

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

VOTE

Authorizing the City of Lowell (“Seller”) through its City Council to enter into a Purchase and Sales Agreement with University of Massachusetts Building Authority (“Buyer”) of 100 Carlson Avenue, Newton, MA 02459 for the sale and transfer of the Edward A. LeLacheur Park in the City of Lowell.

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WHEREAS, the City of Lowell is the owner of the Edward A. LeLacheur Park, hereinafter referred to as the “Real Property”, as further shown on attachment “A” and certain Intangible Property, Leases, Property Documents, and Personal Property and is desirous of selling the aforementioned property; and

WHEREAS, the Buyer is desirous of acquiring said Real Property; and

WHEREAS, the Buyer and the Seller have agreed to a Purchase and Sales Agreement and Term Sheet which is incorporated herein and made a part hereof;

WHEREAS, the City of Lowell deems that such sale and transfer is in the best interest of the City.

NOW, THEREFORE, BE IT VOTED BY THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

That the City of Lowell, through this Council, hereby authorizes the sale and transfer of the Edward A LeLacheur Park in the City of Lowell.

BE IT FURTHER VOTED:

That the City of Lowell hereby ratifies and confirms all actions taken to date by its City Manager in connection with or in furtherance of this transfer of real property.

BE IT FURTHER VOTED:

That the City of Lowell, to whatever extent necessary, hereby authorizes the Lowell Arena and Civic Stadium Commission, to transfer the real property as described herein.

BE IT FURTHER VOTED:

That the City Manager on behalf of the City of Lowell is hereby authorized to enter into a Purchase and Sales Agreement with University of Massachusetts Building Authority, (“Buyer”) of 100 Carlson Avenue, Newton, MA 02459 for the sale of the Edward A. LeLacheur Park in the City of Lowell for sum of One Million and 00/100 (\$1,000,000.00) Dollars.

BE IT FURTHER VOTED:

That the Purchase and Sales Agreement and the Term Sheet and any amendments thereto contain such other terms and conditions as the City Manager deems to be in the best interest of the City of Lowell.

BE IT FURTHER VOTED:

That City Manager is authorized to execute and deliver, and to accept on behalf of City of Lowell any and all other documents related to this matter.

UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

July \_\_, 2022

Civic Stadium Commission  
J.F.K. Civic Center  
375 Merrimack Street  
Lowell, Massachusetts 01852

RE: Offer to Purchase Edward A. LeLacheur Stadium, 450 Aiken Avenue,  
Lowell, Massachusetts (the "Property")

This Offer to Purchase ("Offer") is submitted with regard to the Property and sets forth the general terms and conditions upon which the Purchaser (defined below) would be willing to negotiate a Purchase and Sale Agreement for the acquisition of the Property.

**1. Purchaser.**

The University of Massachusetts Building Authority ("UMBA"), or another entity designated by the University of Massachusetts ("UMass").

**2. Seller.**

The Civic Stadium Commission, as defined by Chapter 325 of the Acts of 1994, as amended by Chapter 79 of the Acts of 1995 and Chapter 19 of the Acts of 2010, and with the approval of The City of Lowell ("City").

**3. Property.**

The land, stadium and improvements commonly known as Edward A. LeLacheur Park, as more particularly described on **Exhibit A** attached hereto.<sup>1/</sup>

**4. Purchase Price and Terms.**

A. \$1,000,000.00 cash, to be paid at closing; and

B. In the event that the City receives a certain \$750,000 federal grant earmarked for the Property, that grant shall be transferred to the Purchaser. Additionally, the Seller shall transfer to the Purchaser any existing, unencumbered Property reserves and/or associated unencumbered maintenance funds held by the Seller for the benefit of the Property. The Seller shall also cooperate with Purchaser after the Closing to obtain federal, state or private grants, awards or other funding for the improvement, repair and maintenance of

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<sup>1/</sup> Legal description or plan to be attached.

the Property. The parties shall establish a mutually agreeable structure for obtaining, holding and distributing all available funds for the Property.

