(passed 9-0)

ORDINANCE 01-05

To Approve a Lease between the City of Bloomington Redevelopment Commission and 7th & Walnut LLC
Re: Walnut Center Located at the Northeast Corner of 7th & Walnut

WHEREAS, in 1985 the City of Bloomington Redevelopment Commission and the Common Council both passed resolutions that designated an area of downtown Bloomington as a "blighted area" pursuant to the provisions of Indiana Code 36-7-14-1 *et. seq.*; and

WHEREAS, the Redevelopment Commission developed and approved a Development Plan, as required by statute, to revitalize the designated blighted area; and

WHEREAS, the Development Plan identified several primary objectives for revitalizing the blighted downtown area; and

WHEREAS, two of the primary objectives identified were to (1) increase off-street parking opportunities in the downtown area, and (2) encourage land uses which strengthen and intensify existing land use relationships in the area; and

WHEREAS, the City of Bloomington has consolidated a surface parking lot it owns at the northeast corner of 7th and Walnut Street with an adjoining surface parking lot formerly owned by Ameritech (the "consolidated lot"); and

WHEREAS, the Redevelopment Commission has accepted a proposal from 7th and Walnut LLC for a public/private project on the consolidated lot; and

WHEREAS, the Redevelopment Commission has entered into a ground lease with 7th and Walnut LLC, which requires 7th and Walnut LLC to construct a multi-level parking and commercial facility, to be known as "Walnut Center" on the consolidated lot; and

WHEREAS, the Common Council voted unanimously by Ordinance 00-20 to vacate the public alleyway crossing a portion of the consolidated lot in order to facilitate the public/private project; and

WHEREAS, the parking portion of the public/private facility at Walnut Center has reached a point of substantial completion; and

WHEREAS, the Redevelopment Commission has entered into an operating lease with 7th and Walnut LLC, pursuant to its Resolution 01-06, subject to final approval by the Common Council, pursuant to the provisions of I.C. 36-7-14-25.2(c), that gives the City of Bloomington control over the parking portion of the public/private facility, including setting of rates and other terms of use; and

WHEREAS, the Common Council has reviewed the operating lease and finds that it furthers the stated goals of the Redevelopment Plan, provides a vital component in alleviating the current and future parking needs of the downtown, and gives the City of Bloomington a major and continuing role in sustaining and bolstering the economic strength of the downtown and surrounding areas;

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

SECTION 1. The operating lease between the Redevelopment Commission and 7th and Walnut LLC, which was approved by Redevelopment Commission with the adoption of Resolution 01-06 and which governs the public/private project known as Walnut Center located on the northeast corner of 7th, is attached and made a part of this ordinance and is hereby approved.

SECTION 2. If any section, sentence, or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect

without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 3. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, and approval of the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 7th day of February, 2001.

Patricia Cole, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 8th day of February, 2001.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 8th day of February, 2000.

JOHN FERNANDEZ, Mayor
City of Bloomington

SYNOPSIS

This ordinance approves the lease between the City of Bloomington Redevelopment Commission and the 7th and Walnut, LLC regarding the retail/commercial/parking facility located at the north east corner of 7th and Walnut, known as Walnut Center. The Redevelopment Commission adopted Resolution 01-06 which authorizes them to enter into an operating lease with 7th and Walnut LLC for the leaseback by the City of the parking portion of Walnut Center that has been constructed by 7th and Walnut LLC on land owned by the Redevelopment Commission. The public/private partnership that has resulted in this structure has spanned over two years and has involved the Redevelopment Commission, the Board of Public Works, the Common Council, 7th & Walnut LLC and Ameritech. The resultant structure will add approximately 400 parking spaces to the downtown area, will add retail and commercial space, and will house an important component of the telecommunications infrastructure of the community. The parking portion of the facility is set to come on line at a time of favorable interest rates, which will substantially reduce lease payments by the City from those previously anticipated for the project.

Flory - 2 w/certs.
Legal - 5
HAND
Redev. Comm.

Controller
Public Works
Ameritech
7th & Walnut, LLC.

INTERDEPARTMENTAL MEMORANDUM

City of Bloomington Legal Department

TO: Members of the Common Council

FROM: Michael Flory, City Legal

DATE: 15 January 2001

RE: 7th & Walnut Parking Garage

The purpose of this memorandum is to give you the background underlying the ordinance by which you are asked to approve the Redevelopment Commission resolution to enter into a lease with 7th and Walnut LLC for the parking portion of the parking garage/commercial facility at the northeast corner of 7th and Walnut Streets. The facility will contain a ground-level retail/commercial space, a telecom hotel, and five floors of parking, providing approximately 386 spaces.

HISTORICAL BACKGROUND

In 1985 the City of Bloomington Redevelopment Commission and the Common Council passed resolutions that designated an area of downtown Bloomington as a "blighted area" pursuant to the provisions of Indiana Code 36-7-14 et.seq. In conjunction with that designation, the Redevelopment Commission approved a Development Plan for the area, enumerating various objectives for revitalizing the downtown area. Two of the primary objectives identified by the Development Plan were:

1. Provide increased off-street parking opportunities; and

2. Encourage land uses which strengthen and intensify existing land use relationships in the area.

For some years there has been discussion of the construction of a parking facility on the lot owned by the City at the northeast corner of 7th and Walnut Streets. The City used that land as a surface-paved parking lot. Adjacent to the City's lot was a surface-paved parking lot owned by Ameritech of Indiana. In the last year of his first term, Mayor Fernandez began exploring various options for construction of a parking garage at this corner. The Board of Public Works, the Redevelopment Commission, and ad hoc committees, with representation from Council members and the Council Attorney, all have had extensive input into this process. The final result of this process is a public/private partnership between the City of Bloomington and local developer Wininger/Stolberg Group.

WALNUT CENTER

The process that has led to Walnut Center and the lease back of the parking facility by the city has been complex. It began, beginning with an initial issuance of and RFP by the Board of Public Works, asking for proposals for construction of a facility with commercial/retail space on the first floor, and five upper floors of parking. Three responses were received, and were reviewed by a committee made up of the Mayor, the President of the Common Council, the City Controller, the Council's attorney and myself. None of the proposals submitted were workable under the auspices of the Board of Public Works, and it became apparent that it would be necessary to keep land rental costs down in order to make the project feasible for any private partner. This objective was accomplished through two actions:

1. Rather than purchase the adjoining Ameritech lot, an agreement was reached with Ameritech whereby Ameritech would donate its lot to the City in exchange for certain considerations. The primary considerations are reserved space for parking and telecommunications operations, at no charge for a period of 20 years. The City/Ameritech agreement allowed the City to acquire the adjoining parcel of ground--necessary to provide sufficient area for the parking facility at no upfront cost. Incidentally, the exchange avoided any need to employ eminent domain to obtain the land; parking next to its facility is vital to the interests of Ameritech, and Ameritech would not have been a willing seller had the City chosen to insist on an outright purchase of the lot.

