

RESOLUTION NO. 75-18

WHEREAS, City of Bloomington, through its Board of Public Works, desires to construct a sidewalk-bicycle path between Park Ridge Subdivision and Indiana State Highway #46 By-Pass, and

WHEREAS, the Board of Public Works has determined the best location for such a sidewalk-bicycle path lies along the Illinois Central Gulf Railroad Company right-of-way, and

WHEREAS, the Board of Public Works has reached a tentative agreement with the Illinois Central Gulf Railroad Company to lease a portion of said right-of-way for said purpose, the terms of which proposed lease are attached as an exhibit,

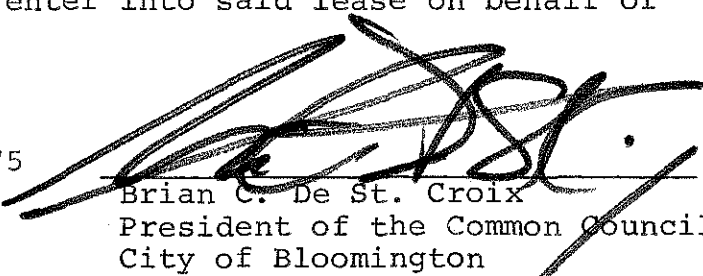
NOW, THEREFORE BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON THAT:

The construction of the above mentioned sidewalk-bicycle path is found to be a desirable project of public utility and benefit, and

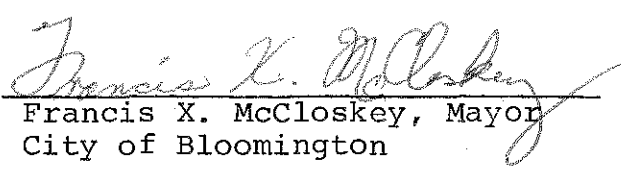
The terms of the attached proposed lease are hereby approved, and

The President of the Board of Public Works is hereby authorized to execute and enter into said lease on behalf of the City of Bloomington.

APPROVED: 19 June, 1975


Brian C. De St. Croix
President of the Common Council
City of Bloomington

APPROVED: 24 June, 1975


Francis X. McCloskey, Mayor
City of Bloomington

Lease

THIS Indenture made as of the 10TH day of June, 1975

by and between Illinois Central Gulf Railroad Company, a corporation, as Lessor (hereafter called "Railroad"), and CITY OF BLOOMINGTON

(hereafter called the "Lessee") whose billing and mailing address is c/o Mr. Leo Hickman Board of Works, P. O. Box 100, Bloomington, Indiana 47401

WITNESSETH, that the parties hereto, for and in consideration of the performance of the covenants, conditions and agreements hereinafter expressed agree as follows:

1. Railroad leases to Lessee and Lessee leases from Railroad upon the terms, covenants and conditions herein contained the property outlined in red on print attached hereto and made a part hereof, hereafter called "Premises", located at or near Bloomington

in the County of Monroe, State of Indiana, more particularly described as follows:

2.73 Acres, more or less, of Railroad property as outlined in red on the print attached hereto and made a part hereof.

for the term commencing on the 1ST day of June, 1975, and ending on the 31ST day of May, 1985, unless sooner terminated as hereinafter provided,

to be used exclusively as sidewalk and for no other purpose without the express written consent of Railroad. Lessee agrees to pay as rent for said demised premises the sum of \$5,000.00 per Term payable in advance to be paid to the Railroad in

~~installments of \$XXXXXXXXXXXXXXXXXXXX each in advance on the XXXXXXXX day of XXXXXXXXXXXXXXXXXXXXXXX during the term hereof.~~

2. Lessee accepts this lease subject to all lawful outstanding existing liens and superior rights, if any, in and to said Premises, including, but not limited to, the Railroad Company's Consolidated Mortgage dated November 1, 1949, and supplements thereto, to Morgan Guaranty Trust Company of New York (Formerly Guaranty Trust Company of New York), Trustee, if the same is applicable to said Premises. Lessee agrees it shall not have any claim against Railroad for damages on account of any deficiency in title of Premises leased hereby and agrees that in the event of failure of such title the sole remedy of Lessee shall be the right to the return of a proportionate share of rent paid in advance without interest for any period in which Lessee is deprived of possession of Premises by title superior to that of Railroad.

