

HGS:e
1/7/69.

A) Agreement
with City

1969 Lease
Agreement

AGREEMENT
Between
CITY OF MILWAUKEE
and

MILWAUKEE COUNTY WAR MEMORIAL CENTER, INC.

* * * * *

THIS AGREEMENT made and entered into and executed in triplicate this 5th day of February, 1969, by and between the CITY OF MILWAUKEE, a municipal corporation organized and existing under the laws of the State of Wisconsin, as party of the first part, hereinafter referred to as "Lessor," and the MILWAUKEE COUNTY WAR MEMORIAL CENTER, INC., a corporation, duly organized and existing under the laws of the State of Wisconsin, as party of the second part, hereinafter referred to as "Lessee," and its DEVELOPMENT COMMITTEE:

W I T N E S S E T H :

WHEREAS, Lessor acquired the following described land for the purpose of providing parking which is essential to the area in which the said land is situated, to-wit:

All of Block 52 in Plat of Milwaukee, (East of the River), a recorded subdivision in the Northeast 1/4 of Section 29, Township 7 North, Range 22 East, said block being bounded by North Edison Street, East Highland Avenue, East State Street, and North Water Street.

and

WHEREAS, the Commissioner of Public Works of the City of Milwaukee, hereinafter referred to as "Commissioner" has concluded that the type of parking best suited to the area and to the "Performing Arts Center" would be a multi-level parking structure containing approximately 700 parking units so that parking facilities may be provided to the general public and also to that segment of the public attending events at the Performing Arts Center, and together with a pedestrian overpass to provide

access to the Performing Arts Center; and

WHEREAS, the cost of providing such a parking structure if the Lessor were required to construct it would necessitate the expenditure of approximately One Million Seven Hundred Thousand Dollars (\$1,700,000) of public funds and create an impact on the tax levy; and

WHEREAS, Lessee is directly associated with the development and the future operation of the Performing Arts Center, and has offered in writing to the Lessor to lease the above described land at the sum of One Dollar (\$1.00) per year and to provide as part of the entire consideration a parking structure at Lessee's own cost, free of any obligation whatsoever to Lessor and to expend for the construction and completion of such parking structure a sum of not more than One Million Seven Hundred Thousand Dollars (\$1,700,000) in the overall construction thereof and related facilities for the parking structure and in conformity with the architectural design of the Performing Arts Center as well as the approval by the Lessor manifested through the review, approval and acceptance of detailed plans and specification for such parking structure by the Commissioner; and

WHEREAS, it is the intention of Lessee that when mortgage loans which have been obtained by Lessee for the purpose of constructing such parking structure have been fully amortized and discharged, that at such time and on December 31 of the year in which final payment has been made by Lessee on such loans, a legal transfer of the parking structure will be made to the Lessor and that all right, title and interest thereto, free from encumbrances and charges will be conveyed, assigned and transferred to the Lessor, and this lease shall be terminated; and

WHEREAS, all of the above obligations assumed by Lessee, as hereinafter identified, and the aforesaid future transfer of the parking structure, constitute the undivided consideration for the leasing of the above

described site, and is identified as the basis on which the following lease is made;

NOW, THEREFORE, in consideration of the covenants and agreements hereinbefore set forth in the "Whereas" provisions of this Agreement, and the covenants and conditions hereinafter set forth, to be kept and performed by both parties, the Lessor does hereby lease, let and demise unto the Lessee those certain premises heretofore described, all subject to the terms and conditions hereof.

I.

Term of Lease

Lessee is to have and to hold the leased premises for a term of 50 years, which term shall commence on the day when this Lease is entered into and executed, and shall terminate on the 31st day of December of the 50th year, computed from the commencement date, unless this Lease is either extended or unless this Lease is sooner terminated, either by consent of the parties or as provided for herein through a transfer of the aforesaid parking structure. Lessee shall pay to the Lessor as part of the consideration for the rental of the leased premises the sum of One Dollar (\$1.00) per year in advance, the first payment thereof to be made on the date when this Lease is executed, and thereafter said One Dollar (\$1.00) shall be paid annually on February 1 of each and every year during the term of the Lease.

II.

Lessor's Title

Lessor represents that it has good title in fee simple, free from all liens and encumbrances, to the land above described.

III.

Lessee's Obligation to Construct Parking Structure

Lessee shall at its sole expense and as soon as practicable

subsequent to the date on which this Lease has been entered into (which shall be deemed the commencement date of the Lease) but in no event later than 60 days from such commencement date of the Lease, begin construction upon the leased site of a multi level automobile parking structure, suitable and available for parking of not less than 700 automobiles within such structure, together with a pedestrian overpass to the Performing Arts Center, such construction shall be completed within 14 months after the date upon which this Lease is entered into; provided, however, that such period of time may be extended because of delays caused by inability to obtain building permits for the construction and completion of the parking structure, or because of time needed to obtain Lessor's approval of the plans and specifications for such parking structure, or because of labor disturbances or by reason of such other delays which occur through no fault or negligence of the Lessee. Title to all improvements on the leased land shall vest in the Lessee, subject, however, to the rights of conveyance to the Lessor as provided for in this Agreement.