2. The consolidated City/Ameritech parcels of land were transferred by the Board of Public Works to the Redevelopment Commission, which has statutory authority to lease land at less than appraised value if the action furthers redevelopment of a blighted area.

The Redevelopment Commission then issued an RFP, and received only one proposal--from Wininger/Stolberg Group. After extensive negotiation, the Redevelopment Commission and W/S entered into a long-term land lease which requires W/S to construct a multi-story building on the consolidated parcel. Once the structure is completed, the Redevelopment Commission intends to lease back all parking spaces within the facility. That lease cannot be signed until the parking spaces are available for use. State statute requires the Redevelopment Commission to authorize entering into such a lease through resolution, and that resolution to be approved by the Common Council by ordinance. In furtherance of the project, the Common Council voted unanimously in ordinance 00-20 to vacate the public alleyway that crossed a portion of the lot.

The primary terms of the lease of the parking spaces are as follows:

1. The cost of the structure, less any prepayments by the Redevelopment Commission, will be amortized over a 30 year period at a set interest rate

(determined by a formula in Section 1.11 of the lease) less $100,000 guaranteed annual payment by 7th & Walnut toward the cost. The rate will be subject to restructuring ever five years, to account for interest rate changes. Note that the Redevelopment Commission has already prepaid $500,000 toward design and development costs of the project.

2. In addition to the developer's $100,000 annual guarantee, 50% of any rental income over $12.00/square foot will go to reduce the leaseback amount. (See Section 4.2 for the exact formula.)

3. The developer will act as the landlord for the commercial/retail space. The City will be responsible for maintenance and upkeep only of the parking portion of the facility.

4. The City, through the Common Council, will have control over the rates of the parking spaces, both metered and leased. This will give the City the power to adjust rates so that there is a balance between revenue generation that will contribute to lease payments, and parking costs that encourage full capacity use of the spaces.

5. The lease contains all provisions necessary to fulfill the agreement between the City and Ameritech.

As this memo is drafted, we do not yet have the final interest rate. However, due to the recent fall in interest rates, it appears the annual cost of the lease will be approximately $85,00 less during the first five years than we had originally planned. The copy of the lease you have therefore must still be viewed as a draft. However, I will see that all council members are immediately informed when we can plug in the final figures. The lease, of course, must be in final form before action by the Redevelopment Commission on February 5th.

Discussion of this ordinance is being tightly coordinated with action by the Redevelopment Commission to insure locking in favorable interest rates at the earliest opportunity.

The project comes on line at an important time. Interest rates are favorable. It appears that there will be some action on the S.T. Semicon lot, either through receivership or through the actions of a private developer. Any development of that entire city block will only serve to increase the demands on parking in the downtown area. In addition, the City has had lengthy discussions with the County about the possibility of the County leasing a sufficient number of spaces to help alleviate the continual and severe parking problems faced by County employees. Finally, a portion of the first floor space will be occupied by a "Telecom Hotel", which will serve as a major switching point for fiber optic communications.

This project has been a creative effort involving government and the private sector. The result is a structure that will play a major role in protecting and furthering the

renaissance we have seen in the downtown area over the past several years--the area that the Common Council and Redevelopment Commission designated "blighted" in 1985.

I will be happy to talk with, or to meet with, any council members who would like any further information.

City of Bloomington
Office of the Controller

MEMORANDUM
(revised)

To: Dan Sherman, Council Attorney
From: Tom Guevara
Date: January 17, 2001
Re: Walnut Center Garage Lease
Cc: Linda Runkle, Michael Flory

At the request of Michael Flory I have developed the following information concerning the leasing arrangements for the Walnut Center, which will be completed at the end of this month. For the reasons outlined below, I believe that the proposed lease from a cost perspective – for both the city's share of construction cost and as a lease obligation – is fair and reasonable, saves the city money when compared to our original cost estimates, and should be executed as quickly as possible to lock in very favorable interest rates for the first 5 year term of the lease.

As you recall from Council Briefings in the middle of last year, the City committed to a public-private partnership with the Wininger Stolberg Group (WSG) to build and operate a new retail center and parking garage to be located at the northeast corner of Seventh and Walnut Streets. Under the proposed arrangements, the parking garage will be operated and maintained by the City and the retail space will be operated and maintained by a new partnership created by WSG called 7th and Walnut, LLC. In examining the partnership arrangement, we presented information to demonstrate that the City's overall share of the project costs was fair and that the costs of construction for a like (parking) structure were reasonable. Financing for the facility is to be provided by execution of a private mortgage to be taken by the LLC. Upon completion of the garage, execution of the mortgage, and signing of an operating lease between the City and 7th and Walnut, the City will be obligated to make monthly lease payments to 7th and Walnut in an amount that is based on the cost of the facility mortgage.

The negotiated lease payment between the City and Seventh and Walnut, LLC will be equivalent to the monthly cost of a 30 year mortgage, less a $100,000 guaranteed annual payment by WSG. The total amount of the mortgage will not exceed the cost of the building, $5.6 million. The interest rate of the mortgage is based on the U.S. Treasury security 5-year constant maturity rate, plus 225 basis points (2.25%). The mortgage is to be re-based every 5 years. When the financing details were first discussed with Council members, the 5-year Treasury security rate was at about 6.6%. Thus, the total interest rate that would have been in effect if a mortgage was taken at that time would have been 8.85%. The 6.6% Treasury rate was high by historical standards. Nevertheless, for planning purposes, the Controller's office assumed a 9% interest rate (6.75% Treasury rate, plus 225 basis points) when estimating the City's lease cost. As part of the City's financial strategy, we determined it would be in our best interest to pay certain construction expenses as they were incurred, effectively "buying down" the principal amount of the mortgage. We received authorization from the Redevelopment Commission to expend up to $500,000 of Downtown TIF funds for expenses directly related to the construction costs of the garage. Consequently, the City's total lease payment was estimated at that time to be $392,429, including the $500,000 buy-down on the mortgage. Of this total amount, $143,000 is estimated to come

401 N. Morton Street • Bloomington, IN 47404 City Hall Phone: (812) 349-3412 • Fax: (812) 349-3456
www.city.bloomington.in.us
e-mail: controller@city.bloomington.in.us

from parking and retail revenue sharing income. The remainder, $249,429 is to paid from Downtown TIF funds.

Between the time when this project was first presented and today, with project completion imminent, interest rates have turned very favorable. The 5-year Treasury rate has trended down to well under 5%, with the most recently published rate being 4.85%. If the lease were signed today, however, the actual index would be 4.80% because the mortgage rate is indexed to the *weekly* interest rate of the 5-year Treasury security for the week preceding the week in which the mortgage is closed.