**5. Terms and Conditions.**

- A. Title. At Closing, Seller shall deliver to Purchaser good and indefeasible fee simple title to the Property, subject to the permitted exceptions set forth in the Purchase and Sale Agreement between the parties.
- B. Condition on Delivery. The Property will be sold as-is and delivered to Purchaser by Seller in its existing condition. Purchaser will not seek reimbursement from Seller for any costs it has incurred with respect to the Property. The City (including all departments, boards and commissions) shall (i) waive and release the Seller, Purchaser and Property from any liability, responsibility or obligations, including any existing fines, orders or violations of any laws, codes, rules, or regulations (“Violations”) involving any applicable building codes, over which the City has jurisdiction; and (ii) not seek to enforce these Violations against the Purchaser at a later date, provided that the Purchaser commits to spend up to Three Million Dollars (\$3,000,000) over five (5) years to cure any such Violations and for the general improvements, maintenance and upkeep of the Property. Any waiver and release as described above shall not apply to any 21E violations, should such violations be discovered on the Property. In such an event, the Purchaser will waive and release the City from any associated enforcement action or liability.
- C. Purchase and Sale Agreement. The execution and delivery of a mutually acceptable Purchase and Sale Agreement as more particularly described in Section 10 hereof.
- D. Due Diligence. Purchaser shall have a period of sixty (60) days from the acceptance by Seller of this Offer (the “Due Diligence Period”) to conduct due diligence inspections, investigations and tests usual and customary for the acquisition of commercial properties, including, without limitation, title, survey and physical inspections. After acceptance by Seller of this Offer, Seller and Purchaser shall execute an access agreement in a form mutually acceptable to Seller and Purchaser (the “Access Agreement”) as a condition to Purchaser’s right to access the Property and review due diligence documentation. Upon execution of the Access Agreement, Seller shall deliver to Purchaser copies of any documents in its possession and control related to the Property, including, without limitation, title insurance policies and other title materials, surveys, plans, permits, environmental reports and sampling results, engineering and geotechnical reports, leases, licenses and any other materials reasonably requested by Purchaser and in Seller’s possession or control. Seller will cooperate fully with Purchaser to facilitate inspection of and access to the Property for Purchaser’s agents and contractors.
- E. Approvals. Purchaser’s proposed purchase of the Property is subject to the approval of the Members of UMBA Board, any other applicable governing board and any other regulatory agency (the “Purchaser Approvals”). After acceptance of this Offer and

prior to execution of the Agreement (as defined in Section 10 below), Purchaser shall seek the Purchaser Approvals. Such Purchaser Approvals shall be obtained by Purchaser prior to execution of the Agreement.

Seller's proposed sale of the Property is subject to the approval of the Secretary of the Executive Office of Administration and Finance and/or legislative authorization, approval of the Lowell City Council and the Lowell Civic Commission (the "Purchaser Approvals"). After acceptance of this Offer and prior to execution of the Agreement (as defined in Section 10 below), Seller shall seek the Seller Approvals. The Seller approvals shall include the dissolution of the Civic Commission and any other entity or authority currently operating the Property. Such Seller Approvals shall be obtained by Seller prior to execution of the Agreement.

- F. City Use. At Closing, the parties will enter into an agreement that will provide the Seller to use best efforts for the City of Lowell to use the Property annually for a Fourth of July celebration and for the Lowell High School graduation exercises. The City may also use the property for an additional three events, as well as during a State of Emergency. There shall be no fee or charge payable to the Seller for such use, provided the City shall be responsible for insurance, any set-up, break-down, clean-up and similar out-of-pocket expenses, to restore any damage to the Property resulting from such events, and to defend, indemnify and hold harmless the Purchaser from and against any claims or other liability for personal injury or property damage resulting from such events.
- G. Right of First Offer. Purchaser may not sell the Property in fee simple to a third party for ten (10) years after the Closing unless it first offers to sell the Property to the City of Lowell at Fair Market Value.
- H. Naming. Upon the sale of the Property to the Purchaser the parties agree that the ballpark will be named UMass Lowell LeLacheur Park, or another similar name. The Purchaser shall maintain the name LeLacheur in the name of the ballpark in honor of Edward A. LeLacheur unless otherwise consented to by the City of Lowell.

**6. Closing.**

The Closing will take place thirty (30) days after the end of the Due Diligence Period.

**7. Closing Costs.**

Purchaser will be responsible for all of Purchaser's due diligence costs and expenses, including title and survey costs. Although the Seller would be otherwise responsible for the Massachusetts deed stamps excise tax cost, the parties recognize that the Seller is tax exempt. All other closing cost related to the Property shall be allocated according to the standards for such allocation in Boston, Massachusetts. Survey costs and the costs for any extended coverage or endorsements to the Owner's Title Policy (including any modification of the

survey exception) will be the responsibility of the Purchaser. Each party shall be responsible for its own legal costs and expenses.

**8. Brokerage Commissions.**

Seller and Purchaser each warrant and represent to the other that it has not engaged or dealt with any broker or finder in connection with the proposed purchase and sale of the Property.

**9. Confidentiality.**

Purchaser and Seller agree to hold in strictest confidence the discussions between the parties and the terms of this Offer and the Agreement, except for any disclosures required by law, including, without limitation, any securities laws or filings made by Seller or its affiliates. Purchaser also agrees to hold in strictest confidence all information contained in the materials supplied by Seller to Purchaser for purposes of due diligence review and the results of any of Purchaser's due diligence investigations or studies. Purchaser may share data and discuss pertinent aspects of the Property and transaction with its team of outside consultants and attorneys as well as its investors, as it deems appropriate.

