

## FULLER PARK PARKING LOT LAND LEASE

**THIS LAND LEASE** ("Lease") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between **REGENTS OF THE UNIVERSITY OF MICHIGAN**, a Michigan constitutional corporation, whose address is 503 Thompson Street, Ann Arbor, Michigan 48109 (the "University"), and the **CITY OF ANN ARBOR**, a Michigan municipal corporation, whose address is 100 North Fifth Avenue, Ann Arbor, Michigan 48104 (the "City").

### PRELIMINARY STATEMENT

University proposes to use a portion of the land owned by City and currently used by City as a parking area for Fuller Park described in Exhibit A-1, attached hereto and made a part hereof by reference ("Property") for the purpose of using and operating the Property as a parking lot for University. University has applied to City for approval of its use of City-owned property for this purpose and the parties have negotiated in good faith the use of the Property.

City's lease of the Property and its retained rights under the lease for use of the Property as specified in Exhibit A are consistent with the use of the Property for public purposes.

**NOW, THEREFORE**, in consideration of the lease payments and mutual promises contained herein, receipt whereof is hereby severally acknowledged, University and City hereby confirm the terms and conditions upon which they individually and collectively will use and occupy the Property and their respective responsibilities for operation and maintenance of the Property as follows:

1. Duration/Rent. Subject to the conditions specified in Exhibit A, City will make the Property available upon the following terms and conditions:

(a) The term during which the Property will be made available (the "Term") will be for a period of two years, beginning on September 1, 2008 and terminating August 31, 2010, unless terminated earlier pursuant to the terms of this Lease.

University shall have the option to renew its Lease of the Property, or a portion thereof, on 90 days advance written notice, for 2 successive 2-year periods upon the same terms and conditions herein, if mutually agreed upon in writing. Such options to renew are on the condition that a renegotiated lot lease rental amount shall be agreed upon for each 2-year option following the initial 2-year lease period.

(b) During the Term, University shall pay to City rent annually in the amount specified for the rental period in Exhibit B attached and made a part of this Lease. Rent shall be due and payable not later than the first day of September of each year during the term of the Lease with the following exception: the lease payment due September 1, 2008 will be due not later than June 15, 2009. If University fails to pay any amount it owes to City under this Lease when that amount is due, the amount shall be assessed a one-time late charge in the amount of 5 percent of the late rental payment amount and shall be subject to a service charge until it is paid at the lesser of the rate of 2 percent per month or the highest rate permitted by law.

(c) To the extent permitted by law, each party agrees to protect, defend and indemnify the other, its officers, agents, and employees from any and all liabilities,

claims, liens, fines, demands and costs, including legal fees, of whatsoever kind and nature which may result in injury or death to any persons, including the respective parties own employees, and for loss or damage to any property, including property owned or in the care, custody or control of the respective party in connection with or in any way incident to or arising out of the occupancy, use, operations, performance or non-performance of work in connection with this Lease resulting in whole or in part from the negligent acts or omissions of the respective party, its officers, agents, and employees. This provision is not intended, and shall not be construed, to waive or limit any immunity defense which the respective governmental entity may have including but not limited to governmental immunity. In the event of joint or concurrent negligence of University and City, each shall pay its own costs and expenses incurred in defending against the action and each shall pay that portion of the loss or expense that its share bears to the total negligence by a court of competent jurisdiction.

It is acknowledged that each party self-insures its general liability exposures through a permanently funded non-cancelable program. During the Term, each party will procure and maintain such insurance policies or self-insurance coverage as will protect itself from all claims for bodily injuries, death or property damage which may arise in connection with their respective use of the Property under the terms of this Lease. Each party agrees name the other as an "additional insured" on the policies with respect to any action taken in connection with uses or requirements stated in Exhibit A. The respective parties shall be responsible to each other or the insurance companies insuring the respective parties for all costs resulting from both financially unsound insurance companies selected and their inadequate insurance coverage. If requested, a party shall furnish the requesting party with satisfactory certificates of self-insurance/insurance or a certified copy of the policy.

2. Conditions to Effectiveness. The commitment of City to lease the Property to University on the terms specified in Section 1 is subject to the satisfaction (or waiver in writing by City as to the Regents of the University of Michigan) of necessary approval of the lease and authorization of its execution by resolution of the governing bodies of City and the Regents of University of Michigan.

3. Default/Termination. The following will constitute events of default by University under this Lease:

(a) The failure by University to pay any rent within 30 days after the date for payment specified in Section 1(b); or

(b) The breach by University of any commitment under this Lease and the failure to remedy that breach within 30 days after the date that City delivers written notice identifying such breach and demanding such remedial action.

Upon the occurrence of an event of default, City, by further written notice to University, may terminate this Lease effective 30 days following the day of delivery of such notice. In such event, the obligation of City will terminate as of the effective date of such termination, University will remain liable to City for all rent accrued under this Lease through the effective date of termination and any damages incurred by City as a result of such default.

This lease will terminate if, at any time prior to the termination by expiration (Section 1), default (Section 3) or early termination (Section 4), the parties mutually agree, in writing executed by an authorized official of the parties, to terminate the Lease.