Based on the above interest information we can estimate the current total interest rate to be about 7.1% instead of 9% as originally planned. Because we have paid $493,678 in construction expenses up front, our lease payment is now estimated to be $311,793, a savings of $80,636 for each year for the first five years of the lease contract as compared to our original estimates. The drop in the interest rate is passed completely through to the City because the developer will still be obligated to make a $100,000 guaranteed annual payment regardless of interest rates.

The mortgage loan will be finalized upon project completion, bank inspection of the facility, and signing of the lease by the City. We do not anticipate interest rates to change significantly between now and when the lease is actually signed, but, the 5-year rate has trended slightly upward in the last several days so we believe it is in the city's interest to approve and sign the lease as quickly as possible.

I hope this information on the financial issues of the Walnut Center was helpful. If you have any other questions, please do not hesitate to call me.

7th Street Garage

Scenario 2 - $500,000 project paydown from Dowtown TIF

Leases @ $450/month, inc[illegible] every 2 years; meters increased $.25/ every 5 years

SAMPLE SCENARIO FOR FINANCING THE PA[illegible]G

Feasibility Analysis

Retail leased at $14.95 net, increased 1%/year thereafter

Cash Flow Statement	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14
Parking annual lease price	*450*	*450*	*480*	*480*	*510*	*510*	*540*	*540*	*570*	*570*	*600*	*600*	*630*	*630*
Meter rate	*0.25*	*0.25*	*0.25*	*0.25*	*0.25*	*0.50*	*0.50*	*0.50*	*0.50*	*0.50*	*0.75*	*0.75*	*0.75*	*0.75*
Retail revenue sharing	17,250	18,124	19,007	19,899	20,800	21,709	22,628	23,556	24,493	25,440	26,396	27,362	28,337	29,322
Friedman - 40 leases (24/7)	18,000	18,000	19,200	19,200	20,400	20,400	21,600	21,600	22,800	22,800	24,000	24,000	25,200	25,200
Other leased spaces - 155 (12/5)	69,750	69,750	74,400	74,400	79,050	79,050	83,700	83,700	88,350	88,350	93,000	93,000	97,650	97,650
Lot Permits (Monroe Co.)-100 @ $305	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500
Metered Parking	7,500	7,500	7,500	7,500	7,500	15,000	15,000	15,000	15,000	15,000	22,500	22,500	22,500	22,500
Ameritech comp. - 20 spaces (20 yrs.)	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TIF Revenue	249,429	248,555	241,822	240,930	234,179	225,770	219,001	218,073	211,286	210,339	196,033	195,067	188,242	187,257
Subtotal City-Generated	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429
Add:														
Developer's Guaranteed Income	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
Total Net Income	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429
Lease Expenses														
Annual lease $5.1mm @ 9.0%	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429
Income after lease payment	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Additional TIF required	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total TIF required	**249,429**	**248,555**	**241,822**	**240,930**	**234,179**	**225,770**	**219,001**	**218,073**	**211,286**	**210,339**	**196,033**	**195,067**	**188,242**	**187,257**

Bonding Analysis*	Annual pmt.	NPV Interest Cost - Gross		NPV Interest Cost w/WSG Payment	
		Annual	Total	Annual	Total
30 year bond @ 5.95%	$366,584	$125,845	$1,741,538	$25,845	$357,659

* excludes bond issuance expenses and fees

Year 15	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30	
670	*670*	*700*	*700*	*730*	*730*	*760*	*760*	*790*	*790*	*820*	*820*	*850*	*850*	*880*	*880*	
0.75	*1.00*	*1.00*	*1.00*	*1.00*	*1.00*	*1.25*	*1.25*	*1.25*	*1.25*	*1.25*	*1.50*	*1.50*	*1.50*	*1.50*	*1.50*	
30,317	31,322	32,337	33,362	34,397	35,443	36,499	37,566	38,643	39,731	40,830	41,940	43,061	44,194	45,337	46,492	935,800
26,800	26,800	28,000	28,000	29,200	29,200	30,400	30,400	31,600	31,600	32,800	32,800	34,000	34,000	35,200	35,200	798,400
103,850	103,850	108,500	108,500	113,150	113,150	117,800	117,800	122,450	122,450	127,100	127,100	131,750	131,750	136,400	136,400	3,093,800
30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	30,500	915,000
22,500	30,000	30,000	30,000	30,000	30,000	37,500	37,500	37,500	37,500	37,500	45,000	45,000	45,000	45,000	45,000	787,500
0	0	0	0	0		15,200	15,200	15,800	15,800	16,400	16,400	17,000	17,000	17,600	17,600	164,000
178,462	169,957	163,092	162,067	155,182	154,136	124,530	123,463	115,936	114,848	107,299	98,689	91,118	89,985	82,392	81,237	
392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	392,429	11,772,871
100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	3,000,000
492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	
492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	492,429	14,772,871
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
178,462	**169,957**	**163,092**	**162,067**	**155,182**	**154,136**	**124,530**	**123,463**	**115,936**	**114,848**	**107,299**	**98,689**	**91,118**	**89,985**	**82,392**	**81,237**	**5,078,372**

OPERATING LEASE

THIS INDENTURE WITNESSETH, that 7th & Walnut, LLC, an Indiana limited liability company ("Landlord"), and The City of Bloomington, Indiana Redevelopment Commission ("Tenant"), in consideration of their mutual undertakings, agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1. The Demised Premises. The "Demised Premises" consists of approximately three hundred eighty-six (386) parking spaces of the parking garage constructed upon the real estate commonly known as northeast corner of 7th and Walnut Streets, Bloomington, Indiana; the elevator; the landscaping; the security system, dumpster area and other property or improvements described in the Ground Lease which is necessary to comply with the terms of the Ameritech Agreement. A site plan which depicts the Demised Premises, which were constructed in accordance with the Plans and Specifications previously approved by Lessee, is attached hereto as Exhibit A-1 and a site plan which depicts the retail/commercial/telecommunication space is attached to this Lease as Exhibit A-2.

Section 1.2. Additional Rental. "Additional Rental" means the cost of protecting, operating, managing, repairing, repaving, lighting, cleaning, striping, insuring, inspecting and landscaping the Demised Premises; and, all real estate or personal property taxes assessed upon the Demised Premises.

Section 1.3. Commencement Date. "Commencement Date" means the first day the Demised Premises are ready for use and occupancy for their intended purposes.

Section 1.4. Demised Term. "Demised Term" means the period from the Commencement Date until the expiration of the Ground Lease, or any later date as provided in Article 3 of this Lease.

