also be described by a map, drawing, sketch, or survey attached to this Exhibit B:

[Describe School Parcel]

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