Comm-90
final-90 9/18/91

RESOLUTION 91-28

TO APPROVE CONVEYANCE OF THE OLD HEADQUARTERS FIRE STATION LOCATED AT FOURTH AND WALNUT STREETS TO THE BLOOMINGTON AREA ARTS COUNCIL, INC., AND TO AUTHORIZE TURNOVER OF THE ARTS SQUARE HORIZONTAL PROPERTY REGIME TO THE ASSOCIATION OF CO-OWNERS

WHEREAS, in July of 1990, the City of Bloomington created the Arts Square Horizontal Property Regime in order to permit conveyance of a portion of the Old City Hall Building to the Bloomington Area Arts Council, Inc. (hereinafter BAAC) for use as a community Arts Center; and

WHEREAS, on July 31, 1990, the City of Bloomington conveyed Unit A in Arts Square Horizontal Property Regime to BAAC for rehabilitation and use as the John Waldron Arts Center; and

WHEREAS, a new Headquarters Fire Station is nearing completion at the corner of Fourth and Lincoln Streets, and the present Headquarters Fire Station will be vacating its current location at Fourth and Walnut Streets, which is also known as and hereinafter referred to as Unit B in said Horizontal Property Regime; and

WHEREAS, BAAC has offered to purchase Unit B for the appraised value of $125,000 in order to facilitate and enhance its rehabilitation and use of Unit A as the John Waldron Arts Center; and

WHEREAS, the Mayor has recommended approval of conveyance of Unit B to BAAC in accordance with a Purchase Agreement which has been negotiated between the Administration and BAAC; and

WHEREAS, the purchase agreement was approved by the Board of Public Works by Resolution on September 10, 1991; and

WHEREAS, it is in the best interests of the City of Bloomington and the public to convey Unit B to BAAC; and

WHEREAS, under the Horizontal Property Laws (Ind. Code 32-1-6 et seq.) and under the provisions governing the Arts Square Horizontal Property Regime, the City of Bloomington controls the Regime through its initial Board of Directors until such time as the Regime is turned over to the Association of Co-owners; and

WHEREAS, the administration has recommended that the Regime be turned over to the Association of Co-Owners at the time of conveyance of Unit B to BAAC, in order that the regime be governed by BAAC as owners of both units in the regime; and

WHEREAS, the Board of Public Works has approved turnover of the regime by Resolution on September 10, 1991; and

WHEREAS, the interests of the City of Bloomington and the Public are adequately protected by provisions incorporated into the Deed and Mortgage on Unit A and to be incorporated in conveyance documents for Unit B in accordance with the Purchase Agreement;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, THAT:

1. The Common Council of the City of Bloomington hereby approves the Purchase Agreement attached hereto and made a part hereof and the conveyance of Unit B in Arts Square Horizontal Property

Regime to BAAC upon the terms and conditions contained in said Agreement.

2. The Common Council of the City of Bloomington hereby approves turnover of the Horizontal Property Regime to the Association of Co-Owners at the time of conveyance of Unit B to BAAC.

3. The Common Council of the City of Bloomington hereby authorizes the Mayor and the initial Board of Directors to execute all documents necessary to effect conveyance of Unit B and turnover of the Horizontal Property Regime.

4. The Common Council of the City of Bloomington hereby directs the Controller to place the proceeds from the sale of Unit B into a Fire Capital Fund. This fund is established to provide for any future needs of the fire department which may include, but are not limited to, acquiring land for a new westside fire station, constructing that station, and purchasing, maintaining, or operating firefighting apparatus and equipment. Any expenditures from this fund must be approved in advance by the Common Council.

PASSED and APPROVED by me upon this 18th day of September, 1991.

John Fernandez
JOHN FERNANDEZ, President
Bloomington Common Council

ATTEST:

Patricia Williams
PATRICIA WILLIAMS, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 19th day of September, 1991.

Tomilea Allison
TOMILEA ALLISON, Mayor
City of Bloomington

SYNOPSIS

This Resolution approves a purchase agreement for conveyance of Unit B in Arts Square Horizontal Property Regime, which will soon be vacated by the Fire Department, to the Bloomington Area Arts Council, Inc., which already owns Unit A, the future site of the John Waldron Arts Center. This Resolution also approves turnover of control of the Horizontal Property Regime to the Association of Co-Owners upon conveyance of Unit B.

Signed copies to

Arts Center
Fire Dept
Public Works
Legal
Controller

PROPOSED PURCHASE AGREEMENT

August 26, 1991

To : Bloomington Area Arts Council, Inc. - **Buyer**
P.O. Box 1293, Bloomington, IN 47402

From : City of Bloomington - **Seller**
P.O. Box 100, Bloomington, IN 47402

The Bloomington Area Arts Council, Inc. (hereinafter referred to as BAAC) hereby agrees to purchase from the City of Bloomington, Indiana the following described real estate in Monroe County, in the State of Indiana:

> Unit B (consisting of B-1 and B-2) in the Arts Square Horizontal Property Regime, as established by the Declaration of Arts Square Horizontal Property Regime dated July 3, 1990, and recorded July 27, 1990, in Misc. Record Book 201, pages 371-412, in the Office of the Recorder of Monroe County, Indiana, together with an undivided Percentage Interest in the Common Areas of Arts Square Horizontal Property Regime, as set out in said Declaration and any subsequent amendments thereto; which property is commonly known and presently used as the Headquarters Fire Station, in the 1915 Bloomington City Hall and the 1950 addition to that building at 122 South Walnut, Bloomington, IN 47404;

for the sum of **ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS** upon the following terms and conditions:

1. Payment. Twelve Thousand Five Hundred Dollars ($12,500.00) shall be paid upon the delivery of a Quitclaim Deed. The balance of the purchase price is to be carried on a Purchase Money Promissory Note in the amount of One Hundred Twelve Thousand Five Hundred Dollars ($112,500.00) together with interest thereon at an annual rate of 6% up to and including the date of maturity. The maturity date for this note shall be one year from the date of delivery of deed, and full payment of principal and interest shall be due on or before said maturity date. Buyer shall have the right to prepay the principal, along with interest accrued to the date of payment, prior to the maturity date. Performance on said note is to be secured by a Purchase Money Real Estate Mortgage.