Section 1.5 Minimum Rental. For purposes of this Agreement, the annual "Minimum Rental" shall be calculated using the following formula:

> Minimum Rental = (Project Cost less any expenses prepaid by Tenant, amortized over thirty (30) years at the Applicable Rate) less $100,000 per year

For purposes of illustration, the Minimum Rental for each of the first five (5) years of the Demised Term shall be Three Hundred Six Thousand Eight Hundred Forty-Seven Dollars and Sixteen Cents ($306,847.16), which was calculated according to the foregoing formula assuming that: (a) the Project Cost was $5,600,000; (b) the prepaid Tenant improvements were $493,678; and (c) the Applicable Rate was 6.980%, which was the Applicable Rate as of January 10, 2001. The Applicable Rate as of the date of execution of this Operating Lease is _____ percent (_____)%. Tenant's Minimum Rental payments shall cease on the date thirty (30) years from the Commencement Date, provided that Tenant shall have paid all Minimum Rental payments and all other sums owed pursuant to this Operating Lease as of such date.

Section 1.6. Tenant's Notice Address. Any notice required to be given to Tenant under this Lease will be sent to "Tenant's Notice Address" which is:

> City of Bloomington
> P.O. Box 100
> Bloomington, IN 47402

Section 1.7. Ground Lease. "Ground Lease" means the Lease for the real estate between The City of Bloomington, Indiana Redevelopment Commission, as Ground Lessor, and 7th & Walnut, LLC, an Indiana limited liability company, as Ground Lessee, a Memorandum of which

was recorded on February 9, 2000, as Number 2000002041 in the Office of the Recorder of Monroe County, Indiana.

Section 1.8. Operating Lease. "Operating Lease" means this sublease between Landlord and Tenant as subsequently modified or amended.

Section 1.9. Rent. "Rent" means Minimum Rental, Additional Rental and any amounts payable by Tenant to Landlord or on Landlord's behalf as a condition of this Lease.

Section 1.10. Ameritech Agreement. "Ameritech Agreement" means the Agreement between the City of Bloomington, Indiana and Ameritech, a copy of which is attached as Exhibit B.

Section 1.11. Applicable Rate. For purposes of this Agreement, the "Applicable Rate" is an interest rate which equals 225 basis points above the average yield on U.S. Treasury Securities adjusted to a constant yield of five (5) years in effect and published during the calendar week immediately preceding the calendar week in which the Landlord's permanent financing is funded. Landlord agrees that Landlord shall request funding of Landlord's permanent financing within thirty (30) days after the Demised Premises are available for Lease and Landlord and Tenant have both executed this Lease. The Applicable Rate shall be redetermined every five (5) years and the Minimum Rental shall be reamortized using the adjusted Applicable Rate.

Section 1.12. Project Cost. For purposes of this Agreement, "Project Cost" equals Five Million Six Hundred Thousand Dollars ($5,600,000) which is the construction cost of the Demised Premises including but not limited to direct expenses for labor and material incorporated into the Demised Premises. The final Project Cost shall be adjusted for any

increases or decreases in cost as a result of any change orders requested by Tenant and accepted by Landlord which are incorporated into the Demised Premises, and shall also be adjusted for any prepayment of expenses by Tenant.

Section 1.13. Revenues. "Revenues" means the Parking Revenues, Tax Increment, subject to appropriation by the Redevelopment Commission, Retail Income, and any other available funds, including appropriations from the Common Council or disbursements from the Lease Rental Surplus Fund.

ARTICLE 2

LEASED PREMISES

Section 2.1. Premises. Landlord subleases the Demised Premises to Tenant and Tenant accepts the Demised Premises from Landlord subject to all the terms and conditions of the Ground Lease and the Ameritech Agreement; provided, however, Tenant shall indemnify and hold Landlord harmless from any liability resulting from Tenant's failure to perform the Tenant's covenants contained in the Ameritech Agreement.

Section 2.2. Changes in the Demised Premises. Landlord shall not make any material changes to the building dimensions, exterior building facade, landscaping and other exterior site improvements without first obtaining Tenant's written consent which Tenant agrees shall not be unreasonably or arbitrarily withheld.

ARTICLE 3

DEMISED TERMS

The Demised Term of this Operating Lease shall begin on the Commencement Date and shall terminate August 31, 2039; provided, however, if Ground Lessee exercises any extension(s) available pursuant to Section 2.02 of the Ground Lease, then the Demised Term of this Operating Lease shall be extended to correspond with the date of expiration of the Ground Lease as extended.

ARTICLE 4

RENT

Section 4.1. Minimum Rental. During each calendar month of the Demised Term, Tenant promises to pay the Minimum Rental to Landlord, in advance, in equal monthly installments on the first day of each calendar month, without prior demand or setoff.

The final Minimum Rental shall be adjusted based upon the actual Project Costs and, during the first thirty (30) years of the Demised Term, shall be re-amortized every five (5) years based upon the Applicable Rate.

Section 4.2. Retail Revenue Sharing. During the Demised Term, Landlord shall share the lease revenue received from the tenants of the retail/telecommunications portion of the Project by making a payment to Tenant, calculated as follows:

(Base Rental - $12.00) X 50% = Retail Revenue Sharing Payment

For purposes of making the foregoing calculation, the "Base Rental" equals the rental which is paid to Landlord, calculated on an annual leasable square footage basis, by tenants who lease and occupy any portion of the retail/telecommunications portion of the Project **excluding** any

payments received by Landlord as payment for taxes, insurance, maintenance, costs of collection, late fees, interest and tenant finishes and improvements made or supplied by Landlord which are in addition to the Landlord's standard tenant finishes and improvements. Landlord shall remit such payment to the Tenant monthly not later than the fifteenth (15th) day of the month following the calendar month in which the payment was received from the retail/telecommunications tenants; provided, however, that if Tenant is then in default, Landlord may apply such payment to any amount then payable by Tenant under the terms of this Lease.

Section 4.3. Payment of Additional Rental. During the Demised Term, Tenant shall also pay the Additional Rental upon the sooner of sixty (60) days after invoicing by Landlord or as it becomes payable to any other party. During the Demised Term, at intervals chosen by Landlord, Landlord may establish a budget for the Additional Rental to be reimbursed to Landlord which shall be billed to Tenant monthly, in advance. At the end of the calendar year, Tenant shall pay any deficiency to Landlord in one lump sum within sixty (60) days of receipt of an invoice. Any overpayment shall be credited to Tenant's payments of Additional Rental due for the subsequent calendar year. The actual billings for the prior calendar year will be adjusted up or down to reflect the charges for the prior calendar year and the total will then become the basis for the estimated billings for the next calendar year. The estimated payment schedule may be reviewed and adjusted by Landlord from time to time to assure the billings accurately reflect the charges being incurred.

Section 4.4. Late Charges. In the event any installment of Rent is paid later than sixty (60) days after the same is due, a late charge of one and one-half percent (1 1/2%) of the delinquent installment may be assessed by the Landlord against Tenant. An additional charge

of one and one-half percent (1 1/2%) may be charged for each month that said delinquency continues.

Section 4.5. Partial Month. If Tenant's obligation to pay Rent commences on a day other than the first day of any calendar month, Tenant shall pay a daily pro-rata share of the Minimum Rental and Additional Rental upon the Commencement Date of this Lease.