3. Lessee shall pay all taxes, license fees or other charges which may become due or which may be assessed against said Premises, Lessee, the business conducted on said Premises or any improvements thereon, except special assessments for public improvements, and shall promptly reimburse Railroad for any such items which may be paid by Railroad upon presentation by Railroad of bills for same. In default of such reimbursement, all sums so paid by Railroad shall be deemed additional rental and recoverable as such. In the event Premises hereby demised, or any part thereof, shall be subject to any special assessment for any public improvement or improvements, the rental herein reserved and stipulated to be paid by Lessee shall be increased by 10% per annum of the amount of such assessments.

4. Lessee has examined Premises and knows the condition of said Premises and has received the same in good order and repair and acknowledges that no representations as to the condition and repair thereof have been made by the Railroad or its agents or employees prior to or at the execution of this lease that are not herein expressed. Lessee accepts Premises subject to any and all existing easements, Railroad facilities, pipe lines, telephone, telegraph, communication and signal lines or any other similar facilities together with any future installations thereof provided such future installations do not interfere with Lessee's use of Premises. Should it at any time become necessary to relocate any of Railroad's facilities by reason of this lease, or Lessee's use of Premises, Lessee shall bear and pay the cost of so doing.

5. No improvement shall be constructed by Lessee on the Premises without prior written consent of Railroad. Such consent shall not relieve Lessee of any responsibility otherwise imposed by law or the terms of this lease. Lessee shall not enter into any contract for labor, materials or services for improvements on Premises without stipulating that no lien shall arise or be claimed on account thereof against the title or interest of Railroad and that any such lien shall be limited to the interest of the Lessee and subject to the rights of Railroad under the terms of this lease. Prior to any construction Lessee shall furnish Railroad with copies of any contracts, contractors' sworn statement together with full and complete waivers of lien from all contractors, subcontractors, laborers, material men and others furnishing services or material to the Premises.

6. Lessee shall not interfere with or obstruct drainage ditches or drain pipes on or below the surface of the ground as the same may now exist on Premises, nor shall Lessee put or permit any contaminous matter to enter into any drainage ditch or drain pipe on Premises. If it should become necessary to make any change or alteration in any existing drainage ditch, drain pipe or pipes on the surface or below the surface of the ground on Premises by reason of any improvements that Lessee may desire to construct thereon, Lessee shall, at its own expense, make such changes or alterations in a manner satisfactory to the Chief Engineer of Railroad or his authorized representative.

7. Lessee shall not erect or maintain or allow to be erected or maintained any building, structure or physical obstruction of any kind adjacent to or over any railroad track at distances less than those prescribed by lawful authority; and in the absence of any such clearances prescribed by lawful authority, no building, structure or physical obstruction shall be erected, maintained or allowed to exist within eight and one-half (8½) feet of the center line of any railroad track or at a height of less than twenty-three (23) feet above the top of the rails of the track (with suitable increase in such clearances where required because of curvature and/or super-elevation of the track), except as to wires, the overhead minimum clearance of which shall be in accordance with specifications of the then current National Electrical Safety Code and in no case less than twenty-seven (27) feet, (twenty-five (25) feet in the case of wires or cables suspended from messengers), above the top of rails of any railroad track. Knowledge of or notice to Railroad of Lessee's failure to perform this covenant and Railroad's continued operation over any railroad track thereafter shall not be a waiver of this covenant.

8. Lessee will not use or suffer or permit to be conducted any trade or business on the herein leased premises which shall be, in the judgment of Lessor, offensive or obnoxious; and shall not cause, permit or suffer on said premises anything which may be or become a nuisance or annoyance or be obnoxious to Lessor, Lessor's other tenants, or to the neighborhood or surrounding premises, such as may cause or become cause for any action in damages by anyone, or which may invoke the action of duly constituted civil authorities in the performance of their duties maintaining the health, welfare and safety of its citizens, nor shall Lessee use said leased premises for any immoral or improper purposes. Lessee shall comply with all present and/or future regulations, rules and requirements of all federal governmental agencies, state governmental agencies and municipal agencies relative to the provisions regarding pollution of the environment. Lessee shall in no way pollute the premises or surrounding areas.