IV.

Approval of Plans and Specifications

The parking structure to be constructed shall conform to generally acceptable standards for parking structures, and the plans and specifications for such structure shall be approved in writing by the Commissioner before any construction shall be commenced.

V.

Limited Use of Leased Lands

Lessee shall use the leased lands only for the purpose of constructing a multi level parking structure and for no other purpose unless the Lessor's consent has first been obtained in writing for another purpose; but such consent shall be evidenced by a resolution adopted by the Common Council of the City of Milwaukee.

VI.

Lessee to Provide Performance Bonds

Lessee agrees to provide a performance bond or performance bonds in an amount sufficient to protect the Lessor against any construction liens or other encumbrances whatsoever which may be created by any act or action in any manner relating to construction and completion of the said parking structure or with respect to the lease herein granted. Such performance bond or bonds shall be provided as a condition of this Lease and the amount and type of bond shall be approved both by the Commissioner and by the City Attorney. In the event that the Lessee fails to provide such bond or bonds which are acceptable to the Commissioner, then this Lease shall be deemed terminated.

VII.

Lessee to Operate Parking Structure

Lessee shall have the exclusive operation and control of the parking structure and shall be liable exclusively for its operation and for all expenses related to (a) operation; (b) maintenance; (c) all repairs necessary; and (d) avoidance of deterioration. Lessor shall have no liability or obligation with respect to operation, maintenance or repairs or to prevent deterioration of the structure and shall not be liable for any loss or losses.

VIII.

Lessee shall Determine Parking Charge
in Consultation with Lessor

Lessee shall make such charges for rental of parking units within the parking structure as it shall determine to be appropriate and reasonable.

Lessee shall file a schedule of its rates with the Common Council annually and/or 30 days prior to any rate change.

IX:

Efficient Operation - Public Parking

Lessee shall operate the parking structure in such a manner so as to provide the most efficient use thereof and to provide public parking for the area generally as well as parking for persons attending events at the Performing Arts Center. It is specifically provided that the parking structure shall be available on as broad a basis as is possible for general public parking

X.

Lessee to Indemnify Lessor

Lessee from time to time shall notify Lessor of the insurance which has been obtained to satisfy the requirements of this Agreement. This provision of the Lease shall be construed liberally so that it will constitute full protection to the Lessor. (Lessee shall indemnify and save the Lessor harmless against any and for any and all claims, damages, costs or expenses arising from the construction of improvements on the leased land or otherwise arising prior to the completion date of the parking structure; it being expressly understood and agreed that the Lessor shall not be liable and the Lessee does waive all claims for damages to persons or property sustained by the Lessee or its employees or agents which result from any activities caused on the leased premises prior to the completion date. Lessee shall prior to such completion date carry and pay the premiums for public liability insurance, insuring itself and the Lessor against injury to property, person or loss of life arising out of the use and occupancy of the leased premises, with limits of at least \$50,000 for property damage, \$300,000 for one person and \$1,000,000 for any number of persons injured or killed in any one accident and shall furnish to the Lessor as may be requested a certificate of the existence of such insurance satisfactory to the Lessor. Lessee shall in addition to the above, prior to the completion date insure and keep insured any improvements thereon against loss or damage by fire and extended coverage for the sum of at least 80% of replacement value. Lessee,

following construction shall carry adequate insurance to protect the Lessee and the Lessor against any claims, damages, costs and accidents arising from the operation of the parking structure or because of the lease of the aforesaid site made the subject matter of this Agreement. Lessee, without any cost to Lessor, shall also be obligated, following the completion of the construction to keep all property similarly insured against loss or damage by fire or extended coverage hazards. Lessee shall be required to replace such parking structure and pedestrian overpass if they shall be substantially damaged.

XI.

Lessee's Conveyance to Lessor

When all of the mortgage loans have been fully paid and amortized, Lessee shall convey and transfer the parking structure and all improvements and facilities with respect thereto and which are located on said leased land to Lessor. Such conveyance shall occur on December 31 of the year in which final payment on such mortgage loans has been made by Lessee. Lessee shall promptly arrange to execute all necessary legal instruments which are required in order to effectuate the transfer contemplated by this provision and title to such improvements shall thereafter be in the name of the Lessor and this Lease terminated without further obligation to the Lessee.

XII.

Division of Excess Revenues

Lessee shall divide with Lessor on an equal basis all revenues in excess of those required to specifically meet the following:

1. Debt service requirements on mortgage loans.
2. Expenses of operating the parking structure.
3. Maintenance of parking structure and land.
4. Repairs to parking structure.
5. Insurance.
6. All other related expenses which are directly necessary

in the operation of the parking structure as determined by the Lessee and Lessor and not here specifically enumerated.

