ORDINANCE 80-73

To Authorize the Issuance of Economic Development First Mortgage Revenue Bonds for K-Mart Corporation

WHEREAS, the City of Bloomington, Indiana, heretofore adopted an approving preliminary resolution finding and determining that the financing of those certain economic development facilities of Bloomington Square Associates (the "Investor Developer" and "Landlord" by assignment) for use by the K-Mart Corporation (the "Tenant") complies with the purposes and provisions of the Indiana Code of 1971, Sections 18-6-4.5-1 et seq., as amended (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 Installment Sale Agreement, the First Mortgage Indenture and Deed of Trust, the Lease, the Construction Advance Agreement, the Guaranty Agreement, the Disposition Agreement and the Official Statement; and

WHEREAS, the City heretofore determined to long-term permanently finance the Project and its related costs by the issuance of $2,755,000 in aggregate principal amount of its bonds to be designated as "Economic Development First Mortgage Revenue Bonds, Series A 1980, K-mart Corporation - Tenant and Guarantor" (the "Bonds"), to be issued under and pursuant to a First Mortgage Indenture and Deed of Trust, dated as of August 1, 1980 (the "Indenture"), with the Trustee, and as secured by an Installment Sale Agreement, dated as of August 1, 1980 (the "Installment Sale Agreement"), with the Investor Developer, and a Collateral Assignment of the Lease of the Project between the Investor Developer, as the Landlord by assignment, and K-mart Corporation, as the Tenant; and

WHEREAS, Zappala & Company, Inc. (the "Managing Underwriters"), have offered to purchase said Bonds and have heretofore presented to the City its Bond Purchase Proposal (the "Bond Purchase Proposal") relating thereto; and

WHEREAS, certain actions are required to be taken by the Common Council as a prerequisite to the issuance and sale of said Bonds;

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 long-term permanent financing of the economic development facilities referred to in the Installment Sale 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 $2,755,000 Economic Development First Mortgage Revenue Bonds, Series A 1980, K-mart Corporation - Tenant and Guarantor, under and pursuant to the First Mortgage Indenture and Deed of Trust, will be of benefit to the health, prosperity, economic stability and general welfare of the City of Bloomington and its citizens.

SECTION II. The Bond Purchase Proposal, dated as of August 4, 1980, from Zappala and Company, Inc., which has heretofore been presented to the Common Council, is hereby ratified, accepted and approved.

SECTION III. The City herewith approves and accepts the Deed for the Premises, approves the form of the Lease between the Investor Developer and K-mart Corporation, and approves and agrees to sell to the Investor Developer on an installment purchase basis the Premises as improved by the Project Facilities under and pursuant to the Installment Sale Agreement, and approves the form of the Installment Sale Agreement between the City and the Investor Developer, the form of the First Mortgage Indenture between the City and the Trustee, the form of the Construction Advance Agreement between the Trustee, the Investor Developer and the Managing Underwriters, as approved by the City, the form of the Disposition Agreement between the City, the Trustee and the K-mart Corporation, and

the form of the Official Statement in respect of the Bonds, all as heretofore approved by The Bloomington Economic Development Commission and, as to the Installment Sale Agreement and the Lease, hereinafter collectively defined as the "Financing Agreement" referred to in the Act (executed copies of which shall be incorporated herein by reference only and shall be kept on file with the City Clerk of the City), are hereby approved in substantially the forms presented to this meeting, and are hereby directed to be in such final forms as the City Attorney shall approve, and the Mayor is hereby authorized and directed to execute and deliver, and the City Clerk is hereby authorized and directed to execute and affix the seal of the City to, and to attest, said documents in substantially said final approved forms and upon the terms and conditions therein set forth, with such changes therein as such officers and City Attorney shall approve, such approval to be conclusively evidenced by said officers' execution thereof. The City consents to the use and distribution of the Official Statement by the Managing Underwriters but assumes no responsibility for the accuracy or completeness thereof.

SECTION IV. The City hereby appoints American Fletcher National Bank and Trust Company to be the Trustee under the First Mortgage Indenture.