Section 4.6. Place of Payment of Rent. All Rent shall be payable to Landlord, at 501 Woodscrest Drive, Bloomington, Indiana 47401 or to such other person or place as Landlord may hereafter designate in writing.

Section 4.7. No Relief. All payments due from Tenant hereunder shall be without relief from valuation and appraisement laws.

Section 4.8. Utilities. The Demised Premises may not be separately metered but, in any event, Tenant shall pay its pro-rata share on a just and equitable basis, as determined by Landlord, of the sewer and water, gas and electric charges as part of the Additional Rent. Tenant shall hold Landlord harmless and Landlord shall not in any way be liable or responsible to Tenant for any loss, damage or expense that Tenant may sustain or incur, if the quantity or character of any utility service is changed or suspended.

Section 4.9. Funding. The parties acknowledge that the Tenant has expended Four Hundred Ninety-Three Thousand Six Hundred Seventy-Eight Dollars ($493,678) in leasehold improvements made to the Demised Premises in accordance with the terms of a Resolution passed by the Tenant at its regularly scheduled meeting on June 5, 2000. The Rent shall be payable solely from the Revenues and the Rent shall not be payable from any other source and shall not constitute debt of the Tenant in any constitutional or statutory sense. The Tenant will

not pledge any of its taxing power to the payment of Rent; however, during the entire Demised Term, Tenant covenants and agrees that Tenant shall:

4.9.1 set the parking rates for the Demised Premises at a level that when combined with the other Revenues will be sufficient to pay the Rent and all other occupancy expenses;

4.9.2 favorably consider appropriation of Tax Increment Revenues collected by the City of Bloomington Redevelopment Commission within the Downtown TIF expanded for payment of any Rent not paid by Revenues;

4.9.3 appropriate additional sums on an annual basis to ensure that adequate funds are available from Revenues, including but not limited to the Tax Increment Revenues or other sources so that the Tenant shall: (a) Keep an amount in the Lease Rental Surplus Fund equal to not less than twelve (12) months Rent due hereunder; and (b) fulfill Tenant's obligation to pay the Rent to Landlord during the entire Demised Term; and

4.9.4 in addition to the foregoing sources, the Tenant may establish a Lease Rental Surplus Fund which may be used to pay the Rent when due if the Revenues are insufficient.

ARTICLE 5

OCCUPANCY AND USE

Section 5.1. Occupancy. Tenant may occupy the Demised Premises solely for the purpose of operating a parking garage and for no other purpose without the express prior written consent of Landlord.

Section 5.2. Use of Premises. Tenant shall use the Demised Premises for no unlawful purpose or act; shall not commit waste to the Demised Premises; shall comply with all applicable laws, regulations and orders of any governmental authority or agency and all reasonable directions of Landlord; and, shall not do or permit anything to be done in or about the Demised Premises which will injure or harm them.

Section 5.3. Use of Spaces Above Retail Space. Tenant shall designate not less than seventy-five (75) spaces immediately above the retail portion of the Project as metered spaces or, at Landlord's option, as monthly rental spaces to be leased to the Project's retail tenants.

ARTICLE 6

TAXES

Section 6.1. Personal Property Taxes. Tenant agrees to pay, prior to the delinquency date, all taxes levied upon personal property, together with any license fees, occupation taxes and other governmental charges arising out of Tenant's use or occupancy of the Demised Premises.

Section 6.2. Payment of Taxes. As a governmental entity, the Tenant does not anticipate any liability for personal property taxes, license fees, occupation taxes or other governmental charges. Tenant agrees to pay, as Additional Rental, all general real estate taxes which become due and payable upon the Demised Premises during the Demised Term, provided, however, that Tenant shall not be obligated to pay any income tax or profit tax, or inheritance or estate or transfer taxes, or any personal or corporation taxes, or franchise or license taxes, levied, assessed against or payable by Landlord.

Section 6.3. Contesting Assessments. As a governmental entity, the Ground Lessor does not anticipate any liability for general real estate taxes. Tenant shall have the right, at its own cost and expense and in its own name and in the name of Landlord, to protest or contest, or to seek to have reviewed, reduced, equalized or abated any tax, by legal proceedings or in such manner as it deems advisable. Landlord agrees to join with Tenant and to execute any and all documents, applications, petitions, instruments or complaints necessary for any such contest,

review or other proceedings desired by Tenant, provided, however, that any such contest review or proceeding shall be carried on by Tenant at its sole cost and expense, and upon the final determination of any such contest, review or proceeding, Tenant shall pay the taxes as are so finally determined, and all penalties and/or costs which may thereupon be due.

ARTICLE 7

LIENS

Tenant shall keep the Demised Premises free from any liens, including but not limited to mechanic's liens, arising from any act or failure to act on the part of the Tenant. If Tenant fails to do so, Landlord shall have the right, but not the obligation, to pay the amount of such lien to cause its release and such amount shall be considered Additional Rental to be paid to Landlord by Tenant on demand. All liens and encumbrances created or suffered by Tenant shall attach to Tenant's interest only.

ARTICLE 8

MAINTENANCE, REPAIRS, ALTERATIONS AND SIGNS

Section 8.1. Maintenance and Repairs. Tenant shall, at Tenant's expense, during the Demised Term or any extension, bear all expenses for maintenance, repair and replacement of the Demised Premises as Additional Rental.

During the Demised Term, Tenant shall also maintain the landscaping and other site improvements which form part of the Demised Premises and shall keep the parking area free of trash or rubbish, free of snow or ice, paved, lighted and striped.

If this Lease terminates prior to expiration of the Demised Term, the Demised Premises shall be returned to Landlord at the termination in as good order, condition and repair as the

same are on the Commencement Date, excepting only ordinary wear and tear, defaults of the Landlord, condemnation, casualty, war and uninsured Acts of God.

Section 8.2. Alterations. Tenant shall not at any time during the Demised Term have the right to make any alterations, additions or improvements to the Demised Premises except with the Landlord's prior written consent. Any such alterations, additions, fixtures permanently installed, or improvements which may be made or installed by Tenant with Landlord's prior written consent shall remain upon the Demised Premises and at the termination of this Lease prior to expiration of the Demised Term, such alterations, additions and fixtures shall be surrendered to Landlord with the Demised Premises.

Tenant agrees that, during the time any such permitted alterations or improvements are being made, Tenant shall indemnify and hold Landlord harmless from any and all liens for labor, materials and supplies which may arise by reason of such alterations and improvements made by Tenant.

Section 8.3. Signs. All signage standards, signs, lettering, advertising, decoration, lighting or any other thing of any kind visible from the Demised Premises installed by Tenant, shall be first approved in writing by Landlord. In addition, Tenant, at Tenant's sole expense will obtain the permission and sign permits required by the City of Bloomington, Indiana. The location and method of installation of any signage shall be as designated or approved by Landlord. Plans drawn to one-fourth inch equals one foot scale showing the dimensions and type of sign, lettering, colors, mounting brackets, advertising, decoration, lighting or any other thing of any kind together with the proposed location thereof shall be submitted to Landlord before installation.