Lessee herein agrees that any permits granted by Lessor to Lessee under the terms of this lease shall not be construed as a waiver by Lessor of any of the prohibitions herein contained.

Failure of Lessee to remove, abate or discontinue such nuisance, or to remove the cause and/or effects of pollution of the environment within a period of thirty (30) days after notification by Lessor (or other duly constituted authority) to Lessee, shall be cause for Lessor to declare this lease terminated as of the end of the 30-day period.

9. Railroad shall have the right at any time, but not the obligation, to inspect Premises to assure itself that there has been compliance with the terms of this lease, but the exercise by Railroad of such right, or the failure to exercise the same, shall not relieve Lessee of any obligation imposed upon Lessee under the terms of this lease.

10. No signs or advertisements except those of the Lessee's business shall be displayed on Premises and shall not be erected so as to obstruct the view at grade crossings.

11. No intoxicating liquors shall be sold or dispensed on Premises without Lessee first obtaining written consent of Railroad and delivering to Railroad dram shop or other appropriate insurance in amounts prescribed by Railroad.

12. Lessee shall pay for all utility service brought to and/or consumed on the Premises and agrees that artificial lighting shall be by electricity only. Any electrical installation on Premises, where oil or flammable liquids are handled or stored, except in unbroken original containers, shall conform to and be maintained in accordance with the provisions of the then current edition of the National Electrical Code with respect to Class I Hazardous Locations. Lessee agrees that the portion of any track or siding, whether the property of Lessee or Railroad, upon which cars of flammable or explosive liquids are placed for storage, loading or unloading shall be adequately protected against the hazard of fire or explosion due to stray electrical currents or static discharge. This protection shall conform to the rules for recommended practice relative to the protection of said track or sidings from fire or explosion due to stray current as set forth in the then current specifications of the Association of American Railroads. Lessee will comply with all provisions of the then current AAR Circulars Nos. 17 and 17-F with respect to tank installations, storage and handling of anhydrous ammonia, including the unloading thereof from railroad tank cars. Lessee also agrees to comply with all applicable Federal, State, and Municipal Laws, Rules and Regulations governing the handling of flammable or explosive liquids and anhydrous ammonia.

13. Lessee agrees that at all times during the continuance of this lease it will exercise such care, and cause such precautions to be taken, as shall adequately protect the facilities, buildings and structures plus contents thereof on said Premises, and all property, of whatever description, including, but not limited to that belonging to the parties hereto, situated on Premises, against all dangers to which they may be exposed from fire regardless of cause.

14. Lessee agrees to assume, indemnify and save harmless Railroad against (a) any penalty or damage or charges imposed on Railroad for any violation of any laws or ordinances occasioned by the act or neglect of Lessee or those holding under Lessee, (b) any and all liability, loss, cost, damage and expense (including attorneys' fees), arising out of or from any accident or other occurrence on or about Premises or attributable to occupancy of Premises by Lessee or attributable to the operation of engines, cars or other equipment over and upon any side, spur, industry or other track connecting Premises with the main line of Railroad, or located on any part of Premises, causing injury to any person (including the parties hereto and their employees) or property (including that belonging to the parties hereto), and (c) all claims and any and all loss, cost, damage or expense, including, but not limited to, that occurring to the parties hereto, arising out of any failure of Lessee in any respect to comply with and perform all the requirements and provisions of this lease. The indemnity provided for in this paragraph shall be applicable regardless of negligence of Railroad in connection with the obligations imposed on Lessee in Paragraphs 7 and 15 of this lease. The Railroad shall not be liable and the Lessee waives all claims for damages and/or injury to person or property sustained by the Lessee resulting from any accident in or about the demised premises whether resulting directly or indirectly from any act or neglect of the Railroad.

