

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

VOTE

Authorizing the City Manager to execute a Maintenance Easement between the Commonwealth of Massachusetts acting by and through the University of Massachusetts at Lowell, the University of Massachusetts Building Authority and the City of Lowell, located within certain parcels of land situated on the southerly side of Salem Street and the southerly side of Pawtucket Street, in the City of Lowell.

The City Engineers have reviewed the easement and have reported that the easement is acceptable.

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

That the City Manager be and he is hereby authorized to execute a Maintenance Easement between the Commonwealth of Massachusetts acting by and through the University of Massachusetts at Lowell, the University of Massachusetts Building Authority and the City of Lowell, located within certain parcels of land situated on the southerly side of Salem Street and the southerly side of Pawtucket Street, in the City of Lowell. Said Easement shall be in the form or substantially the form attached hereto.

BE IT FURTHER VOTED:

That any cost of recording the Easement and related Plans shall be at the expense of the Commonwealth of Massachusetts acting by and through the University of Massachusetts at Lowell.

V:easement:umbaand umlpawtucketandsalem

GRANT OF EASEMENT

THIS GRANT OF EASEMENT is made this _____ day of _____, 2017, by the CITY OF LOWELL, a municipal corporation of the Commonwealth of Massachusetts, having an address at City Hall, 375 Merrimack Street, Lowell, Massachusetts 01852, acting by and through its City Council (the “CITY”) in favor of the UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY, a body politic and corporate and public instrumentality of the Commonwealth of Massachusetts created by Chapter 773 of the Acts of 1960, having an address at 225 Franklin Street, Boston, Massachusetts 02110 (“UMBA”) and the UNIVERSITY OF MASSACHUSETTS AT LOWELL, a public institution of higher learning, having an address at One University Avenue, Lowell, Massachusetts 01854 (the “UNIVERSITY”).

The CITY is the owner of a parcel of land in the City of Lowell, Middlesex County, Commonwealth of Massachusetts, a portion of the rights-of-way for Pawtucket Street and Salem Street, containing approximately 7158 square feet and shown as “Proposed Easement “A” Area” on the Plan hereinafter referenced and as described in Exhibit A attached hereto (the “CITY Parcel”), and as more particularly shown on the plan entitled “Maintenance Easement Plan of Land in Lowell, MA”, University Crossing, dated January 23, 2017, prepared for University of Massachusetts – Lowell by Hancock Associates, attached hereto as Exhibit B (the “Plan”). UMBA is the owner of land in Lowell, Middlesex County, Massachusetts, abutting the CITY Parcel, as more particularly shown on the Plan (the “UMBA Parcel”). The UNIVERSITY occupies the UMBA Parcel for UNIVERSITY purposes. UMBA and the UNIVERSITY desire an easement over, across, in, under, upon and within the CITY Parcel for the purpose of installing, maintaining, using, inspecting, repairing, altering, constructing, operating, improving, planting, and replacing grass, plants, trees, tree grates, planters, lighting fixtures, signage, benches, monuments, trash receptacles, sculptures, paved parking areas (as shown on the Plan), guardrails, fencing, and associated equipment.

NOW, THEREFORE, for and in consideration of One Dollar and the mutual promises, agreements and covenants herein contained, the parties hereby agree as follows:

1. The CITY hereby grants, transfers and delivers to UMBA, its successors and assigns, the perpetual, nonexclusive right and easement over, across, in, under, upon and within the CITY Parcel shown as “Proposed Easement “A” Area” on the Plan (the “Easement Area”) to install, maintain, use, inspect, repair, alter, construct, operate, improve, plant and replace grass, plants, trees, tree grates, planters, lighting fixtures, signage, benches, monuments, trash receptacles, sculptures, paved parking areas (as shown on the Plan), guardrails, fencing, and electrical infrastructure, sprinklers, water lines, and irrigation equipment serving the same and all appurtenances, fittings and equipment necessary or related thereto (hereinafter collectively called the “Facilities”), and, in connection therewith, the right to enter upon and to pass along the CITY Parcel for all of the above purposes and to do all other acts incidental to the foregoing, including the right to enter upon and to pass along and over the CITY Parcel for ingress and egress to the

UMBA Parcel. The rights granted herein shall be subject to the right of the public to use the sidewalks on the CITY Parcel for pedestrian travel and to the CITY's right to maintain utilities within the Easement Area and its right to access said utilities by means of manholes within the Easement Area for purposes of maintenance and repair of the utilities. In the exercise of its rights under this Agreement, UMBA shall use reasonable efforts not to interfere with the pedestrian use of the CITY Parcel or the utilities beneath said sidewalk.

