

ORDINANCE 86-1

AN ORDINANCE APPROVING A LEASE AND
AUTHORIZING ANNUAL LEASE PAYMENTS
FOR A PARKING FACILITY TO BE
LOCATED ON FOURTH AND WALNUT STREETS

WHEREAS, the Bloomington Common Council previously examined and determined a need for a parking facility; and

WHEREAS, the Bloomington Common Council recommended the creation of the Bloomington Downtown Parking Development Corporation; and

WHEREAS, representatives of the Common Council actively participated in the Design Review Committee, working directly with the engineer responsible for the design of the parking facility; and

WHEREAS, the Common Council has reviewed and approved the plans and specifications for the parking facility; and

WHEREAS, the Common Council has reviewed the Lease between the Bloomington Downtown Parking Development Corporation and the City of Bloomington, Indiana.

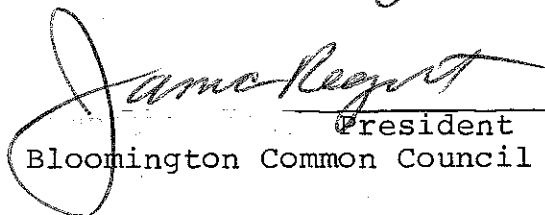
NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA, THAT:

Section 1. The Lease between the Bloomington Downtown Parking Development Corporation and the City of Bloomington, Indiana, a copy of which is attached hereto and made part hereof, is hereby approved and authorized.

Section 2. The Common Council hereby approves, authorizes and agrees to appropriate lease payments of three hundred eighty eight thousand dollars (\$388,000.00) per year, to be paid in two equal semi-annual installments.

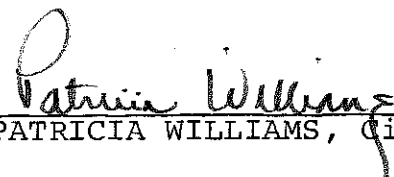
Section 3. Severability. If any section, sentence, or provision of this ordinance or the application thereof to any person or circumstance shall be declared invalid, such invalidity shall not affect any of the other parts of this ordinance which can be given effect without the invalid part, and to this end the provisions of this ordinance are declared to be severable.

PASSED AND ADOPTED By the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 14th day of January, 1986.



President
Bloomington Common Council

ATTEST:



PATRICIA WILLIAMS, City Clerk

PRESENTED By me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 15 day of January, 1986.

Patricia Williams
PATRICIA WILLIAMS, City Clerk

SIGNED AND APPROVED By me upon this 15 day of January, 1986.

Tomilea Allison
TOMILEA ALLISON, Mayor
City of Bloomington

SYNOPSIS

This Ordinance approves a Lease and authorizes annual lease payments to the Bloomington Downtown Parking Development Corporation.

Signed copies
Legal Dept.
Controller
BDPC

L E A S E

BLOOMINGTON DOWNTOWN PARKING DEVELOPMENT
CORPORATION

and

CITY OF BLOOMINGTON, INDIANA

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L E A S E

THIS LEASE, entered into this day of , 1985, between BLOOMINGTON DOWNTOWN PARKING DEVELOPMENT CORPORATION, an Indiana Not For Profit Corporation, (hereinafter called "Lessor"), and THE CITY OF BLOOMINGTON, INDIANA, a body corporate and politic designated by the laws of the State of Indiana as "The City of Bloomington, Indiana", acting through the Board of Public Works thereof (hereinafter called "Lessee"),

WITNESSETH THAT:

In consideration of the mutual covenants herein contained, it is agreed that:

1. Premises, Term and Warranty. The Lessor does hereby lease, demise and let to Lessee the real estate in the City of Bloomington, Monroe County, Indiana, more particularly described in Exhibit A attached hereto and made a part hereof, and a Parking Facility Building (hereinafter referred to as "Building"), to be erected thereon by Lessor according to plans and specifications dated October 29, 1985, by Clair K. Wolverton, Professional Engineer.