15. Lessee agrees to indemnify and save harmless Railroad, its employees and agents to assume all risk, responsibility and liability for death of, or injury to, any persons, including, but not limited to, employees, agents, officers, patrons and licensees of the parties hereto, and agrees to indemnify and save harmless Railroad, its employees and agents and assume all risk, responsibility and liability for loss, damage or injury to any property, and agrees to pay for all loss or damage to property of Railroad or property in its custody or possession, including loss of use thereof, together in all cases with all liability for any expenses, attorneys' fees and costs incurred or sustained by Railroad, arising from or in any manner or degree attributable to the existence of or storage of explosive material or other inherently dangerous commodities on Premises regardless of any negligence of Railroad.

16. Lessee agrees at all times during the term hereof, at its own expense, to keep the improvements on the demised premises insured against loss by fire and those risks now or hereafter normally covered by the term "extended coverage" for not less than one hundred percent (100%) of their full insurable value in companies acceptable to the Railroad. Lessee further agrees Railroad shall be named as one of the insured and furnished a duplicate original of said insurance policy which shall further provide for thirty (30) days prior written notice to Railroad of any change in coverage or cancellation thereof.

As a further consideration Lessee agrees, at Lessee's sole cost, to secure, prior to the effective date of this lease, and to keep in effect at all times during the term hereof, a policy of insurance satisfactory to Railroad insuring Railroad from and against any and all damages, claims, demands, causes of action, suits, judgments, attorneys' fees, costs and expenses resulting or arising from death of or injury to persons whomsoever, or loss or destruction of or damage to property whatsoever and to whomsoever belonging, resulting from, growing out of or incidental to the use or occupancy of Premises, or any part thereof, by Lessee, or any person or persons whomsoever, with or without the consent of Lessee, or arising from or growing out of Railroad operation or maintenance by Railroad, or from any causes whatsoever. Said liability policy shall provide coverage of not less than Three Hundred Thousand Dollars (\$300,000) for death or injury to one person, and not less than Five Hundred Thousand Dollars (\$500,000) for death or injury to more than one person occasioned in any one accident or occurrence, and not less than One Hundred Thousand Dollars (\$100,000) for loss or destruction of or damage to property. It is understood and agreed by Lessee that furnishing of such policy of insurance and the acceptance by Railroad is not intended to and shall not limit, affect or modify the obligations of Lessee under any provisions of this lease. Said insurance policy shall specifically refer to and cover the indemnity provided under this lease and shall further provide for thirty (30) days prior written notice to Railroad of any change in coverage or cancellation thereof. A certificate of insurance evidencing the insurance required hereunder, and any renewal thereof, shall be furnished Railroad.

17. The Lessee agrees, if requested by Railroad, that it will at its own expense erect and maintain a good substantial fence or barricade on Premises separating the same from other property of Railroad on which Railroad operations are conducted.

18. If Lessee fails to substantially begin compliance with any obligations under the terms of this lease after receiving ten (10) days written notice from Railroad, the Railroad may, at its option, perform such obligations at the sole cost and risk of Lessee. Cost of work performed by Railroad for Lessee's account as referred to in this lease is hereby defined to be the cost of labor and material furnished by Railroad and rental on equipment used. To the cost of labor there shall be added 10% to cover supervision and accounting. Also included will be the cost of vacation allowance, paid holiday allowance, health and welfare allowance, Railroad Retirement and/or Social Security taxes, unemployment compensation and premiums on workmen's compensation, property damage and public liability insurance. To the cost of material there shall be added 15% to cover accounting, handling and transportation. In addition, the term "Cost" is defined to include taxes payable by Railroad under any excise, sales or use tax based on the wages of labor, cost of material, or the gross cost of the work, as the case may be. Bills covering such cost and expense as herein defined shall be paid by Lessee within fifteen (15) days after the receipt thereof.

19. Failure or delay of Railroad to require full compliance with any one or more of the terms of this lease shall not be held as a waiver of a right to subsequently insist upon such compliance.