After installation, all signage shall be maintained in good condition and repair at all times by Tenant. All sign costs, including electrical power to sign location, if any, shall be borne by Tenant. Landlord shall have the right to remove any sign erected by Tenant which has not been approved, in advance, by Landlord. Such removal will be done at Tenant's sole cost and expense, which will be paid as Additional Rental within ten (10) days after billing by Landlord.

ARTICLE 9

INDEMNIFICATION AND INSURANCE

Section 9.1. Insurance to be Furnished by Tenant and Indemnification. Tenant, at Tenant's expense, shall purchase and maintain in force at all times during the Demised Term, fire and extended coverage insurance, public liability, property damage and workmen's compensation insurance insuring against loss, cost and expense by reason of injury to or the death of persons or damage to or the destruction of property arising out of or in connection with the occupancy or use of the Demised Premises by Tenant. All such insurance will name Landlord and Tenant as insureds, and will be carried with an insurer acceptable to Landlord, with limits acceptable to Landlord. The minimum amount of public liability and property damage insurance to be carried by Tenant will not be less than $1,000,000.00 for injury to or death of persons, resulting from one accident, and $100,000.00 for injury to property. The fire and extended coverage insurance carried by Tenant will insure the Demised Premises against loss or damage to the full extent of its replacement value as determined annually during each year of this Lease.

Section 9.2. Indemnification of Landlord. Tenant shall INDEMNIFY AND SAVE HARMLESS Landlord from any loss, liability, cost or expense (including attorneys' fees and

court costs incurred in the defense thereof) arising out of or in connection with Tenant's use and occupancy of the Demised Premises, including any injuries to persons or damages to property, unless caused by the acts or omissions of Landlord, its agents, representatives or contractors.

Section 9.3. Copies of Policies to be Furnished by Tenant. Prior to expiration of the prior policy, Tenant shall furnish Landlord with either a copy of each of the policies insuring the risks referred to in the foregoing sections of this Article or certificates of insurance evidencing such coverage and renewals thereof. All policies shall name Landlord and Landlord's mortgage lender(s) as additional insureds and shall contain a provision that the insurer may not cancel or change the coverage afforded by the policy without first giving Landlord at least thirty (30) days' written notice.

Section 9.4. Waiver of Claims. Landlord shall not be liable for and Tenant waives all claims against Landlord for damages to persons or property sustained by Tenant or Tenant's employees, agents, or servants resulting from the Demised Premises or any equipment or appurtenances becoming out of repair, or resulting directly or indirectly from any act or neglect of any third person, firm or corporation; provided, however, Landlord shall remain liable for any damages sustained by Tenant or Tenant's employees, agents or servants resulting from Landlord's willful acts or gross negligence.

Landlord hereby releases Tenant (and anyone claiming through or under Tenant) from any liability to Landlord (or anyone claiming through or under Landlord by way of subrogation or otherwise) for any loss or damage to Landlord's property caused by fire or other perils against which Landlord is provided protection (excepting and excluding all or any portion of such loss or damage not covered because of an applicable deductible clause or in excess of the amount of

coverage provided) by the coverage afforded by the fire and casualty insurance required to be maintained under Section 9.1 of this Lease, even if such loss or damage shall have been caused by the fault or negligence of Tenant (or anyone claiming through or under Tenant) or its agents or employees. Tenant hereby releases Landlord from any liability or responsibility to Tenant (or anyone claiming through or under Tenant by way of subrogation or otherwise) for any loss or damage to Tenant's property caused by fire or other perils normally covered by standard fire insurance (with extended coverage endorsements), whether or not such property is actually insured against any such loss or damage, even if such loss or damage shall have been caused by the fault or negligence of Landlord or its agents or employees. Any fire and casualty insurance obtained by Landlord or Tenant will recognize this Section 9.4 and contain an appropriate waiver of subrogation clause.

ARTICLE 10

ASSIGNMENT AND SUBLETTING

Notwithstanding any other provision of this Lease, Landlord agrees that Tenant shall be permitted, without Landlord's consent, to: (a) provide parking spaces in accordance with the Ameritech Agreement; (b) lease spaces to the public; (c) lease spaces to other tenants of Landlord; or, (d) meter spaces in the Demised Premises.

ARTICLE 11

DAMAGE BY FIRE AND EMINENT DOMAIN

Section 11.1. Fire or Casualty. In the event of any damage to any portion of the Demised Premises, Landlord agrees to repair, restore or rebuild the Demised Premises to substantially the same condition in which the Demised Premises were immediately before such damage or

destruction, in accordance with specifications prepared by Landlord in consultation with Tenant. Landlord shall diligently execute such repair, restoration, replacement or rebuilding in a timely and workmanlike manner using materials and contractors selected by Landlord. If Landlord fails to undertake the repair, restoration, replacement or rebuilding of the Demised Premises in a timely manner, Tenant may serve notice upon Landlord. If, thirty (30) days following receipt of such notice, Landlord still has not commenced the repair, restoration, replacement or rebuilding of the Demised Premises, without legal cause, then Tenant may elect to perform such repair, restoration, replacement or rebuilding and, in that event, Tenant may deduct the expenses therefrom the Rent payable to Landlord hereunder. In the event the whole or any part of the Demised Premises are destroyed or damaged by fire or other casualty, before the termination or expiration of this Lease, then, in every such case, the Rent as herein provided, or a just and proportionate part thereof, according to the nature and extent to which the Demised Premises shall have been rendered unfit for use and occupancy by Tenant, shall be suspended and abated until the Demised Premises shall have been put, by and at the expense of Landlord, in the condition in which they were immediately prior to such destruction or damage (Landlord's work, however, being limited to the insurance proceeds available).

Notwithstanding anything to the contrary contained herein, if that damage or destruction occurs during the last three (3) years of the Demised Term, this Lease shall terminate on the date which is sixty (60) days after the occurrence of such damage or destruction. On such termination, Rent, taxes, assessments and other sums payable by Tenant to Landlord hereunder shall be pro rated as of the termination date and, in the event any Rent, taxes, or assessments

shall have been payable in advance, Landlord shall rebate the same for the unexpired period for which such payment shall have been made.

Section 11.2. Eminent Domain.

11.2.1. If all or any substantial part of the building which is part of the Demised Premises shall be condemned by any competent authority, this Lease shall end on the date when the possession of the part so taken shall be required by such authority, and without apportionment of the award to or for the benefit of Tenant. If any condemnation proceeding shall be instituted in which it is sought to take or damage only a portion of the building located on the Demised Premises, or the land under it, or if the grade of any street or alley adjacent to the building is changed by any competent authority and such partial taking or change of grade makes it necessary or desirable to remodel the building to conform to the taking or changed grade, Landlord shall have the right to cancel this Lease upon not less than ninety (90) days' prior written notice to Tenant. In either of the events above referred to, the Rent at the then current rate shall be apportioned as of the date of the termination. No money or other consideration shall be payable by Landlord to Tenant for the right of cancellation and Tenant shall have no right to share in the condemnation award or in any judgment for damages caused by the change of grade.