The above mentioned plans and specifications may be changed, additional construction work may be performed and additional equipment may be purchased by Lessor, but only with the approval of Lessee, and only if such changes or modifications, additional construction work or additional equipment do not alter the character of the Building or reduce the value thereof. Any such additional construction work or additional equipment shall be part of the property covered by this lease. The above mentioned plans and specifications have been filed with and approved by Lessee.

TO HAVE AND TO HOLD the same with all rights, privileges, easements and appurtenances thereunto belonging, unto Lessee, for a term of seventeen (17) years, beginning on the date the Building is completed in accordance with the plans and specifications, acceptable to Lessee and ready for occupancy, and so certified to the Lessee by Clair K. Wolverton, Professional Engineer, and ending on the day prior to such date seventeen (17) years thereafter. The date the Building is completed, ready for occupancy, shall be endorsed on this lease

at the end hereof by the parties hereto as soon as the same can be done after such completion, and such endorsement shall be recorded as an addendum to this lease. The Lessor hereby represents that it is possessed of, or will acquire, a good and indefeasible estate in fee simple to the above described real estate, and Lessor warrants and will defend the same against all claims whatsoever not suffered or caused by the acts or omissions of Lessee or its assigns.

2. Semi-annual Rental Payments. The Lessee agrees to pay rental for said premises at the rate of Three Hundred Eighty-eight Thousand Dollars (\$388,000.00) per year during the term of this lease. The first rental installment shall be due on the day that the Building to be erected on the premises is completed in accordance with the plans and specifications, acceptable to Lessee and ready for occupancy, and so certified to the Lessee by Clair K. Wolverton, Professional Engineer, or on December 28, 1987, whichever date is later, in an amount which provides for rental at the yearly rate specified above from the date of completion until the first June 28 or December 28 following such date of completion. Thereafter, such rental shall be payable in advance in semi-annual installments of One Hundred Ninety-Four Thousand Dollars (\$194,000.00) on June 28 and December 28 of each year. The last semi-annual rental payment due before the expiration of this lease shall be adjusted to provide for rental at the yearly rate specified above from the date such installment is due to the date of the expiration of this lease. All rentals payable under the terms of this lease shall be paid by the Lessee to Monroe County Bank, Bloomington, Indiana, as Trustee (hereinafter called "Trustee"), or to such other bank or trust company as may from time to time succeed the Monroe County Bank, as Trustee under the Trust Indenture securing the First Mortgage Bonds (hereinafter referred to as "Bonds") to be issued by the Lessor. All payments so made by the Lessee shall be considered as payment to the Lessor of the rentals payable hereunder.

After the sale of first mortgage bonds to pay the cost of said Building, including the acquisition of the site therefor, and other

expenses incidental thereto, the annual rental shall be reduced to an amount equal to the multiple of One Thousand Dollars (\$1,000.00) next higher than the highest principal and interest due in any year ending on a bond maturity date (bond year) on such bonds, plus Two Thousand Dollars (\$2,000.00), payable in equal semi-annual installments. Such amount of reduced annual rental shall be endorsed on this lease at the end hereof by the parties hereto as soon as the same can be done after the sale of said bonds and such endorsement shall be recorded as an addendum to this lease.

3. Additional Rental Payments. The Lessee shall pay as further rental for said premises all taxes and assessments levied against or on account of the leased property and any income or excise tax imposed on Lessor on account of receipt of lease rentals. Any and all such payments shall be made and satisfactory evidence of such payments in the form of receipts shall be furnished to the Lessor by the Lessee, at least three (3) days before the last day upon which the same must be paid to avoid delinquency. In case the Lessee shall in good faith desire to contest the validity of any such tax or assessment, and shall so notify the Lessor, and shall furnish bond with surety to the approval of the Lessor conditioned for the payment of the charges so desired to be contested and all damages or loss resulting to the Lessor from the non-payment thereof when due, the Lessee shall not be obligated to pay the same until such contests shall have been determined.