20. If for a period of five (5) days the rent, or any part thereof, shall be unpaid on the day when due, or if default shall be made by Lessee for a period of ten (10) days after written notice in keeping or performing any of the other covenants or agreements herein contained, or if bankruptcy, insolvency, receivership, foreclosure or any similar proceedings affecting Lessee shall be instituted and not dismissed for said period, Railroad may at its election declare this lease terminated and the term provided for herein shall be ended. An abandonment of the Premises by Lessee for a period of thirty (30) days shall operate at the election of Railroad as termination of this lease without notice. Failure of Lessee to occupy or use Premises for the purposes above specified shall at the election of Railroad be deemed an abandonment. Whenever or however ended Railroad shall have the right (without being guilty of any manner of trespass or forcible entry or detainer) either with or without notice or demand, and either with or without process of law, to immediately take possession of Premises and any improvements thereon, and to remove therefrom the Lessee and/or any person or persons occupying Premises or any and every part thereof, and any and all effects that may be then on Premises or any part thereof, using such force as may be necessary, and to repossess and enjoy Premises. When the term of this lease shall be ended for any cause Lessee covenants and agrees to give up and surrender to Railroad peaceably and immediately Premises and Railroad owned improvements thereon without further demand or notice and in good order, repair and condition, reasonable wear and tear excepted, failing which Railroad may restore Premises and improvements to good order, repair and condition at the sole cost and risk of Lessee. Termination of this lease shall not affect the Railroad's rights with respect to Lessee's obligations for rent or otherwise and shall not prevent Railroad from pursuing such other actions or proceedings as it may deem advisable. All sums due and unpaid under the terms of this lease shall bear interest at the maximum permitted rate under law.

21. If the term of any lease made by the Lessee for any premises leased from Railroad shall be terminated or terminable after the making of this lease because of any default by the Lessee under any such lease, such fact shall empower the Railroad, at the Railroad's sole option, to terminate this lease by notice to the Lessee.

22. This lease is made subject to the approval of any Governmental authority having jurisdiction thereover.

~~23. Railroad may terminate this lease and the tenancy hereby created at any time by giving Lessee sixty (60) days notice of such intention. No termination of this lease shall release the parties, or either of them, from any liability or obligation that accrued prior to said termination. In the event this lease is terminated pursuant to Paragraph 23, any unearned prepaid rentals made by the Lessee under the terms and conditions of this lease shall be refunded to the Lessee on a prorata basis less any other monies which may be due Railroad.~~ See attached addenda.

24. All notices to be given to Lessee shall be considered as having been properly given upon mailing such notice by certified U. S. mail, postage prepaid, addressed to Lessee at its billing and mailing address set out heretofore. For the purposes of effectuating termination of this lease, as provided in Paragraph 23 hereof, notice may be served upon lessee by (a) personally delivering notice of termination to Lessee; (b) by personally delivering notice to any of Lessee's employees on premises; (c) by posting said notice of termination on premises; or (d) by mail as above provided. Utilization of any one or more of such methods for giving

notice of termination of lease shall be considered to be proper notice to the Lessee. All notices to the Railroad shall be addressed to the Manager - Real Estate Operations, 135 East 14th Place, Chicago, Illinois 60605, by U.S. certified mail, return receipt requested, and shall be considered as having been properly given when actually received by the Railroad.

233 N. Michigan Ave. 60601

25. The Lessee shall at its own expense remove or cause to be removed all buildings, structures, foundations, footings, materials, signs or signboards, debris or other articles or facilities owned or used by Lessee or placed on, above or below the surface of the premises by Lessee or by any person, firm or corporation or former Lessee through which the Lessee does or did at any time obtain a clear position of the premises whether by assignment or otherwise. Lessee agrees to restore the premises to a condition satisfactory to the Railroad.