Buyer has deposited with Seller earnest money in the sum of One Thousand Dollars ($1,000.00), to be applied as

part of the purchase price of said real estate at the time of delivery of deed.

2. Possession, Closing, and Insurance. Possession is to be delivered upon closing, or upon the date upon which the City Fire Department has vacated the premises, whichever is later. Closing will take place on or before October 15, 1991.

Seller's insurance shall be cancelled as of the date of closing. Seller shall bear the risk of loss until that time. Buyer shall obtain insurance in such amounts and with such coverages as may be acceptable to Seller as Mortgagee, effective upon the date of closing. This provision shall have no application to master policies of insurance upon the horizontal property regime.

3. Public Improvements. Buyer will assume all assessments for municipal and other public improvements which become a lien after acceptance of this offer.

4. Improvements to Real Estate. Seller shall not cause any improvement to be made to the Real Estate without compelling reason of health and safety or the consent of Buyer, from and after the date of execution of this Purchase Agreement.

5. Title Insurance and Correction of Defects. Buyer, at its option and at its own expense, may obtain title insurance; provided, however, if Buyer chooses to obtain title insurance, Buyer shall obtain a commitment for said title insurance, and notify seller of any unacceptable defects in title, conditions or exceptions on or before September 11, 1991. Correction of any such unacceptable defects, conditions or exceptions shall be at Buyer's cost and expense.

6. Default. Should either Buyer or Seller refuse to complete this transaction after execution of a Purchase Agreement by the parties, then the other party may pursue all available legal and equitable remedies; provided that Seller, at its option, may elect either to pursue all available legal and equitable remedies or declare a forfeiture hereunder and retain the Earnest Money as liquidated damages.

7. Pro-rating Common Expenses. At closing, common expenses pre-paid by the City on the first of the month in which closing occurs will be pro-rated and BAAC will reimburse the City for its pro-rata share of such expenses.

8. Personal Property, Fixtures, and Other Improvements. Conveyance of the Real Estate will not include any personal property presently contained therein, nor shall conveyance include the following items, which Seller shall remove:

1. Air conditioner (including condenser and coils).
2. Air compressor including tanks, phaser box, control panel, and all other accessory equipment.
3. Emergency generator and electrical panel (disconnect) associated therewith.
4. Window fan.
5. Fire poles (two).
6. Speakers (located in bathroom/bay).
7. Shelving in offices (3 rooms).
8. Metal lockers (located in bay).
9. Gas grill.
10. All kitchen equipment and appliances.

The City makes no representations regarding ownership or use of the wooden deck which is attached to Unit B but which projects across the property line; provided, however, Buyer shall have no right by virtue of this conveyance to remove or otherwise interfere with the air conditioning unit, which is located on the deck and which serves the pedestrian walkway located in the air rights easement over and across Unit B.

9. Other Conditions. As further conditions of sale, Buyer agrees:

A. That the BAAC will comply with Indiana Code sec. 32-1-6-28, which requires the written consent of the City, as lienholder on Unit "A", before the property may be removed from the horizontal property laws.

B. That the City will consent to removal of the property from the horizontal property laws only upon BAAC's execution of documents keeping the existing use restrictions and reversion provisions for Unit "A" in place.

C. That any mortgage or lien placed upon Unit "B" by BAAC prior to removal from the horizontal property laws (with the exception of the City's Purchase Money Mortgage) shall,upon removal, be subordinated to the City's existing Mortgage on Unit "A" in the amount of $270,000, and if such mortgage or lien on Unit "B" exists prior to removal BAAC shall, upon request of the City, release the City in writing from its obligation under Paragraph 12 of the Mortgage to "not unreasonably

withhold its consent" to further encumbrance of the property by mortgages subordinate to that of the City; otherwise, all terms and conditions of the existing Mortgage are to remain in effect.

It is the intent of the parties that this Purchase Agreement be approved by both parties on or before September 18, 1991; and if approved, the above referenced earnest money is to apply to the purchase price, and if refused by either party, same is to be refunded in full. It is understood that approval by the City will require formal action by both the Board of Public Works and Common Council, and that this Purchase Agreement will not be binding upon the City until such approval has been given.

IN WITNESS WHEREOF, the parties have caused this Purchase Agreement to be executed this _____ day of _____, 1991.

THE CITY OF BLOOMINGTON, INDIANA

BY: _____
Tomilea Allison, Mayor

BY: _____
City of Bloomington Common Council
John Fernandez, President

BY: _____
City of Bloomington Board of Public Works
Dr. Frank N. Hrisomalos, President

The undersigned persons executing this Purchase Agreement on behalf of Buyer hereby represent and certify that they are duly elected officers of Buyer and have been fully empowered, by proper resolution of the Board of Directors of Buyer, Bloomington Area Arts Council, Inc., to execute this Purchase Agreement; that Buyer has full corporate capacity to purchase the real estate described herein and to abide by all terms and conditions contained herein; and that all necessary corporate action for the making of such purchase agreement has been taken and done.

THE BLOOMINGTON AREA ARTS COUNCIL, INC.

BY: _____
Elizabeth P. Blumenthal, President

BY: _____
Jefrey L. Davidson, Treasurer