2. The CITY acknowledges and agrees that while UMBA is the owner of the UMBA Parcel, the UNIVERSITY, as the occupant of the UMBA Parcel, will be the party responsible for installing, maintaining, using, inspecting, repairing, altering, constructing, operating, improving, planting and replacing the Facilities.

3. In the exercise of any of the rights granted hereunder, UMBA, the UNIVERSITY, and their employees, agents, licensees and contractors entering upon the CITY Parcel do so at their own risk.

4. To the extent allowed by law, the UNIVERSITY agrees to hold the CITY harmless and to exonerate, indemnify and defend the CITY and its employees from and against any and all claims, liabilities and the reasonable costs and expenses associated therewith asserted by or on behalf of any person, entity, firm, corporation or public authority on account of bodily injury, death, or property damage arising out of any act or omission of the UNIVERSITY in connection with this Grant of Easement or as a result of any use of or passage or travel over or upon the Easement Area by the UNIVERSITY or by any person claiming by, through or under the UNIVERSITY.

5. UMBA and the UNIVERSITY agree that the UNIVERSITY shall, at its cost and expense, keep the Easement Area and the Facilities in good condition and repair at all times and shall be solely responsible for the maintenance, repair, operation and replacement of the Facilities unless and to the extent the Facilities are damaged as a result of the act or omission of the CITY, its employees, agents or contractors. The UNIVERSITY shall, promptly after the conclusion of any activity associated with the maintenance, repair, operation or replacement of the Facilities, at its sole cost, restore the Easement Area to as near the condition which existed immediately prior thereto as is reasonably possible. Nothing contained in this Grant of Easement shall exempt the University from the need to obtain permits applicable to any such maintenance, repair, operation or replacement activities.

6. The terms and provisions of this Grant of Easement shall run with the land and shall inure to the benefit of and be binding upon the parties hereto and their respective successors, assigns, mortgagees and transferees, and upon all other persons or entities claiming by, through or under UMBA or the CITY, respectively.

7. No trustee or employee of UMBA or the UNIVERSITY shall have any personal liability under this Grant of Easement.

8. This Grant of Easement shall be governed by and construed under the laws of the Commonwealth of Massachusetts. This Grant of Easement may not be amended except by a

written instrument executed by both parties. If any provision of this Grant of Easement is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions hereof will not be affected or impaired.

IN WITNESS WHEREOF the parties have caused this Agreement to be sealed and subscribed as of the date hereinabove set forth.

APPROVED AS TO FORM:

CITY OF LOWELL

By: _____
Christine O'Connor
City Solicitor

By: _____
Kevin J. Murphy
City Manager

UNIVERSITY OF MASSACHUSETTS
BUILDING AUTHORITY

By: _____
Patricia Filippone
Executive Director

THE UNIVERSITY OF
MASSACHUSETTS AT LOWELL

By: _____
Jacqueline Moloney,
Chancellor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ____ day of _____, 2017, before me, the undersigned notary public, personally appeared _____, as _____ of City of Lowell, proved to me through satisfactory evidence of identification, which was a [need to specify] valid driver’s license/passport/military ID/ or other government issued photo ID, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as _____ of said City of Lowell.

[Official signature and seal of notary]

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ____ day of _____, 2017, before me, the undersigned notary public, personally appeared _____, as _____ of the University of Massachusetts Building Authority, proved to me through satisfactory evidence of identification, which was a [need to specify] valid driver’s license/passport/military ID/ or other government issued photo ID, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as _____ of said University of Massachusetts Building Authority.

