ORDINANCE 81-64

To Authorize the Issuance of $4,000,000 in Economic Development Revenue Bonds Series A (Bloomington Square Associates Project) and to Approve Other Actions in Relation Thereto

WHEREAS, the City of Bloomington, Indiana (the "Issuer") is a municipal corporation and political subdivision of the State of Indiana, and is authorized and empowered by the provisions of Indiana Code Section 18-6-4.5-1 et seq. (the "Act") to finance "economic development facilities", as defined in the Act, for use by others in order to remedy conditions harmful to the health, prosperity, economic stability and general welfare of the area encompassing the City of Bloomington, Indiana and detrimental to the development of such area, which conditions include insufficient employment opportunities, insufficient tax base, insufficient site development for commercial use and insufficient diversification of economic development facilities; and

WHEREAS, the Act further authorizes the Issuer to make direct loans to users or developers forthe cost of acquisition, construction or installation of economic development facilities, and to collect loan payments in installments therefor, and to issue bonds pursuant to the Act to accomplish the purposes of the Act, and to secure such bonds by the pledge of one or more notes, debentures, bonds, or other secured or unsecured debt obligations of the users or developers, and to assign and pledge all or any part of its interest in and rights under the notes, debentures or bonds relating thereto; and

WHEREAS, upon recommendation of the Bloomington Economic Development Commission, the Issuer has by ordinance duly adopted, agreed with Bloomington Square Associates (the "Developer"), a limited partnership duly organized and existing under the laws of the State of Indiana, to issue its revenue bonds and to loan to the Developer the proceeds of the sale thereof to enable the Developer to provide certain land and to construct a certain shopping center facility consisting of a supermarket, drug store and other local and regional retail stores (the "Project"), which will be of the character and accomplish the purposes of the Act, in order to benefit the health and welfare of the citizens of the area encompassing the Issuer; and

WHEREAS, the Issuer and the Developer will enter into a loan agreement (the "Agreement"), dated as of June 1, 1981, specifying the terms and conditions pursuant to which the Issuer will loan the proceeds of sale of the revenue bonds to the Developer for the purpose of acquiring, constructing and installing the Project and the Developer will execute and deliver to the Issuer its promissory note (the "Note") to evidence its obligations to make the loan payments to the Issuer; and

WHEREAS, contemporaneously with the execution and delivery of the Agreement, the Developer will enter into certain lease agreements (the "Lease Agreements"), pursuant to which the Developer will lease each of the several stores comprising the Project to the tenant thereof; and

WHEREAS, contemporaneously with the execution and delivery of the Agreement, the Developer and the Issuer will enter into a mortgage and security agreement (the "Mortgage") dated as of June 1, 1981, pursuant to which the Developer will mortgage and convey the Project and assign its rights under the Lease Agreements to the Issuer as further security for the performance and observance of its obligations under the Agreement and the Note; and

WHEREAS, the Issuer has, for the purpose of providing funds to loan to the Developer to pay part of the cost of acquiring, constructing, and installing the Project, determined to issue and sell its Economic Development Revenue Bonds, Series A (Bloomington Square Associates Project) (the "Bonds") in the aggregate principal amount of $4,000,000 and to enter into the Indenture as herein defined to secure the Bonds in the manner set forth therein; and

WHEREAS, the Issuer has found that the proposed financing of the Project will be of benefit to the health and welfare of the Issuer and complies with the purposes and provisions of the Act; and

WHEREAS, the Bonds to be issued by the Issuer will be secured by and contain such terms and provisions as are set forth in that certain Trust Indenture dated as of June 1, 1981 (hereinafter referred to as the "Indenture") to be entered into between the Issuer and American Fletcher National Bank and Trust Company, as Trustee (hereinafter referred to as the "Trustee") the proceeds from the sale of the Bonds to be deposited with the Trustee and disbursed in accordance with the provisions of the Indenture; and

WHEREAS, the Issuer, heretofore adopted an approving preliminary resolution finding and determining that the financing of those certain economic development facilities of Bloomington Square Associates for use by various tenants complies with the purposes and provisions of the Act, and that such financing will be of benefit to the health, prosperity, economic stability and general welfare of the City of Bloomington and its citizens; and

WHEREAS, the Bloomington Economic Development Commission heretofore also approved and recommended the adoption of this form of ordinance by this Common Council and has approved the forms of and has transmitted for approval by this Common Council the Bonds, the Agreement, the Indenture, the Note and the Mortgage; and

WHEREAS, the officers of the Issuer have caused to be presented to this meeting the following documents or instruments which are attached to this ordinance as Exhibits A through D, inclusive:

(a) Trust Indenture dated as of June 1, 1981, to be entered into by and between the Issuer and the American Fletcher National Bank and Trust Company, Indianapolis, Indiana, as Trustee.

(b) Loan Agreement dated as of June 1, 1981 to be entered into by and between the Issuer and Bloomington Square Associates.