All such items of disbursements shall be subject to audit by the Lessor at intervals of six months for the purpose of determining and ascertaining whether an excess in revenues exists and if so in what amount. After five full years of operation from the date when operation of such parking structure begins and on the 1st of the month next succeeding such five-year period, a division of excess revenues shall be made between the Lessor and Lessee on this basis: (a) One-half of the excess revenues to the Lessor; and (b) the remaining One-half of excess revenues to the Lessee. Thereafter, subject to the same method of accounting, a division shall annually be made if excess revenues exist. The dates on which such division shall be made shall be determined by the parties. This procedure for division of excess revenues shall continue from year to year until the lease has been terminated and it shall also operate for any part of a year where the lease is terminated during a calendar year. Any questions which may arise respecting the accounting procedures applicable to a division of excess revenues shall be resolved by the accountants for both the Lessor and Lessee respectively.

XIII.

Interpretation of this Agreement

In the event of an ambiguity or a question arising respecting the interpretation or application of this Agreement, then it is the intention of the parties hereto that this Agreement shall be interpreted in such a manner as to protect and safeguard the rights and benefits provided for herein to the Lessor.

IN WITNESS WHEREOF, the Lessor and Lessee have hereunto

set their hands and seals this 5th day of February, 1969, at Milwaukee,
Wisconsin.

In Presence of:

William H. Carlton
Christine M. Witzke

CITY OF MILWAUKEE, a
municipal corporation

By Henry W. Haick Mayor
Charles P. Schauder
DEPUTY City Clerk

Countersigned:

John E. Kelly
City Comptroller
Lessee

MILWAUKEE COUNTY WAR
MEMORIAL CENTER, INC.

Harry S. Lent
Mildred Rehner

By Joseph A. Greco
Joseph A. Greco Chairman
Robert W. Schroeder
Robert W. Schroeder Secretary
Lessee

DEVELOPMENT COMMITTEE

Mildred Rehner
Harry S. Lent

By Richard R. Teschner
Richard R. Teschner Chairman
Eliot G. Fitch
Eliot G. Fitch Vice Chairman

(EXECUTED IN TRIPLICATE)

STATE OF WISCONSIN)
MILWAUKEE COUNTY)

Personally came before me this 13th day of February, 1969,
Henry W. Maier, Mayor of the City of Milwaukee, to me known
to be the person who executed the foregoing instrument and to me known to
be such Mayor of said municipal corporation, and acknowledged that he
executed the foregoing instrument as such officer as the deed of said
municipal corporation, by its authority and pursuant to Resolution File
No. 67-4039-g adopted by the Common Council of the City of Milwaukee
on January 21, 1969.

Harold H. Heltzer
Notary Public, Milwaukee County, Wisconsin
My commission expires Jan 25, 1977

STATE OF WISCONSIN)
MILWAUKEE COUNTY)

Personally came before me this 13th day of February, 1969,
Chester P. Schmidt DEPUTY
City Clerk of the City of Milwaukee, to me known
to be the person who executed the foregoing instrument and to me known to
be such City Clerk of said municipal corporation, and acknowledged that he
executed the foregoing instrument as such officer as the deed of said
municipal corporation, by its authority and pursuant to Resolution File No.
67-4039-g adopted by the Common Council of the City of Milwaukee
on January 21, 1969.

Charles M. Smith
Notary Public, Milwaukee County, Wisconsin
My commission expires April 27, 1977

STATE OF WISCONSIN)
MILWAUKEE COUNTY)

Personally came before me this 13th day of February, 1969,
John C. Kalupa City Comptroller of the City of Milwaukee,
to me known to be the person who executed the foregoing instrument and
to me known to be such City Comptroller of said municipal corporation,
and acknowledged that he executed the foregoing instrument as such officer
as the deed of said municipal corporation, by its authority and pursuant
to Resolution File No. 67-4039-g adopted by the Common Council
of the City of Milwaukee on January 21, 1969.

Patricia R. Hagt
Notary Public, Milwaukee County, Wisconsin
My commission expires Jan. 18, 1970

STATE OF WISCONSIN)
MILWAUKEE COUNTY)

Personally came before me this 5th day of February, 1969,
Joseph A. Bruno, Chairman and Robert H. Schneider
Secretary of the MILWAUKEE COUNTY WAR MEMORIAL CENTER, INC., to
me known to be the persons who executed the foregoing instrument and to
me known to be such officers of said corporation, and acknowledged that they
executed the foregoing instrument as such officers as the deed of said
corporation, by its authority.

Mildred Rederst
Notary Public, Milwaukee County, Wisconsin
My commission expires July 2, 1972

STATE OF WISCONSIN)
MILWAUKEE COUNTY)

Personally came before me this 5th day of February, 1969,
Richard R. Teschner, Chairman, and Eliot G. Fitch, Vice Chairman,
of the DEVELOPMENT COMMITTEE, to me known to be the persons who
executed the foregoing instrument and to me known to be such Chairman
and Vice Chairman of said DEVELOPMENT COMMITTEE, and acknowledged
that they executed the foregoing instrument as such Chairman and Vice
Chairman as the deed of said Committee, by its authority.

Mildred Rehner

Notary Public, Milwaukee County, Wisconsin
My commission expires July 2, 1972

APPROVED AS TO FORM AND
EXECUTION this 14th day of
February, 1969.

Harry S. Lutz
Deputy City Attorney