[Official signature and seal of notary]

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ____ day of _____, 2017, before me, the undersigned notary public, personally appeared Jacqueline Moloney, as Chancellor of the University of Massachusetts at Lowell, proved to me through satisfactory evidence of identification, which was a [need to specify] valid driver's license/passport/military ID/ or other government issued photo ID, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Vice Chancellor of said University.

[Official signature and seal of notary]

My commission expires:

Exhibit A

Easement Area "A"

A certain parcel of land situated on the southerly side of Salem Street and the southerly side of Pawtucket Street in the City of Lowell, County of Middlesex and Commonwealth of Massachusetts, bounded and described as follows:

Beginning at a point on the southerly sideline of said Salem Street and being the southeasterly corner of the subject easement as shown on the hereinafter referenced plan; thence:

- | | |
|---------------|--|
| Westerly | along a curve to the left, having a radius of two hundred and zero hundredths feet (200.00'), a distance of one-hundred eleven and sixty-six hundredths feet (111.63') to a point; thence turning and running; |
| S 64°08'51" W | a distance of thirty-three and six hundredths feet (33.06') to a point; thence turning and running; |
| S 67°43'29" W | a distance of nine and ninety-four hundredths feet (9.94') to a point; thence turning and running; |
| S 64°08'51" W | a distance of eighty-eight and sixty-eight hundredths feet (88.68') to a point; thence turning and running; |
| Southwesterly | along a curve to the left, having a radius of twenty-eight and zero hundredths feet (28.00'), a distance of thirty-five and eighteen hundredths feet (35.18') to a point; thence turning and running; |
| S 70°23'34" W | a distance of five and sixty-five hundredths feet (5.65') to a point; thence turning and running; |
| Northerly | along a curve to the right, having a radius of thirty-eight and forty-eight hundredths feet (38.48'), a distance of fifty-one and forty-three hundredths feet (51.43') to a point; thence turning and running; |
| Northeasterly | along a curve to the left, having a radius of five hundred and zero hundredths feet (500.00'), a distance sixty-nine and sixty-two hundredths feet (69.62') to a point; thence turning and running; |
| N 49°36'18" E | a distance of nine and seventy-eight hundredths feet (9.78') to a point; thence turning and running; |
| N 51°00'11" E | a distance of fifty-one and eighty-seven hundredths feet (51.87') to a point; thence turning and running; |

Easterly along a curve to the right, having a radius of fifty and zero hundredths feet (50.00'), a distance of thirty-one and fourteen hundredths feet (31.14') to a point; thence turning and running;

Easterly along a curve to the right, having a radius of eight-one and zero hundredths feet (81.00'), a distance of twenty-six and thirty-nine hundredths feet (26.39') to a point; thence turning and running;

S 74°38'54" E a distance of thirty and forty-one hundredths feet (30.41') to a point; thence turning and running;

S 72°30'36" E a distance of forty-eight and forty-six hundredths feet (48.46') to a point; thence turning and running;

S 20°20'51" W a distance of four and sixty-one hundredths feet (4.61') to the point of beginning.

Said easement contains seven thousand one hundred and fifty-eight square feet more or less (7,158±S.F.) and is shown as Proposed Easement "A" on a plan by Hancock Associates entitled: "Maintenance Easement Plan of Land in Lowell, MA", prepared for: University of Massachusetts- Lowell, dated: 1/23/2017



Kevin J. Murphy
City Manager

October 19, 2017

City Manager Kevin J Murphy
Mayor Edward J. Kennedy
And
Members of the City Council

Re: Easements

Dear Mr. Manager, Mayor Kennedy and Members of the City Council:

The following easements are between University of Massachusetts Building Authority (UMBA), the University of Massachusetts at Lowell (UML) and the City. One easement provides to the City a permanent easement at LeLacheur ballpark relative to an access issue. In the remaining easements the City is providing UML with an easement over City property for the purpose of maintaining green space with plants, lights and signage.

Yours very truly,

Christine P. O'Connor
City Solicitor