(c) Mortgage and Security Agreement dated as of June 1, 1981, to be entered into by and between Bloomington Square Associates and the Issuer.

(d) Bond Purchase Agreement dated May , 1981, to be entered into by and among the Issuer, Bloomington Square Associates and Allied Bank of Texas, as the Purchaser.

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

SECTION I. It is hereby found and determined that the financing of the Project referred to in the Agreement heretofore approved by the Bloomington Economic Development Commission and presented to the Common Council at this meeting, through the issuance and sale of the $4,000,000 Economic Development Revenue Bonds, Series A (Bloomington Square Associates Project), under and pursuant to the Indenture, will be of benefit to the health, prosperity, economic stability and general welfare of the City of Bloomington and its citizens.

SECTION II. In order to remedy conditions harmful to the health, prosperity, economic stability and general welfare of the area encompassing City of Bloomington, Indiana by inducing the Developer to develop the Project in the State of Indiana and in Monroe County, Indiana, there shall be and there is hereby authorized the following action to be taken by the Issuer pursuant to the provisions of the Act and this Ordinance:

(a) the acquisition by the Developer of certain real property located in Monroe County, Indiana, being the same property described in the Agreement and the Mortgage.

(b) the construction by the Developer of a new shopping center facility in accordance with the plans and specifications referred to in the Agreement.

SECTION III. In order to accomplish the public purposes specified above and in the Act and for the purpose of providing funds with which to pay the cost of the acquisition and construction of the Project provided above, and costs and expenses incidental to the issuance of the Bonds, there shall be and there hereby is authorized to be issued pursuant to the Act the revenue bonds of the Issuer to be designated "Economic Development Revenue Bonds, Series A (Bloomington Square Associates Project)" in the aggregate principal amount of Four Million Dollars ($4,000,000). The Bonds are authorized to be issued for the purpose of paying (i) the costs of acquiring certain real property located in the County of Monroe, Indiana (the "Land") and constructing certain shopping center facilities thereon (the "Building"), (ii) interest on the Bonds during the construction of the Building and (iii) certain expenses related to the issuance of the Bonds. The Bonds shall be issued under and secured by a Trust Indenture from the Issuer to American Fletcher National Bank and Trust Company, a national banking association having its principal office in Indianapolis, Indiana. The Agreement, the Note, the Mortgage and all other properties, rights and privileges specifically described or intended to be so in the granting clauses of the Indenture shall be pledged and assigned under the Indenture to secure the payment of the principal of, premium (if any) and the interest on the Bonds and any additional parity Bonds that may be issued under the Indenture. The Series A-1 Bond shall be dated as of the date of issue, shall be numbered R-1, shall be in the denomination of $4,000,000, shall bear interest and shall mature and become payable as specified in the Series A-1 Bond and in the Indenture. The Series A-1 Bond shall be exchangeable at the office of the Trustee for Series A-2 Bonds provided in the Indenture and the Series A-2 Bonds shall bear interest and shall mature and become payable as specified in the Series A-2 Bonds and in the Indenture.

The Bonds shall be in such form and contain such provisions as are set out in the Indenture.

The Bonds together with interest thereon, shall be limited obligations of the Issuer payable solely from the revenues and other amounts derived from the Agreement and the Note (except to the extent paid out of moneys attributable to the Bond proceeds or the income from the temporary investment thereof and under certain circumstances, proceeds from insurance and condemnation awards) and shall be a valid claim of the respective holders thereof only against the Bond Fund and other moneys held by the Trustee and the revenues and other amounts derived from the Agreement and the Note, which revenues and other amounts are hereby pledged and assigned for the equal and ratable payment of the Bonds and shall be used for no other purpose than to pay the principal of and interest on the Bonds or any other costs incident thereto. The Bonds shall not in any respect be a general obligation of the Issuer nor shall they be payable in any manner from funds raised by taxation. principal of and interest on the Bonds except as may be otherwise expressly authorized in the Indenture. The Bonds and the interest thereon shall not be deemed to constitute a debt of the State of Indiana, or any political subdivision thereof, or a pledge of the faith and credit of the State of Indiana or any political subdivision thereof but shall be a limited obligation of the Issuer payable solely from such special source and fund provided therefor in accordance with the Agreement, the Note and Indenture and pledged therefor, and neither the State of Indiana, any political subdivision thereof nor the Issuer shall be obligated to pay the Bonds, premium, if any, thereon or the interest thereon or other costs incident thereto except from such special source and fund above-mentioned and pledged therefor and neither the faith and credit nor the taxing power of the State of Indiana or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or interest on the Bonds or any other costs incident thereto. The Bonds shall not in any respect be a general obligation of the Issuer nor shall they be payable in any manner from funds raised by taxation.

