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7-25-2002

## WMU Board of Trustees Special Meeting July 25, 2002

WMU Board of Trustees

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WESTERN MICHIGAN UNIVERSITY  
BOARD OF TRUSTEES  
SPECIAL MEETING  
JULY 25, 2002

A special meeting of the Western Michigan University Board of Trustees was held via conference call at 9 a.m. on Thursday, July 25, 2002, in the Connable Board Room, Bernhard Center.

Board members participating: Trustee Anthony, Trustee Aseritis, Trustee Chormann, Trustee DeNooyer, Trustee Holden, Trustee Klohs, Trustee Pero and President Floyd (ex officio). Unable to participate: Trustee St. John.

In the absence of Chair St. John, the meeting was called to order by Vice Chair Klohs.

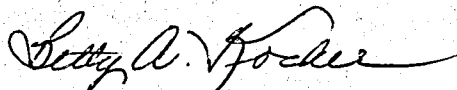
Resolutions re projects funded by the State Building Authority were recommended for approval:

Lake Michigan College Southwest Center Project - On a 7-0 roll call vote, after a motion by Trustee Pero, supported by Trustee Anthony, the Board approved a resolution re construction and completion assurance agreements, conveyances of property, a lease and easement agreement, if necessary, for the Western Michigan University Lake Michigan College Southwest Center and the addendum which authorizes clarifications or amendments to the resolution if necessary.

Engineering and Applied Sciences Building Project - The Board of Trustees, following a 7-0 roll call vote after a motion by Trustee Anthony, supported by Trustee DeNooyer, approved a resolution re construction and completion assurance agreements, if necessary, for the Western Michigan University Engineering and Applied Sciences Building and the addendum authorizing clarification or amendments to the resolution if necessary.

Adjournment. The meeting was adjourned at 9:15 a.m.

Respectfully submitted,



Betty A. Kocher  
Secretary  
Board of Trustees

- Lake Michigan College Southwest Center Project - 1

The Lake Michigan College Southwest Center Project will be completed in August. The University has already "spent down" from its own funds not only the University's share of the costs for this project (\$2.1 million), but \$1.5 million of the SBA's share of the project (\$6.3 million). The University will need to continue to use its own funds for the balance of the State's portion until authorized to receive reimbursement from the state. It is expected that the balance of \$4.8 million will be spent by September.

- The Engineering and Applied Sciences Building Project - 2

The Engineering and Applied Sciences Building Project is well underway, and the University is at the point of paying for its share of the costs. However, given the timing of the next scheduled Board of Trustees' meeting, we are seeking authorization to submit this project to the SBA Board as well. The project cost of the building is \$72.5 million and the SBA's share is \$37.5 million.

**Recommended Actions** - ROLL CALL

The resolutions which the SBA requires the University to adopt for these projects are attached. An addendum to each resolution is also attached which provides that the resolutions may be clarified or amended if necessary.

It is recommended that the Board of Trustees adopt these resolutions in separate motions approving construction and completion assurance agreements, conveyances of property, leases and easement agreements, if necessary, for the Western Michigan University Lake Michigan College Southwest Center and Engineering and Applied Sciences Building, and the addenda authorizing clarifications or amendments to the resolutions.

**RESOLUTION OF THE BOARD OF TRUSTEES OF  
WESTERN MICHIGAN UNIVERSITY  
APPROVING A CONSTRUCTION AND COMPLETION  
ASSURANCE AGREEMENT, A CONVEYANCE OF  
PROPERTY, A LEASE AND AN EASEMENT AGREEMENT,  
IF NECESSARY, FOR THE WESTERN MICHIGAN UNIVERSITY  
LAKE MICHIGAN COLLEGE SOUTHWEST CENTER**

A RESOLUTION of The Board of Trustees of Western Michigan University (i) approving (a) a form of construction and completion assurance agreement (the "Construction Agreement"), by and among the State Building Authority (the "Authority"), the State of Michigan (the "State") and The Board of Trustees of Western Michigan University, a Michigan constitutional body corporate (the "Educational Institution"), providing for the rights, duties and obligations of the Authority, the State and the Educational Institution with respect to the Educational Institution's Lake Michigan College Southwest Center and the site therefor (the "Facility") during the construction, renovation and/or equipping of the Facility and prior to the conveyance of the Facility to the Authority, (b) the conveyance of the Facility to the Authority, (c) a lease (the "Lease"), by and among the Authority, the Educational Institution and the State, for the purpose of leasing the Facility to the State and the Educational Institution and (d) an easement agreement (the "Easement Agreement") between the Authority and the Educational Institution, if necessary in connection with the entering into of the Lease, and (ii) providing for other matters related thereto.