4. Abatement of Rent. In the event the Building to be erected on the premises shall be partially or totally destroyed, whether by fire or any other casualty, so as to render the same unfit, in whole or part, for use and occupancy by the Lessee, it shall then be the obligation of the Lessor to restore and rebuild the Building as promptly as may be done, unavoidable strikes and other causes beyond the control of the Lessor excepted; provided, however, that the Lessor shall not be obligated to expend on such restoration or rebuilding more than the amount of the proceeds received by the Lessor from the insurance provided for in Clause 6 hereof.

If there is in force on the date of such partial or total destruction insurance on the demised premises and the rental value thereof, in accordance with the provisions of Clause 6 hereof, the rent shall be abated for the period during which the Building or any part thereof is unfit for occupancy and shall be in proportion to the percentage of floor area which is unfit for occupancy.

5. Alterations and Repairs. The Lessee assumes all responsibility for repairs and alterations to the Building to be constructed by the Lessor. No alterations shall be made by Lessee without first obtaining the written consent of Lessor. At the end of the term, Lessee shall deliver the leased property to Lessor in as good condition as at the beginning of the term, reasonable wear and tear only excepted. Equipment or other personal property which becomes worn out or obsolete may be discarded or sold by Lessee. Lessee need not replace such personal property, but may replace such property at its own expense, which replacement property shall belong to Lessee. The proceeds of the sale of any personal property shall be paid to the above mentioned Trustee. Lessee may trade in any obsolete or worn out personal property or replacement property which will belong to Lessee upon payment to the trustee of an amount equal to the trade-in value of such property.

6. Insurance. Lessee, at its own expense, will, during the full term of the lease, keep the demised premises insured against physical loss or damage, however caused, with such exceptions as are ordinarily required by insurers of buildings or facilities of a similar type, in good and responsible insurance companies to the approval of Lessor. Such insurance shall be in an amount equal to one hundred five percent (105%) of the full replacement cost of the leased facilities as certified by a registered architect, registered engineer, or professional appraisal engineer, selected by the Lessor, on the effective date of this lease and on or before the first day of April of each year thereafter. Such appraisal may be based upon a

recognized index of conversion factors. During the full term of this lease Lessee will also, at its own expense maintain rent or rental value insurance in an amount equal to the full rental value of the leased facilities for the period of two (2) years against physical loss or damage of the type insured against pursuant to the preceding requirements of this clause. Such policies shall be for the benefit of persons having an insurable interest in the demised premises, and shall be made payable to the Lessor or to such other person or persons as the Lessor may designate. Such policies shall be countersigned by an agent of the insurer who is a resident of the State of Indiana, and such policies, together with a certificate of the insurance commissioner certifying that the persons countersigning such policies are duly qualified in the State of Indiana as resident agents of the insurers on whose behalf they may have signed, and the certificate of the architect or engineer hereinbefore referred to shall be deposited with the Lessor. If, at any time, the Lessee fails to maintain insurance in accordance with this clause, such insurance may be obtained by the Lessor and the amount paid therefor shall be added to the amount of rental payable by the Lessee under this lease; provided, however, that the Lessor shall be under no obligation to obtain such insurance and any action or non-action of the Lessor in this regard shall not relieve the Lessee of any consequence of its default in failing to obtain such insurance, including its obligation to continue the rental payments in case of total or partial destruction of the Building as provided in Clause 4 hereof.

7. General Covenants. The Lessee shall not assign this lease or sublet the demised premises herein described without obtaining an opinion of nationally recognized bond counsel that such assignment or sublease would not cause interest on the Bonds issued by Lessor to be subject to federal income tax and the written consent of Lessor. Lessee shall use and maintain the demised premises in accordance with the laws and ordinances of the United States of America, the State of Indiana, and all other proper governmental authorities.

8. Option to Purchase. Lessor hereby grants to Lessee the right and option, on any rental payment date prior to the expiration

of this lease, upon written notice to Lessor, to purchase the demised premises at a price equal to the amount required to enable Lessor to liquidate by paying all indebtedness, including accrued and unpaid interest to the first date on which bonds may be redeemed and all premiums payable on the redemption thereof, and by paying the expenses and charges of liquidation. In no event, however, shall such purchase price exceed the capital actually invested in such property by Lessor represented by outstanding securities or existing indebtedness plus the cost of transferring the property and liquidating the Lessor corporation. The phrase "capital actually invested" as used herein shall be construed to include, but not by way of limitation, the following amounts expended by the Lessor: organization and incorporation expenses, financing costs, carrying charges, legal fees, architect's fees, contractor's fees and reasonable costs and expenses incidental thereto.