4. Early Termination/Potential Rail Station and Local Connector. City's Model for Mobility transportation vision includes the consideration of potential passenger rail station locations along the Norfolk Southern (NS) and Amtrak rail line adjacent to the Property. The vision also includes consideration of a local connector system though this part of City. Lot A is immediately adjacent to the NS operating rail line and appears well suited to support such uses. City reserves the right to terminate this Lease for use of the site for a passenger rail station or a station stop along a local connector system with 12 months advance written notification to University. Termination under this provision will be automatically effective on the date specified in the notice and City shall have no further obligation to University under this Lease except that if the 12-month notice period occurs so as to cross annual payment periods (i.e. for example: notice period June-May/annual payment period September-August), University shall be entitled to a rebate of that portion of the annual payment applicable to the months after the termination date.

Upon initiating formal planning for construction of a new commuter rail station, relocating the Ann Arbor Amtrak intercity passenger station or developing a local connector service contemplating use of a part, or all, of Lot A, City shall notify University of such planning considerations. Notification shall be in writing and will include information regarding University input in City's planning process. City will work cooperatively with University while considering enhancing transportation service to this location. The planning process will assure both parties' interests are included in all considerations. It is recognized that provision of high capacity public mass transportation service to this site is intended to increase access and mobility resulting in a decrease in the need for surface parking by University. Notwithstanding the above, it is understood by the parties that participation by University in the planning process does not negate or otherwise impact City's right to terminate this Lease for the reason stated.

5. Assignment. University shall make no assignment under this Lease.

6. Binding Effect/No Third Party Benefits. This Lease is binding upon and shall inure to the benefit of the parties hereto. This Lease shall not be construed to create in any person or entity not a party, any right, claim, benefit or defense with respect to the parties, or in any party claiming by, through or under either of them, with respect to any loss, cost, damage, claim or cause of action arising under or pursuant to the terms of this Lease.

7. Notices. All notices permitted or required under this Lease shall be in writing and addressed to the parties at their addresses set forth above. Any such notice shall be sent by certified mail, return receipt requested, express overnight delivery requiring a signed delivery receipt, delivered personally or sent by facsimile. Any notice sent by certified mail, return receipt requested, will be deemed delivered on the third business day after mailing. Any notice sent by express overnight delivery will be deemed delivered on the following business day after delivering such notice to the carrier. Any notice given by personal delivery or by facsimile prior to 5:00 p.m. will be deemed delivered on the date of such delivery or, if 5:00 p.m. or later, on the next business day. Any notice which a party fails or refuses to accept will be deemed delivered on the date of such failure or refusal. The parties hereto may change their addresses for notice purposes by a notice sent in accordance with the provisions of this Lease, but no such address shall be a post office box.

8. Authority. The signatories on behalf of the parties hereto hereby represent and warrant to the other parties hereto that they are duly authorized to execute and deliver this Lease on behalf of such party and that this Lease is binding upon and enforceable against such party.

9. Applicable Law. This Lease shall be interpreted and construed in accordance with the laws of the State of Michigan.

10. Counterparts. This Lease may be executed in one or more counterparts, each of which will be deemed an original but all of which together shall constitute but one and the same Lease.

11. Amendments. No amendment, change or modification of any of the terms, provisions or conditions of this Lease will be effective unless made in writing and signed or initialed on behalf of the parties hereto by their duly authorized representatives.

12. Entire Agreement. This Lease constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and prior to contemporaneous discussions and understandings of the parties hereto in connection with the subject matter hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease the day and year first above written.

**REGENTS OF THE UNIVERSITY OF MICHIGAN**

By: \_\_\_\_\_  
Timothy P. Slottow, Executive Vice President  
and Chief Financial Officer

**CITY OF ANN ARBOR**

By: \_\_\_\_\_  
John Hieftje, Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry, Clerk

APPROVED AS TO SUBSTANCE:

By: \_\_\_\_\_  
Jayne Miller, Community Services Area  
Administrator

By: \_\_\_\_\_  
Roger W. Fraser, City Administrator

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Stephen K. Postema, City Attorney

## EXHIBIT A

### Property

Property for purposes of this Lease shall mean the following parking areas delineated for illustrative purposes on the attached map, identified as Exhibit A-1, during the specified days and times and subject to the use restrictions identified below:

- I. **Lot A; South Parking Lot** - 1504 Fuller Road: City agrees to lease to University the entire South parking lot Monday through Friday from 6:00 am to 4:00 pm each day.
- II. **Lot B; North Pool Parking Lot (Paved Lot)** – 1519 Fuller Road: City agrees to lease to University the entire North Pool paved parking lot Monday through Friday from 6:00 am to 5:00 pm beginning the day after Labor Day and continuing through the Friday before Memorial Day, excluding holidays.
- III. **Lot C; North Pool Parking Lot (Unpaved Lot)** – 1519 Fuller Road: City agrees to lease to University the North Pool dirt parking lot Monday through Friday from 6:00 am to 5:00 pm, excluding holidays.