WHEREAS, the Authority has been incorporated under and pursuant to the provisions of Act No. 183, Public Acts of Michigan, 1964, as amended ("Act 183"), for the purpose of acquiring, constructing, furnishing, equipping, owning, improving, enlarging, operating, mortgaging and maintaining buildings, necessary parking structures or lots and facilities, and sites therefor, for the use of the State, including institutions of higher education created pursuant to Section 4, 5, 6 or 7 of Article 8 of the Michigan Constitution of 1963 (the "State Constitution"), or any of its agencies; and

WHEREAS, the Educational Institution has been maintained and created pursuant to Sections 4 and 6 of Article 8 of the State Constitution; and

WHEREAS, the State and the Educational Institution desire that the Authority finance the acquisition, construction, renovation and/or equipping of the Facility in consideration of (i) the Educational Institution granting a license to the Authority to enter upon the site of the Facility (the "Site") in order to undertake such construction, renovation and/or equipping, (ii) the Educational Institution undertaking on behalf of the Authority the oversight of such construction, renovation and/or equipping and (iii) the Educational Institution conveying the Facility to the Authority on or prior to the date of its completion, and the Authority is willing to provide such financing in consideration of the items described above; and

WHEREAS, in accordance with the Construction Agreement, the State and the Educational Institution desire that the Authority acquire the Facility on or prior to the date of its completion, and lease the same to the State and the Educational Institution, and the Authority is willing to acquire the Facility and lease the same to the State and the Educational Institution; and

WHEREAS, the Site is presently owned by the Educational Institution, the Facility will be constructed by the Educational Institution on behalf of the Authority, and it is intended that the Site and the Facility be conveyed to the Authority by the Educational Institution; and

WHEREAS, the acquisition of the Facility by the Authority for use by and lease to the Educational Institution and the State is necessary in order for the State and the Educational Institution to carry out necessary governmental functions and to provide necessary services to the people of the State as mandated or permitted by constitution and law, and the use of Act 183 to accomplish such acquisition represents the most practical means to that end at the lowest cost to the State and the Educational Institution; and

WHEREAS, Section 7 of Act 183 provides that the Lease shall be approved by the Authority, by the State Administrative Board of the State and by concurrent resolution of the Legislature of the State concurred in by a majority of the members elected to and serving in each house and if the Lease is for an institution of higher education existing or created pursuant to Section 4, 5, 6 or 7 of Article 8 of the State Constitution, then in addition, the Lease shall be authorized by the institution of higher education and signed by its authorized officers and, accordingly, it is necessary that the Educational Institution authorize and approve the Lease; and

WHEREAS, if it is determined that (i) the Authority will require an easement from a public road to the Facility over real property owned by the Educational Institution so that the Authority has access to the Facility, (ii) the Educational Institution will require for future use

certain easements through the Facility, (iii) the Authority and the Educational Institution will require an agreement to share a common structural wall or (iv) the Authority will require an easement over real property owned by the Educational Institution so that the Authority has sufficient parking available in connection with the reasonable use of the Facility, then in order to meet any such requirement, it may be necessary for authorized officers of the Educational Institution to approve an Easement Agreement to provide for such easements or the sharing of a common structural wall, as the case may be;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF WESTERN MICHIGAN UNIVERSITY THAT:

1. The plans for the Facility, as filed with the Educational Institution, are hereby approved.

2. The Educational Institution hereby authorizes and approves the Construction Agreement in substantially the form attached as Exhibit A, and any two of the following then seated officers of the Educational Institution: the President, the Treasurer and the Assistant Treasurer are hereby authorized and directed to execute and deliver, at the appropriate time, the Construction Agreement in substantially the form attached as Exhibit A for and on behalf of the Educational Institution. Such officers are hereby authorized to approve such changes in and modifications to the Construction Agreement as do not materially adversely affect the Educational Institution.

3. The conveyance of the Site and the Facility to the Authority in accordance with the Construction Agreement is hereby approved, and any two of the following then seated officers of the Educational Institution: the President, the Treasurer and the Assistant Treasurer are hereby authorized and directed to execute and deliver a warranty deed in substantially the form attached as Exhibit B and bills of sale to accomplish such conveyance in such form as may be from time to time approved by such officers.