**10. Purchase and Sale Agreement.**

Purchaser shall prepare the initial draft of the Purchase and Sale Agreement and deliver it to Seller within seven (7) business days subsequent to the Due Diligence Period reflecting the terms and conditions herein (the "Agreement"). Both parties agree to proceed diligently and in good faith to the execution of a formal purchase contract within thirty (30) days subsequent to the Due Diligence Period. All dates set forth herein may be changed by the mutual agreement of the parties as set forth in the Agreement. Each party shall bear its own legal costs in negotiating the Agreement. If for any reason whatsoever, the Agreement is not executed and delivered by both parties on or before the date that is thirty (30) days subsequent to the Due Diligence Period, then either Seller or Purchaser may elect to terminate this Offer by delivering written notice of termination to the other party and this Offer shall be of no further force and effect except for the provisions specifically set forth herein in Section 9 (the "Binding Provisions"). Notices to as required hereunder shall be provided to the following:

Seller: Office of the City Manager, and  
Office of the City Solicitor  
375 Merrimack Street  
Lowell, Massachusetts 01852

Purchaser: University of Massachusetts Building Authority  
100 Carlson Avenue  
Newton, MA 02459  
Attention: Barbara Kroncke, Executive Director

If the terms of this purchase proposal meet with your acceptance, please execute a copy of this

proposal and return a copy to the undersigned. If an executed copy of this Offer is not received within five (5) days of the date hereof, the terms and conditions of this Offer will expire. This Offer may be executed in counterparts.

This proposal should not be construed as a binding or final purchase offer commitment. Execution of the Agreement is a condition precedent to the creation of a binding contract. Other than the Binding Provisions, it is agreed that this Offer does not bind either Purchaser or Seller nor does it create any rights or obligations. This Offer constitutes only the basic terms upon which the parties intend to negotiate an Agreement and may not be the basis of a claim based on detrimental reliance or any other theory which would bind either Purchaser or Seller.

[Signatures on following page]

Sincerely,

University of Massachusetts Building Authority

By: \_\_\_\_\_

AGREED AND ACCEPTED BY:

Civic Stadium Commission

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



Exhibit A

Legal Description or Site Plan

127128238v.4

**Term Sheet RE: Offer to Purchase Edward A. LeLacheur Stadium, 450 Aiken Avenue, Lowell, Massachusetts (the “Property”)**

**1. Purchase Price and Terms.**

- \$1,000,000.00 cash, to be paid at closing; and
- In the event that the City receives a certain \$750,000 federal grant earmarked for the Property, that grant shall be transferred to the Purchaser.
- Additionally, the Seller shall transfer to the Purchaser any existing, unencumbered Property reserves and/or associated unencumbered maintenance funds held by the Seller for the benefit of the Property.

**2. Terms and Conditions.**

- The Property will be sold as-is and delivered to Purchaser by Seller in its existing condition.
- Included in this section is a release by the City as to any currently existing Building Code violations; and an agreement to hold off on any enforcement action of any Building Code violations for a 5-year period while the Purchaser commits up to a \$3M investment during this period. Pursuant to this section, the City will be released from any potential 21E claims.
- Purchaser shall have a period of sixty (60) days from the acceptance by Seller of this Offer (the “Due Diligence Period”) to conduct due diligence inspections, investigations and tests usual and customary for the acquisition of commercial properties, including, without limitation, title, survey and physical inspections.
- Purchaser’s proposed purchase of the Property is subject to the approval of the Members of UMBA Board, any other applicable governing board and any other regulatory agency (the “Purchaser Approvals”).
- Seller’s proposed sale of the Property is subject to the approval of the Secretary of the Executive Office of Administration and Finance and/or legislative authorization, approval of the Lowell City Council and the Lowell Civic Commission (the “Purchaser Approvals”).
- The Purchaser will maintain the name LeLacheur in the name of the ballpark.
- For the next ten years, the Purchaser commits to not sell the Property to a third party, unless it first offers to sell the Property to the City at FMV.

**3. City Use.**

- The City of Lowell can use the Property annually for a Fourth of July celebration and for the Lowell High School graduation exercises. The City may also use the property for an additional three events, as well as during a State of Emergency. There shall be no fee or charge payable to the Seller for such use, provided the City shall be responsible for insurance, any set-up, break-down, clean-up and similar out-of-pocket expenses.

**4. Closing.**

Will take place thirty (30) days after the end of the Due Diligence Period.

**5. Confidentiality.**

Purchaser and Seller agree to hold in strictest confidence the discussions between the parties and the terms of this Offer and the Agreement, except for any disclosures required by law, including, without limitation, any securities laws or filings made by Seller or its affiliates.