It is expressly understood by the Lessee that until such time as the premises are surrendered to the Railroad free and clear of all buildings, structures, foundations, footings, materials, signs or signboards, debris or other articles or facilities owned by the Lessee and the premises are restored to a neat and orderly condition satisfactory to the Railroad, the Lessee shall be liable to the Railroad for such rental as the Railroad may from time to time determine. The Lessee shall also be liable to the Railroad for any and all losses and/or damages which the Railroad may sustain or become liable for resulting from the failure of the Lessee to restore the premises to a neat and orderly condition. The Railroad may at its sole election remove or dispose of any such property without any liability whatsoever to Lessee and charge the Lessee for all cost and expense incidental to such removal.

26. Lessee agrees at its expense to comply with all the obligations imposed upon it under the terms of this lease and with all laws, rules, regulations and requirements of any Governmental authority having jurisdiction over Premises, the public ways adjacent thereto, the business conducted thereon, or the Lessee or Railroad. Lessee agrees to comply with the then current Association of American Railroad specification and circulars and other standards which will be furnished to Lessee upon written request to Railroad.

27. The invalidity or unenforceability of any provision of this lease shall not affect or impair any other provision.

28. Acceptance of money by the Railroad from Lessee after any default by Lessee or after the expiration of the agreement or after the service of any notice or after the commencement of any suit, or after final judgment for possession of said property, shall not waive such default or reinstate, continue or extend the term of the lease or affect any such notice or suit, as the case may be.

29. Lessee shall not assign this lease or sublet the demised Premises or any part thereof, without the written consent of the Railroad. Lessee shall not allow or permit any transfer of this lease, or any interest hereunder, by operation of law, or convey, mortgage, pledge or encumber this lease or any interest herein. In the event the Lessee shall violate any of the covenants contained in this Paragraph 29, the Railroad may at its option terminate this lease without any notice whatsoever to the Lessee.

30. If the whole or any part of the demised Premises shall be taken or condemned by any competent authority for any purpose, or is sold by the Railroad under the threat of condemnation, the term of this lease shall end upon and not before the date when possession of the part so taken shall be required for such use or purpose, and without apportionment of the award. Current rent shall be apportioned as of the date of such termination and lessee shall have no right to share in the condemnation award or sales proceeds.

31. All of the covenants, agreements, conditions and undertakings contained in this lease shall be binding upon and inure to the benefit of the legal representatives, successors or assigns of the respective parties hereto.

~~32. Lessee hereby irrevocably and irrevocably appoints any authority of any court to be the true and lawful attorney of Lessee, and in the name, place and stead of Lessee, to appear for Lessee in any court of record at any time in any suit or suits brought against Lessee for the enforcement of any right hereunder by Lessor, to waive the issuance and service of process and writ of jury, and from the time, to the extent of judgment or judgments in favor of Railroad and against Lessee for any money due hereunder by Lessee to Railroad and for costs of suit and for a reasonable attorney's fee in favor of Railroad to be fixed by the court, and to release all errors that may occur or intervene in such proceedings, including the issuance of execution upon any such judgment and to stipulate that no appeal shall be prosecuted from such judgment or judgments, and that no proceedings in chancery or otherwise shall be filed or prosecuted to interfere in any way with the operation of such judgment or judgments or of any execution issued thereon or with any supplemental proceedings taken by Railroad to collect the amount of any such judgment or judgments and to consent that execution on any judgment of Lessee in favor of Railroad and against Lessee may issue forthwith.~~

33. It is expressly agreed by and between the parties hereto that all of the agreements, terms and covenants contained in this lease are the only agreements entered into between the parties affecting the demised premises. The Lessee expressly acknowledges that the Railroad has made no agreements affecting the demised premises except those as are expressed therein.

34. It is understood and agreed that if for any reason whatsoever, this lease is terminated prior to its expiration, no refund for unearned rental shall be due the Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this lease to be executed in duplicate original as of the day and year first above written.