4. The Educational Institution hereby authorizes and approves the Lease in substantially the form attached as Exhibit C, and any two of the following then seated officers of the Educational Institution: the President, the Treasurer and the Assistant Treasurer are hereby authorized and directed to execute and deliver the Lease in accordance with the Construction Agreement and in substantially the form attached as Exhibit C for and on behalf of the Educational Institution and such officers are hereby designated as authorized officers of the

Educational Institution for purposes of Section 7 of Act 183. Such officers are hereby authorized to approve such changes in and modifications to the Lease as do not materially alter the substance and intent thereof as expressed in the Lease and the request for action submitted to the Board of Trustees in connection therewith; provided such officers are not hereby authorized to approve a change in the Lease with respect to the range of rental, the description of the Facility or the material financial obligations of the Educational Institution contained in the Lease approved herein. The Educational Institution hereby determines that the maximum rental in the amount described below is reasonable and the authorized officers are hereby authorized to approve in the Lease, as executed, rental in annual amounts determined by the final appraisal of "True Rental," but not exceeding \$631,000 in any 12-month period and a lease term of not exceeding 40 years.

5. If in connection with the entering into of the Lease, and any two of the following then seated officers of the Educational Institution: the President, the Treasurer and the Assistant Treasurer determine that (i) the Authority will require an easement from a public road to the Facility over real property owned by the Educational Institution so that the Authority has access to the Facility, (ii) the Educational Institution will require for future use certain easements through the Facility, (iii) the Authority and the Educational Institution will require an agreement to share a common structural wall or (iv) the Authority will require an easement over real property owned by the Educational Institution so that the Authority has sufficient parking available in connection with the reasonable use of the Facility, then such officers are hereby authorized and directed to execute and deliver an Easement Agreement if necessary in order to meet any such requirement.

6. Any of the following then seated officers of the Educational Institution: the President, the Treasurer and the Assistant Treasurer are hereby severally authorized and directed to take or cause to be taken all other actions, including, without limitation, making requests of and approving requests from the Authority and the State and signing certificates, documents or other instruments, each on behalf of the Educational Institution, as they deem necessary or desirable under the circumstances to accomplish the purposes of the transactions authorized in this Resolution.

7. The Educational Institution further confirms its obligations to perform the duties and obligations specified in the Construction Agreement (only upon its execution by authorized

officers of the Educational Institution) and the Lease (only upon its execution by authorized officers of the Educational Institution) and acknowledges that such obligations do not depend upon passage of title to the Facility to the Educational Institution without consideration upon termination of the Lease. The Educational Institution hereby recognizes that it would execute and deliver the Lease even if title to the Facility would not pass upon termination of the Lease.

8. The Educational Institution recognizes that the Authority shall pay for costs of the Facility in an amount not in excess of \$6,364,300.

9. All ordinances, resolutions and orders or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

10. This Resolution shall be effective immediately upon its adoption.



ADDENDUM TO

RESOLUTION OF THE BOARD OF TRUSTEES OF  
WESTERN MICHIGAN UNIVERSITY  
APPROVING A CONSTRUCTION AND COMPLETION ASSURANCE  
AGREEMENT, A CONVEYANCE OF PROPERTY, A LEASE AND  
AN EASEMENT AGREEMENT, IF NECESSARY,  
FOR THE WESTERN MICHIGAN UNIVERSITY  
LAKE MICHIGAN COLLEGE SOUTHWEST CENTER

Notwithstanding the specified language of the attached resolution, if it is determined by the authorized representatives of the Authority, the University, and the State that any revisions are appropriate and acceptable, then the resolution shall be deemed amended to incorporate such revisions.

The Board of Trustees further clarifies that any two of the following then seated officers of the Educational Institution: the President, the Treasurer and the Assistant Treasurer are further authorized to take all other necessary actions and make any further clarifications as deemed appropriate by the administration relative to this Facility and Site.

*Approved by The Board of Trustees of Western Michigan University on July 25, 2002*

RESOLUTION OF THE BOARD OF TRUSTEES OF  
WESTERN MICHIGAN UNIVERSITY  
APPROVING A CONSTRUCTION AND COMPLETION  
ASSURANCE AGREEMENT, A CONVEYANCE OF  
PROPERTY, A LEASE AND AN EASEMENT AGREEMENT,  
IF NECESSARY, FOR THE WESTERN MICHIGAN UNIVERSITY  
ENGINEERING AND APPLIED SCIENCES BUILDING