11.2.2. If, prior to the termination or expiration hereof, any public or private authority shall, under the power of eminent domain, make a taking resulting in the reduction of the floor area of the building which is part of the Demised Premises by more than fifteen percent (15%) then Tenant may, at its election, terminate this Lease by giving Landlord notice of the exercise of its election within twenty (20) days of the date of notice to Tenant of such taking.

ARTICLE 12

ACCESS TO PREMISES

Landlord and Landlord's authorized representatives shall have the right to enter upon the Demised Premises, with notice when reasonably practicable, at all reasonable hours for the

purpose of inspecting the same, for making repairs, or for exhibiting the Demised Premises to prospective tenants, purchasers or others.

ARTICLE 13

WAIVERS

No waiver by the Landlord of any breach of any one or more of the terms, covenants, conditions and agreements of this Lease shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder. The failure of Landlord to insist upon the strict performance of the terms, conditions, covenants, and agreements herein contained, or any of them, shall not constitute or be considered as a waiver or relinquishment of the Landlord's rights thereafter to enforce any such default or term, condition, covenant or agreement, and the same shall continue in full force and effect.

ARTICLE 14

DEFAULTS AND REMEDIES

Section 14.1. Default, Notice and Termination. If Tenant defaults in payment of the Rent or in the performance of any of the terms, covenants, or conditions of this Lease, Landlord may give to Tenant written notification of such default. If Tenant does not cure any default which can be cured by a payment of money within sixty (60) days, or does not cure any other default within sixty (60) days, after the giving of such notice, the Rent for the remainder of the Demised Term shall become immediately due and payable to the Landlord in one lump sum and Landlord may then terminate this Lease. Tenant shall be entitled to only one such notice during any calendar year, and upon Tenant's subsequent default, Tenant shall be subject to Landlord's rights without further notice. On the termination date specified in the Landlord's notice, the Demised

Term shall terminate, and Tenant shall then pay all amounts due Landlord and peacefully surrender the Demised Premises to Landlord. If this Lease shall have been so terminated by Landlord, Landlord may at any time resume possession of the Demised Premises by any lawful means and remove Tenant and other occupants and their effects.

Section 14.2. Repossession and Reletting. In any case where Landlord has recovered possession of the Demised Premises by reason of Tenant's default, Landlord may, at Landlord's option, change or prepare the Demised Premises for reletting. Landlord may, but shall not be required to, relet the Demised Premises, or any part thereof, for a term or terms to expire prior to, at the same time as or subsequent to the last day of the Demised Term. Landlord may receive payments from the new tenant and shall apply the same first to the payment of such expenses as Landlord may have incurred in connection with the recovery of possession, redecorating, altering, dividing, or otherwise changing or preparing for reletting, including reasonable legal fees and leasing fees, and then to the payment of damages in amounts equal to the Rent and the costs and expense of performance of the other covenants of Tenant. Tenant agrees, whether or not Landlord has relet, to pay to Landlord damages equal to the Rent and other sums agreed to be paid by Tenant for the remainder of the Demised Term, less the net proceeds of the reletting, if any, as ascertained from time to time. The same shall be payable by Tenant on the date Landlord presents an invoice to Tenant. In reletting the Demised Premises, Landlord may grant rent concessions without credit to Tenant. No such reletting shall constitute a surrender and acceptance or be deemed evidence thereof. Landlord's remedies are in addition to any other remedy allowed at law or in equity.

Section 14.3 Landlord's Default. Landlord's failure to perform or observe any of its obligations under this Lease within ten (10) days after Landlord receives written notice from Tenant that any such performance or observance is past due is a default under this Lease ("Landlord's Default"). If the Landlord Default cannot be cured within such ten (10) days, Landlord will not be in default of this Lease if Landlord commences to cure the Landlord's Default within such ten (10) day period and diligently continues to cure such Landlord Default. If Tenant brings suit against Landlord for any breach by Landlord of any of its obligations hereunder and such a breach is determined by a final judgment of a court of competent jurisdiction to have occurred and to have continued beyond the applicable cure period, Landlord will pay Tenant all costs and expenses incurred by Tenant with respect thereto. If Landlord is in default and has failed to cure the default within the applicable cure period under this Lease, Tenant may, without being obligated and without waiving such Landlord Default, cure such Landlord Default. If, within thirty (30) days after entry of a final judgment of a court of competent jurisdiction Landlord fails to reimburse Tenant as required by this Section 14.3, Tenant will have the right to withhold the sum owed Tenant from the next payment of Rent until Tenant is reimbursed in full for the full sum, plus interest at the rate of eighteen percent (18%) per annum.

ARTICLE 15

ATTORNEY'S FEES

In the event either party defaults in any of the covenants and agreements contained herein, each party shall pay their own costs and expenses, including reasonable attorney's fees, that may arise from enforcing this Lease, by suit or otherwise.

ARTICLE 16

NOTICES

All notices that are required or authorized to be given under the terms of this Lease shall be given in writing by United States certified or registered mail with postage prepaid addressed to the party to whom such notice is given, as follows: to Tenant at the Tenant's Notice Address, or to the last post office address of Tenant furnished to Landlord for such notice; and to Landlord at the address for the payment of rent. Any notice so mailed shall be deemed to have been given as of the time said notice is received by the Landlord or the Tenant.

ARTICLE 17

MORTGAGES AND SUBORDINATION

Section 17.1. Mortgages. Tenant hereby covenants and agrees that during the Demised Term or any extensions thereof, Landlord shall have the right and power to mortgage or otherwise create any security or other liens or encumbrances upon or affecting the fee interest in the Demised Premises, or the building, entrance drives, improvements, fixtures, equipment or other property which may be located thereon. Landlord shall have the right and power to mortgage or to modify, extend, renew, replace, refinance, or otherwise change or affect any such mortgage at any time or from time to time.

Section 17.2. Subordination. Tenant hereby agrees that its leasehold interest hereunder is subordinate to the terms of the Ground Lease and the terms of any mortgage now on, or hereafter to be placed on, the Demised Premises hereunder. Each mortgagee shall expressly covenant or each such mortgage shall expressly provide that so long as the Tenant is not in default under this Lease, the Tenant's quiet possession of the Demised Premises shall remain

undisturbed, on the terms and conditions stated herein, whether or not the mortgage is in default and notwithstanding any foreclosure or other action brought by the holder of the mortgage in connection therewith. This Subordination Agreement shall be self-operative and no further instrument or certificate of subordination shall be required from Tenant.