Upon request of the Lessee, the Lessor agrees to furnish an itemized statement setting forth the amount required to be paid by the Lessee on the next rental payment date in order to purchase the demised premises in accordance with the preceding paragraph. The statement shall also set forth the name of the Trustee under the trust agreement or agreements securing the outstanding indebtedness of the Lessor.

If the Lessee exercises its option to purchase, it shall pay to the Trustee referred to above that portion of the purchase price which is required to pay all indebtedness of Lessor, including all premiums payable on the redemption thereof and accrued and unpaid interest. Such payment shall not be made until the Trustee gives to Lessee a written statement that such amount will be sufficient to retire all outstanding indebtedness of Lessor secured by the trust agreement or agreements between the Trustee and the Lessor, including all premiums payable on the redemption thereof and accrued and unpaid interest.

The remainder of such purchase price shall be paid by the Lessee to the Lessor. Nothing herein contained shall be construed to provide that Lessee shall be under any obligation to purchase the demised premises, or under any obligation in respect to any creditors or security holder of Lessor.

9. Option to Renew. Lessor hereby grants to Lessee the right and option to renew this lease for a further like, or lesser, term upon the same or like conditions as herein contained, and Lessee shall exercise this option by written notice to Lessor given upon any rental payment date prior to the expiration of this lease.

10. Defaults. If the Lessee shall default (A) in the payment of any rentals or other sums payable to the Lessor hereunder, or (B) in the observance of any other covenant, agreement or condition hereof and such default shall continue for ninety (90) days after written notice to correct the same; then, in any or either of such events, the Lessor may proceed to protect and enforce its right by suit or suits in equity or at law in any court of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, or the Lessor, at its option, without further notice, may terminate the estate and interest of the Lessee hereunder, and it shall be lawful for the Lessor forthwith to resume possession of the demised premises and the Lessee covenants to surrender the same forthwith upon demand.

The exercise by the Lessor of the above right to terminate this lease shall not release the Lessee from the performance of any obligation hereof maturing prior to the Lessor's actual entry into possession. No waiver by the Lessor of any right to terminate this lease upon any default shall operate to waive such right upon the same or other default subsequently occurring.

11. Notices. Whenever either party shall be required to give notice to the other under this lease, it shall be sufficient service of such notice to deposit the same in the United States mail, in an envelope duly stamped, registered and addressed to the other party or parties at their last known place of business.

NOTICE OF HEARING

PURSUANT TO PROVISIONS OF I.C. 5-3-1

AND IN ACCORDANCE WITH I.C.36-1-10

OF A PUBLIC HEARING TO BE HELD BEFORE

THE BOARD OF PUBLIC WORKS

OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA

You are hereby notified that a public hearing will be held before the Board of Public Works of the City of Bloomington, Monroe County, Indiana on the 7th day of January, 1986 at 5:30 P.M. in the Council Chambers of the Municipal Building, 220 East Third Street, Bloomington, Indiana, upon a proposed lease to be entered into between the City of Bloomington, through its Board of Public Works as the leasing agent and Lessor. The name of the proposed lessor is the Bloomington Downtown Parking Development Corporation. The location of the proposed structure is Lots Number 36, 35, 34 and the North half of Lot Number 33, together with the vacated alley between Lots 35 and 34, in the original plat of the City of Bloomington, which is also described as the North seven-eighths of the East half of the block bounded by Walnut Street, Fourth Street, College Avenue and Third Streets in the City of Bloomington. The character of the structure is a new 340-space parking garage to provide parking spaces in the downtown Bloomington area. The proposed lease upon which the hearing is to be held is for a term of seventeen (17) years commencing with the completion of the parking garage to be erected by the Bloomington Downtown Parking Development Corporation. The lease provides for annual rental of \$388,000.00 per year, payable semi-annually on June 28 and December 28 of each year during the term of the lease, commencing with the completion of the parking garage. As additional rental the lessee shall maintain insurance on the parking garage as required in the lease and shall pay all taxes and assessments against such property, as well as the costs of alterations and repairs.