A RESOLUTION of The Board of Trustees of Western Michigan University (i) approving (a) a form of construction and completion assurance agreement (the "Construction Agreement"), by and among the State Building Authority (the "Authority"), the State of Michigan (the "State") and The Board of Trustees of Western Michigan University, a Michigan constitutional body corporate (the "Educational Institution"), providing for the rights, duties and obligations of the Authority, the State and the Educational Institution with respect to the Educational Institution's Engineering and Applied Sciences Building and the site therefor (the "Facility") during the construction, renovation and/or equipping of the Facility and prior to the conveyance of the Facility to the Authority, (b) the conveyance of the Facility to the Authority, (c) a lease (the "Lease"), by and among the Authority, the Educational Institution and the State, for the purpose of leasing the Facility to the State and the Educational Institution and (d) an easement agreement (the "Easement Agreement") between the Authority and the Educational Institution, if necessary in connection with the entering into of the Lease, and (ii) providing for other matters related thereto.

WHEREAS, the Authority has been incorporated under and pursuant to the provisions of Act No. 183, Public Acts of Michigan, 1964, as amended ("Act 183"), for the purpose of acquiring, constructing, furnishing, equipping, owning, improving, enlarging, operating, mortgaging and maintaining buildings, necessary parking structures or lots and facilities, and sites therefor, for the use of the State, including institutions of higher education created pursuant to Section 4, 5, 6 or 7 of Article 8 of the Michigan Constitution of 1963 (the "State Constitution"), or any of its agencies; and

WHEREAS, the Educational Institution has been maintained and created pursuant to Sections 4 and 6 of Article 8 of the State Constitution; and

WHEREAS, the State and the Educational Institution desire that the Authority finance the acquisition, construction, renovation and/or equipping of the Facility in consideration of (i) the Educational Institution granting a license to the Authority to enter upon the site of the Facility (the "Site") in order to undertake such construction, renovation and/or equipping, (ii) the Educational Institution undertaking on behalf of the Authority the oversight of such construction, renovation and/or equipping and (iii) the Educational Institution conveying the Facility to the Authority on or prior to the date of its completion, and the Authority is willing to provide such financing in consideration of the items described above; and

WHEREAS, in accordance with the Construction Agreement, the State and the Educational Institution desire that the Authority acquire the Facility on or prior to the date of its completion, and lease the same to the State and the Educational Institution, and the Authority is willing to acquire the Facility and lease the same to the State and the Educational Institution; and

WHEREAS, the Site is presently owned by the Educational Institution, the Facility will be constructed by the Educational Institution on behalf of the Authority, and it is intended that the Site and the Facility be conveyed to the Authority by the Educational Institution; and

WHEREAS, the acquisition of the Facility by the Authority for use by and lease to the Educational Institution and the State is necessary in order for the State and the Educational Institution to carry out necessary governmental functions and to provide necessary services to the people of the State as mandated or permitted by constitution and law, and the use of Act 183 to accomplish such acquisition represents the most practical means to that end at the lowest cost to the State and the Educational Institution; and

WHEREAS, Section 7 of Act 183 provides that the Lease shall be approved by the Authority, by the State Administrative Board of the State and by concurrent resolution of the Legislature of the State concurred in by a majority of the members elected to and serving in each house and if the Lease is for an institution of higher education existing or created pursuant to Section 4, 5, 6 or 7 of Article 8 of the State Constitution, then in addition, the Lease shall be authorized by the institution of higher education and signed by its authorized officers and, accordingly, it is necessary that the Educational Institution authorize and approve the Lease; and

WHEREAS, if it is determined that (i) the Authority will require an easement from a public road to the Facility over real property owned by the Educational Institution so that the Authority has access to the Facility, (ii) the Educational Institution will require for future use

certain easements through the Facility, (iii) the Authority and the Educational Institution will require an agreement to share a common structural wall or (iv) the Authority will require an easement over real property owned by the Educational Institution so that the Authority has sufficient parking available in connection with the reasonable use of the Facility, then in order to meet any such requirement, it may be necessary for authorized officers of the Educational Institution to approve an Easement Agreement to provide for such easements or the sharing of a common structural wall, as the case may be;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF WESTERN MICHIGAN UNIVERSITY THAT:

1. The plans for the Facility, as filed with the Educational Institution, are hereby approved.

2. The Educational Institution hereby authorizes and approves the Construction Agreement in substantially the form attached as Exhibit A, and any two of the following then seated officers of the Educational Institution: the President, the Treasurer and the Assistant Treasurer are hereby authorized and directed to execute and deliver, at the appropriate time, the Construction Agreement in substantially the form attached as Exhibit A for and on behalf of the Educational Institution. Such officers are hereby authorized to approve such changes in and modifications to the Construction Agreement as do not materially adversely affect the Educational Institution.