### Property Use Restrictions

#### I. **Maintenance**

**Lot A; South Parking Lot** – University, at its own expense, shall provide all winter maintenance for snow and ice removal concerning the parking lot. City will pay for all other maintenance of the parking lot including, without limitation, asphalt repair and replacement and lighting costs.

**Lots B & C; North Pool Parking Lots (Paved and Unpaved Lots)** – City, at its own expense, shall provide all winter maintenance for snow and ice removal concerning the parking lots. City will pay for all other maintenance of the parking lots including, without limitation, asphalt repair and replacement and lighting costs. City will periodically inspect the unpaved lot for pedestrian hazards due to drainage issues and provide mitigation when possible. University will provide, if needed, and with prior approval by City, temporary lighting in the dirt portion of the parking lot. Temporary lighting shall not be provided earlier than 5:00 am and later than 6:00 pm Monday through Friday.

In April of each year, inspections of Lots B and C by City and University representatives shall be conducted to assess lot condition and to determine the required maintenance program and schedule for that year. Maintenance of Lot C will include one annual grading application as conditions allow. If additional maintenance on Lot C, other than one annual grading application, is performed by either City or University, there will be no change in the Lot C rental fee paid by or due from University. It shall be the option of University to provide additional surface grading on Lot C as deemed suitable; however, University shall not, under any circumstance, add new material to Lot C. If the annual assessment identifies anything other than general maintenance requirements for Lot B, the University may at its option, and at its cost, elect to perform the maintenance. No change in the Lot B rental fee paid by or due from the University will be made as a result of the University's maintenance activities.

The City Parks and Recreation Deputy Manager will work with City and University representatives to coordinate annual inspections, as well as other inspections as needed. If both parties are unable to coordinate a meeting in April or are unable to mutually agree upon a maintenance program and schedule for any reason, both parties shall accept the maintenance program and schedule currently in place until such time as a new maintenance program and schedule is mutually agreed upon.

The contact information for both City and University is as follows:

City

- Maintenance Issues – Fuller Pool Supervisor
- Lease Issues – Deputy Parks and Recreation Manager

University

- Maintenance Issues – Parking Maintenance Manager or Designee (Parking & Transportation Services)
- Lease Issues – Parking Customer Services Manager (Parking & Transportation Services)

If, during the term of this Agreement, renovations or repairs are required to any of the parking lots (Lots A, B or C), City shall use its best efforts to minimize the effect of such repairs or renovations upon the utilization of the parking lots by University. If, despite such best efforts, the utilization of some or all of the designated parking lot(s) must be temporarily suspended, University acknowledges and agrees that City will not be responsible for providing alternate parking arrangements for affected University users. City will provide University with 30 days minimum advance written notification of necessary repairs, unless it is determined by City that emergency repairs are required. University shall remain liable to City for all fees accrued under this Agreement during any on-going repairs or restoration unless otherwise waived in writing by the City. If City and University mutually agree that all or a portion of Lots A, B or C are unusable due to conditions other than scheduled ongoing repair or restoration, the City may, at its sole discretion, reimburse the University for parking rental fees for the impacted Lot paid by University. Such reimbursement, if the City determines one is to be provided, will be a pro-rated calculation based on the rental fee paid for Monday-Friday usage for the parking lot(s), or portion thereof, determined to be unusable.

**II. Security**

**Lot A; South Parking Lot** – City and University will cooperate in providing police security and parking enforcement for this parking lot.

**Lots B & C; North Pool Parking Lots (Paved and Unpaved Lots)** - City and University will cooperate in providing police security and parking enforcement for these parking lots.

City Parks and Recreation Deputy Manager will work with representatives of the Ann Arbor Police Services (AAPS) and University of Michigan Public Safety (UMDPS) to establish an appropriate policing procedure for all lots which shall be reviewed annually.

### **III. Signage**

University will be responsible for providing and installing proper signage, at University's sole expense, for use of all lots. University shall have full authority as to the use of the leased spaces and may restrict the use of any space for University users. These restrictions will be added to existing signage and conveyed to City in writing prior to installation. University shall be responsible for obtaining any permits required for the installation of the signage.

#### **City Use of Lot**

- I. Lot A; South Parking Lot** – Between 4:00 pm and 6:00 am Monday through Friday, the parking lot will be available for City use. The lot is available for City use on the weekends and holidays, 24 hours per day.
  
- II. Lots B and C; North Pool Parking Lots (Paved and Unpaved Lots)**
  - A. Lot B (Paved Lot)
    1. Beginning the Saturday before Memorial Day and continuing through Labor Day, the parking lot will be available for City use 24 hours each day.
    2. Beginning the day after Labor Day and continuing through the Friday before Memorial Day, between 5:00 pm and 6:00 am Monday through Friday, the parking lot will be available for City use.
    3. Beginning the day after Labor Day and continuing through the Friday before Memorial Day, between 6:00 am and 5:00 pm Monday through Friday, University will not park in the northernmost row of parking spaces marked by signage as Park Use Only. Those spaces are available for City use.
  
  - B. Lot C (Unpaved Lot) - Monday through Friday from 6:00 am to 5:00 pm, excluding holidays, the parking lot will be available for use by University.