The lease provides that after the sale of the first mortgage bonds to pay the costs of said structure, including the acquisition of the

site therefore and other expenses incidental thereto, the annual rental shall be reduced to an amount equal to the multiple of \$1,000.00 next highest to the highest principal and interest due in any year ending on a bond maturity date on such bonds, plus \$2,000.00 payable in equal semi-annual installments.

The lease gives an option to the lessee to purchase the property on any rental payment date. The structure to be erected will be a parking garage. The proposed lease, drawings, plans, specifications, and estimates for the structure are open to public inspection at the offices of City Engineer , Municipal Building, 220 East Third Street, Bloomington, Indiana, and at the hearing.

All persons are entitled to be heard at the hearing as to whether the execution of the lease is necessary and whether the rental is fair and reasonable for the proposed structure. After the hearing which may be adjourned from time to time, the leasing agent may modify, confirm or rescind the proposed lease, but the rental as set out in this notice may not be increased.

Dated this 19 day of December, 1985.

Board of Public Works
of the City of Bloomington,
Monroe County, Indiana
By Tomilea Allison, Mayor

ATTEST:

Patricia Williams, Clerk
City of Bloomington, Monroe County, IN

EXHIBIT "A"

Lot Numbers 34, 35, 36 and north half of Lot Number 33 in the Original Plat of the City of Bloomington, Monroe County, Indiana. Also the vacated alley between Lots 34 and 35 described as follows: Six feet by parallel lines adjacent to the South of Lot Number 35 and six feet by parallel lines adjacent to the North of Lot Number 34.

ADDENDUM

[To be added in compliance with Section 1. pertaining to date the Building is completed, ready for occupancy]

ENDORSEMENT

[To be added in compliance with Section 2. pertaining to reduced rental after sale of first mortgage bonds]

12. Successors or Assigns. All covenants of this lease, whether by Lessor or Lessee, shall be binding upon the successors and assigns of the respective parties hereto.

13. Construction of Covenants. Lessor was organized for the purpose of constructing and erecting a parking facilities building and leasing the same to Lessee under the provisions of the Indiana Code, Title 36, Article 1, Chapter 10. All provisions herein contained shall be construed in accordance with the provisions of said Chapter, and to the extent of inconsistencies, if any, between the covenants and agreements in this lease and provisions of said Chapter, the provisions of said Chapter shall be deemed to be controlling and binding upon Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this lease to be executed for and on their behalf the day and year first hereinabove written.

BLOOMINGTON DOWNTOWN PARKING
DEVELOPMENT CORPORATION, LESSOR

James Wray, President
Board of Directors

ATTEST:

Joyce E. Den Braber, Secretary-
Treasurer, Board of Directors

CITY OF BLOOMINGTON, MONROE COUNTY,
INDIANA, LESSEE

BY THE BOARD OF PUBLIC WORKS

Frank Hrisomalos, President

Martha Sims

Tobiatha Eagleson

ATTEST:

Patricia Williams, Clerk

STATE OF INDIANA)
 ss:
COUNTY OF MONROE)

Before me a Notary Public in and for said county and state personally appeared James Wray, Joyce E. Den Braber and Patricia William who acknowledged the execution of the foregoing Lease this day of , 198 .

Notary Public
Resident of Monroe County
My commission expires: _____

STATE OF INDIANA)
 ss:
COUNTY OF MONROE)

Before me a Notary Public in and for said county and state personally appeared Frank Hrisomalos, Martha Sims and Tobiatha Eagleson who acknowledged the execution of the foregoing Lease this day of , 198 .

Notary Public
Resident of Monroe County
My commission expires: _____

This instrument prepared by Thompson & Thompson, Attorneys at Law