3. The conveyance of the Site and the Facility to the Authority in accordance with the Construction Agreement is hereby approved, and any two of the following then seated officers of the Educational Institution: the President, the Treasurer and the Assistant Treasurer are hereby authorized and directed to execute and deliver a warranty deed in substantially the form attached as Exhibit B and bills of sale to accomplish such conveyance in such form as may be from time to time approved by such officers.

4. The Educational Institution hereby authorizes and approves the Lease in substantially the form attached as Exhibit C, and any two of the following then seated officers of the Educational Institution: the President, the Treasurer and the Assistant Treasurer are hereby authorized and directed to execute and deliver the Lease in accordance with the Construction Agreement and in substantially the form attached as Exhibit C for and on behalf of the Educational Institution and such officers are hereby designated as authorized officers of the

Educational Institution for purposes of Section 7 of Act 183. Such officers are hereby authorized to approve such changes in and modifications to the Lease as do not materially alter the substance and intent thereof as expressed in the Lease and the request for action submitted to the Board of Trustees in connection therewith; provided such officers are not hereby authorized to approve a change in the Lease with respect to the range of rental, the description of the Facility or the material financial obligations of the Educational Institution contained in the Lease approved herein. The Educational Institution hereby determines that the maximum rental in the amount described below is reasonable and the authorized officers are hereby authorized to approve in the Lease, as executed, rental in annual amounts determined by the final appraisal of "True Rental," but not exceeding \$3,719,000 in any 12-month period and a lease term of not exceeding 40 years.

5. If in connection with the entering into of the Lease, and any two of the following then seated officers of the Educational Institution: the President, the Treasurer and the Assistant Treasurer determine that (i) the Authority will require an easement from a public road to the Facility over real property owned by the Educational Institution so that the Authority has access to the Facility, (ii) the Educational Institution will require for future use certain easements through the Facility, (iii) the Authority and the Educational Institution will require an agreement to share a common structural wall or (iv) the Authority will require an easement over real property owned by the Educational Institution so that the Authority has sufficient parking available in connection with the reasonable use of the Facility, then such officers are hereby authorized and directed to execute and deliver an Easement Agreement if necessary in order to meet any such requirement.

6. Any of the following then seated officers of the Educational Institution: the President, the Treasurer and the Assistant Treasurer are hereby severally authorized and directed to take or cause to be taken all other actions, including, without limitation, making requests of and approving requests from the Authority and the State and signing certificates, documents or other instruments, each on behalf of the Educational Institution, as they deem necessary or desirable under the circumstances to accomplish the purposes of the transactions authorized in this Resolution.

7. The Educational Institution further confirms its obligations to perform the duties and obligations specified in the Construction Agreement (only upon its execution by authorized

officers of the Educational Institution) and the Lease (only upon its execution by authorized officers of the Educational Institution) and acknowledges that such obligations do not depend upon passage of title to the Facility to the Educational Institution without consideration upon termination of the Lease. The Educational Institution hereby recognizes that it would execute and deliver the Lease even if title to the Facility would not pass upon termination of the Lease.

8. The Educational Institution recognizes that the Authority shall pay for costs of the Facility in an amount not in excess of \$37,499,900.

9. All ordinances, resolutions and orders or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

10. This Resolution shall be effective immediately upon its adoption.

ADDENDUM TO

RESOLUTION OF THE BOARD OF TRUSTEES OF  
WESTERN MICHIGAN UNIVERSITY  
APPROVING A CONSTRUCTION AND COMPLETION ASSURANCE  
AGREEMENT, A CONVEYANCE OF PROPERTY, A LEASE AND  
AN EASEMENT AGREEMENT, IF NECESSARY,  
FOR THE WESTERN MICHIGAN UNIVERSITY  
ENGINEERING AND APPLIED SCIENCES BUILDING

Notwithstanding the specified language of the attached resolution, if it is determined by the authorized representatives of the Authority, the University, and the State that any revisions are appropriate and acceptable, then the resolution shall be deemed amended to incorporate such revisions.

The Board of Trustees further clarifies that any two of the following then seated officers of the Educational Institution: the President, the Treasurer and the Assistant Treasurer are further authorized to take all other necessary actions and make any further clarifications as deemed appropriate by the administration relative to this Facility and Site.

*Approved by The Board of Trustees of Western Michigan University on July 25, 2002*