SECTION IV. The form, terms and provisions of the Indenture which are before this meeting are hereby approved and all of the terms, provisions and conditions of the Indenture are hereby incorporated herein by reference as if the Indenture were set out by this ordinance in its entirety. The Mayor of the Issuer is hereby authorized, empowered and directed to execute, acknowledge and deliver the Indenture in the name and on behalf of the Issuer and the City Clerk of the Issuer is hereby authorized and directed to attest the same. The Indenture is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the official of the Issuer executing the same, his execution thereof to constitute conclusive evidence of his approval of any and all changes or revisions therein from the form of Indenture now before this meeting.

SECTION V. The form, terms and provisions of the Agreement which is before this meeting be and it is hereby approved and all of the terms, provisions and conditions of the Agreement are hereby incorporated herein by reference as if the Agreement were set out in this ordinance in its entirety. The Mayor of the Issuer is hereby authorized, empowered and directed to execute, acknowledge and deliver the Agreement in the name and on behalf of the Issuer and the City Clerk of the Issuer is hereby authorized and directed to attest the same. The Agreement is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the official of the Issuer executing the same, his execution thereof to constitute conclusive evidence of his approval of any and all changes or revisions therein from the form of Agreement now before this meeting.

SECTION VI. The form, terms and provisions of the Bond Purchase Agreement which is before this meeting be and it is hereby approved and all of the terms, provisions and conditions of the Bond Purchase Agreement are hereby incorporated herein by reference as if the Bond Purchase Agreement were set out in this ordinance in its entirety. The Mayor of the Issuer is hereby authorized, empowered and directed to execute and deliver the Bond Purchase Agreement in the name and on behalf of the Issuer. The Bond Purchase Agreement is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the official of the Issuer executing the same, his execution thereof to constitute conclusive evidence of his approval of any and all changes or revisions therein from the form of Bond Purchase Agreement now before this meeting.

SECTION VII. The form, terms and provisions of the Mortgage, which is before this meeting be and it is hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Mortgage were set out in this ordinance in its entirety. The Mayor of the Issuer be and is hereby authorized to execute, acknowledge and deliver the Mortgage in the name of and on behalf of the Issuer and the City Clerk of the Issuer is hereby authorized and directed to attest the same. The Mortgage is to be in substantially the form now before this meeting or with such minor changes therein as shall be approved by the official of the Issuer executing the same, his execution thereof to constitute conclusive evidence of his approval of any and all changes or revisions therein from the form of Mortgage now before this meeting.

SECTION VIII. The Mayor and the Issuer is hereby authorized and directed to execute the Bonds, in the name and behalf of the Issuer, and the City Clerk of the Issuer is hereby authorized and directed to attest the same, all in the manner provided in the Indenture and the Mayor of the Issuer is hereby directed thereupon (i) to deliver the Bonds to the Trustee under the Indenture, and (ii) to authorize the Trustee to authenticate the Bondsand to deliver them to the Purchaser upon payment to the Issuer of the purchase price specified in the Bond Purchase Agreement.

SECTION IX. The entire proceeds derived by the Issuer from the sale of the Bonds shall be paid by the Issuer to the Trustee under the Indenture, which is thereupon authorized and directed to apply and disburse such moneys for the purposes and in the order specified in Section 211(c) of the Indenture.

SECTION X. The Issuer hereby elects that the provisions of Section 103(b)(6)(D) of the Internal Revenue Code of 1954, as amended, shall be applicable to the $4,000,000 principal amount of Economic Development Revenue Bonds, Series A (Bloomington Square Associates Project) of the Issuer and the Mayor of the Issuer be and he is hereby authorized to file such statements or documents which are necessary to effectuate such election.

SECTION XI. The Mayor and City Clerk be, and they are hereby further authorized and directed for and on behalf of the Issuer, to take any and all such action as may be required by the Issuer to carry out, give effect to and consummate the transactions contemplated by each of the aforesaid documents authorized pursuant to this ordinance and to execute all papers, documents, certificates and other instruments that may be required for the carrying out of the authority conferred by this ordinance or to evidence said authority.

SECTION XII. The provisions of this ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereof.

SECTION XIII. All ordinances, resolutions and parts thereof in conflict herewith are to the extent of such conflict hereby repealed and this ordinance shall take effect and be in full force from and after its passage and approval.

SECTION XIV. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 15th day of July, 1981.

Alfred I. Towell, President
Bloomington Common Council

ATTEST:

Nora M. Connors, City Clerk

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 16th day of July, 1981.

Nora M. Connors, City Clerk

SIGNED and APPROVED by me upon this 17th day of July, 1981.

Francis X. McCloskey, Mayor
City of Bloomington

SYNOPSIS

This ordinance would authorize the City of Bloomington to issue its economic development revenue bonds for Bloomington Square Associates. The bonds will be for $4,000,000 and will be used for a shopping center project on Whitehall Pike. The city has no liability for the bonds if approved.