Section 17.3. Tenant's Certificates. Tenant hereby appoints the City of Bloomington Legal Department as its authorized representative to execute and deliver the certificates described in this Section 17.3. Tenant agrees that from time to time upon not less than five (5) business days' prior request by Landlord, Tenant's authorized representative will execute and deliver to Landlord, any mortgagee or prospective mortgagee of Landlord's interest in the Demised Premises, or any purchaser or prospective purchaser of Landlord's interest in the Demised Premises, a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there have been any modifications that the Lease as modified is in full force and effect); (ii) the dates to which the Rent and other charges have been paid; (iii) the date of commencement and expiration of the Demised Term; (iv) that, to the knowledge of Tenant, Landlord is not in default under any provision of this Lease, or, if in default, the nature thereof in detail; and, (v) such other matters as Landlord may reasonably request.

ARTICLE 18

GENERAL PROVISIONS

Section 18.1. Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent, partnership, joint venture, or any relationship other than that of Landlord and Tenant.

Section 18.2. Headings. The headings, titles, and subtitles in this Lease have been inserted solely for convenient reference and shall be ignored in its construction.

Section 18.3. Entire Agreement. This Operating Lease replaces and supersedes any inconsistent provisions of any prior resolutions, term sheets or agreements heretofore made by Landlord and Tenant. This Operating Lease, the Ground Lease and the Ameritech Agreement, Landlord's financing documents, Resolutions of the Redevelopment Commission, and all other documents executed in connection with this Operating Lease are intended to be complementary and supplementary to one another. In the event of any conflict between the terms of one or more thereof, such terms, shall, to the fullest extent reasonably possible, be construed to be complementary. However, if such terms cannot be construed as complementary, then the terms of this Operating Lease, to the extent that do not conflict with the provisions of Section 17.2 hereof, shall govern. All negotiations, considerations, representations and understandings between the parties are incorporated in this Lease, and may be modified or altered only by agreement in writing between the parties.

Section 18.4. Amendment. No amendment to this Lease shall be valid or binding unless such amendment is in writing and executed by the parties.

Section 18.5. Covenants of Landlord. Landlord covenants, warrants and represents that (a) Landlord has full right and power to execute and perform this Lease and to grant the estate demised herein; and, (b) Tenant, on payment of the Rent herein reserved and performing the covenants and agreements hereof shall peaceably have, hold and enjoy the Demised Premises and all rights, easements, appurtenances and privileges belonging or in any way appertaining thereto during the Demised Term.

Section 18.6. Interpretation. All provisions are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each section. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed. If any provision of this Lease shall be held invalid, the validity of the remainder of this Lease shall not be affected.

Section 18.7. Successors. All of the provisions shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. No third party other than such successors and assigns, shall be entitled to enforce any or all of the provisions of this Lease or shall have any rights.

Section 18.8. Remedies. All rights and remedies in this Lease or otherwise existing at law or in equity are cumulative. The exercise of one or more rights or remedies by either party shall not preclude or waive its right to the exercise of any or all of the others.

Section 18.9. Memorandum of Lease. The parties agree that a Memorandum of Lease in the form attached hereto as Exhibit C shall be executed by the parties and recorded in the Office of the Recorder of Monroe County, Indiana.

Section 18.10. Consent. The Landlord agrees that whenever under this Lease provision is made for the Tenant securing the written consent or approval of the Landlord, such written consent or approval shall not be unreasonably withheld, conditioned or delayed.

Section 18.11. Applicable Law. The laws of the State of Indiana shall govern the validity, performance and enforcement of this Lease.

Section 18.12. Not Binding Unless Signed. The submission of the Lease for examination does not constitute an offer to lease. This Lease shall become effective only after signed by both Landlord and Tenant.

SIGNED on the _____ day of _____, 2001.

7TH & WALNUT, LLC
an Indiana limited liability company

By: _____
Eric C. Stolberg, Member

Approved by the City of Bloomington Common Council, Ordinance No. 01-___, February ___, 2001 and the City of Bloomington, Indiana Redevelopment Commission, Resolution No. 01-___, February ___, 2001.

THE CITY OF BLOOMINGTON,
INDIANA REDEVELOPMENT COMMISSION

By:_____
David Walter, President

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Eric C. Stolberg. personally appeared before me, a Notary Public, on the _____ day of _____, 2001, and acknowledged the execution of the foregoing Lease, for and on behalf of 7th & Walnut, LLC, an Indiana limited liability company, and after being duly sworn, stated that the statements contained therein are true.

County of Residence:
_____

_____
Notary Public

My Commission Expires:
_____

_____
Name Printed

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

David Walter, the President of the City of Bloomington, Indiana, Redevelopment Commission, personally appeared before me, a Notary Public, on the _____ day of _____, 2001, and acknowledged the execution of the foregoing Lease, and after being duly sworn, stated that the statements contained therein are true.

County of Residence:

_____

_____
Notary Public

My Commission Expires:

_____

_____
Name Printed

This Instrument Prepared By: James F. Bohrer, **MALLOR CLENDENING GRODNER & BOHRER LLP**, 511 Woodscrest Drive, Post Office Box 5787, Bloomington, Indiana 47407 (812) 336-0200.

ars 1/19/01 I:\1999\99283\02\04\LEASE.RV4

Ord 01-05

To Approve a Lease Between the City of Bloomington Redevelopment Commission and 7th & Walnut LLC

Additional Information

The following attachments can be found in the Common Council Office:

1. Exhibit A-1 (Site Plan – Demised Premises)

2. Exhibit A-2 (Site Plan – Retail/ Commercial Telecommunication Space)

3. Exhibit B (Ameritech Agreement)
- With Further Exhibits

Ord 01-05

To Approve a Lease Between the City of Bloomington Redevelopment Commission and 7th & Walnut LLC

Additional Information - Attachments

The following attachments can be found with the backup material in the Council Office Legislative Files:

1. **Exhibit A-1 (Site Plan – Demised Premises)**

2. **Exhibit A-2 (Site Plan – Retail/ Commercial Telecommunication Space)**

3. **Exhibit B (Ameritech Agreement)**
   - **Joinder**
   - **Exhibit A to Purchase & Sale Agreement**
   - **Seller Acknowledgment of Memorandum..**

4. **Exhibit C (Memorandum of Ground Lease)**
   - **Exhibit "A" (Legal Description)**

Ord 01-05

To Approve a Lease Between the City of Bloomington Redevelopment Commission and 7th & Walnut LLC

Additional Information - Attachments

The following attachments can be found with the backup material in the Council Office Legislative Files:

1. **Exhibit A-1 (Site Plan – Demised Premises)**

2. **Exhibit A-2 (Site Plan – Retail/ Commercial Telecommunication Space)**

3. **Exhibit B (Ameritech Agreement)**
   - **Joinder**
   - **Exhibit A to Purchase & Sale Agreement**
   - **Seller Acknowledgment of Memorandum..**

4. **Exhibit C (Memorandum of Ground Lease)**
   - **Exhibit "A" (Legal Description)**