Illinois Central Gulf Railroad Company,

By
Manager - Real Estate Operations

APPROVALS OF RAILROAD

Accounting
For Vice President & Comptroller

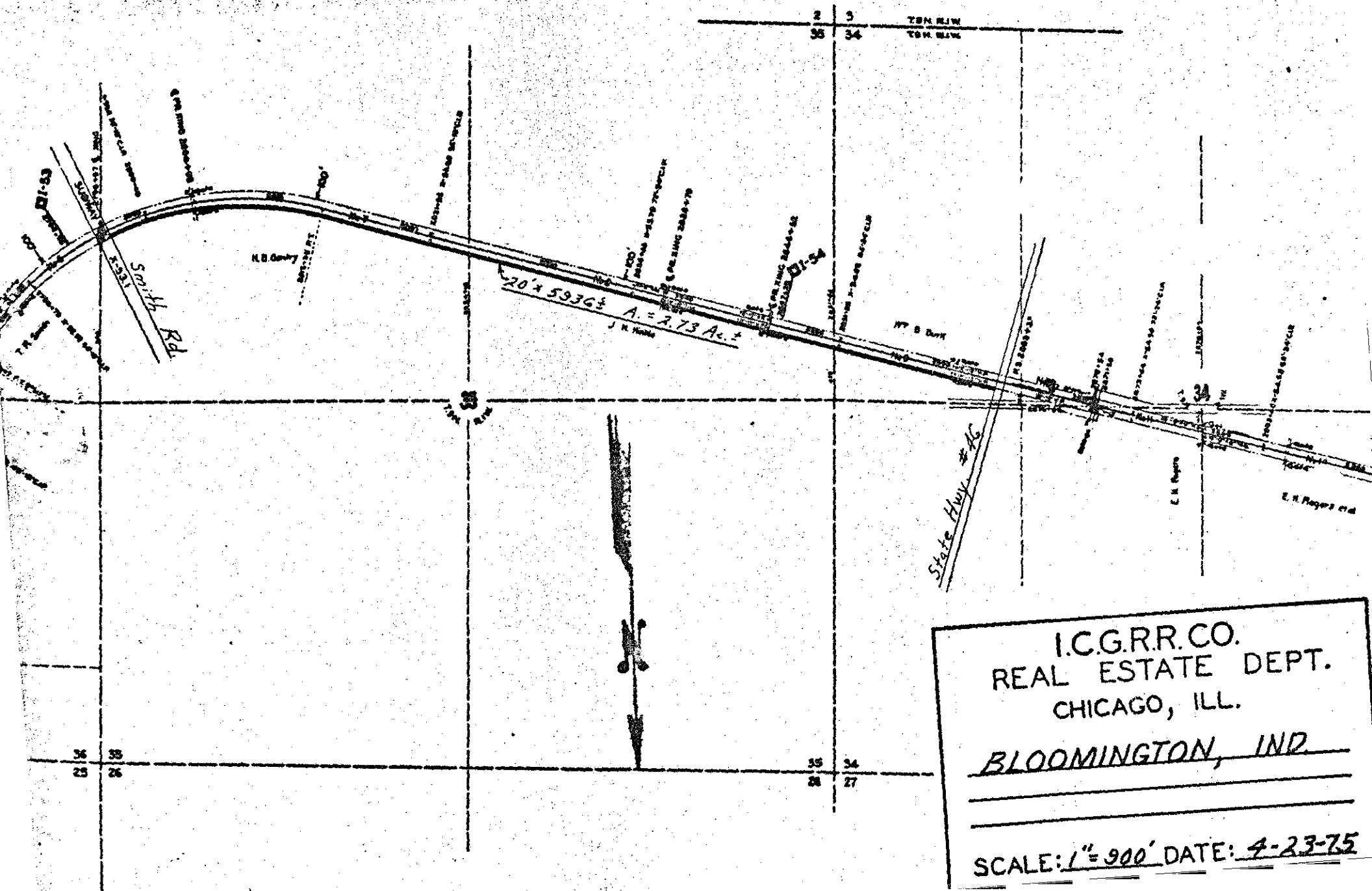
CITY OF BLOOMINGTON
Lessee

Form
Attorney

By:
President

Execution
Attorney

Corporation must sign by duly authorized officer.
All partners in partnership must sign.



I.C.G.R.R.CO.
 REAL ESTATE DEPT.
 CHICAGO, ILL.
BLOOMINGTON, IND.

 SCALE: 1" = 900' DATE: 4-23-75