SECTION V. The issuance under the Act of the $2,755,000 City of Bloomington, Indiana, Economic Development First Mortgage Revenue Bonds, Series A 1980, K-mart Corporation - Tenant and Guarantor, is hereby authorized and directed substantially in the forms presented to this meeting. The facsimile signature of the Mayor is hereby authorized and directed to be printed on the face of said Bonds, the facsimile corporate seal of the City is hereby adopted and authorized to be imprinted thereon, and the facsimile signatures of the Mayor and the City Clerk of the City are also authorized and directed to be printed on the Coupons appertaining to said Bonds. It is also hereby directed that the Bonds shall be executed in facsimile by the City Clerk. The Mayor or City Clerk is further hereby authorized and directed to deliver said Bonds to the Trustee for authentication under the First Mortgage Indenture as hereinafter authorized and, when said Bonds have been authenticated, to deliver them or cause them to be delivered to the Managing Underwriters pursuant to the Bond Purchase Proposal against receipt of the purchase price therefor, and to deposit the amount so received into the Construction Fund as provided in the First Mortgage Indenture.

SECTION VI. The forms, principal amount, numbers, maturities, provisions for redemption of, and the rates of interest on, the Bonds shall be as set forth in the Bond Purchase Proposal and in the First Mortgage Indenture herein approved, and shall be substantially in the forms presented to this meeting. The aforesaid Bonds shall be issued for the purpose of long-term permanently financing the costs of acquiring, constructing and equipping the economic development facilities for the Bloomington Square Associates - K-mart Corporation Project, as more particularly set forth and described in the First Mortgage Indenture and in the Installment Sale Agreement and which is incorporated herein by reference, which Bonds will be payable as to principal and interest and premium (if any) solely from the lease payments to be made by the K-mart Corporation as the Tenant under the Lease as collaterally assigned by the Investor Developer to the Trustee, or the guarantee payments if required to be made by the K-mart Corporation as the Guarantor under the Guaranty Agreement, or as otherwise provided in the First Mortgage Indenture, and the Bonds shall never constitute a general obligation of, or be a general indebtedness of or be a charge against the general credit of the City, nor shall they be payable in any manner from funds raised by taxation.

SECTION VII. The Trustee is hereby requested to manually authenticate the Bonds and to deliver the same and the coupons attached thereto to or upon the order of the Mayor and City Clerk.

SECTION VIII. The Trustee shall be, and by virtue of this Ordinance, and without further authorization from the City, is hereby authorized, directed and requested to invest and reinvest, subject to the directions from time to time of the Managing Underwriters during the Construction Period, and thereafter subject to the directions from time to time of the Investor Developer, all moneys available therefor in any Fund held by it pursuant to the aforesaid First Mortgage Indenture, which, by the terms of said First Mortgage Indenture, may be invested, and to deposit and redeposit such moneys in such Funds as may be permitted by the said First Mortgage Indenture, all subject to the terms and limitations contained in said First Mortgage Indenture, as appropriate.

SECTION IX. The City hereby approves and accepts the Guaranty Agreement from the K-mart Corporation as the Guarantor to the City and to the Trustee on behalf of all Bondholders, and authorizes and directs that the appropriate officers shall execute and deliver said Guaranty Agreement.

SECTION X. The appropriate officers of the City are hereby authorized and directed to assign all right, title and interest of the City in the Installment Sale Agreement to the Trustee as security for the Bonds, and to acknowledge the same to be the act and deed of the City.

SECTION XI. The City hereby approves the Lease between the Investor Developer, as the Landlord by assignment, and the K-mart Corporation, as the Tenant, and hereby consents to and approves of the assignment of the Investor Developer's interests in the Lease with the K-mart Corporation, as the Tenant, in the form of the Assignment of the Landlord's Interests in the Lease as Collateral Security, dated as of August 1, 1980, as made to the Trustee as collateral security for the Bonds, and authorizes and directs that the appropriate officers shall execute the necessary documentation to approve said Collateral Assignment of the Lease.

SECTION XII. The City hereby consents to and approves the Construction Advance Agreement, by and among the Trustee, the Investor Developer and Zappala and Company, Inc., and authorizes and directs that the appropriate officers of the City shall execute the necessary documentation to enter into said Construction Advance Agreement.

SECTION XIII. The appropriate officers of the City are hereby further authorized and directed to execute and deliver all such other documents and to take all such other actions as may be necessary or appropriate, including the ratification hereby of the execution of the Statement of Election and delivery thereof to the Internal Revenue Service, in order to effectuate the execution and delivery of the First Mortgage Indenture, the Installment Sale Agreement, the aforesaid Bond Purchase Proposal, and the issuance and sale of the Bonds, all in accordance with the foregoing Sections hereof.

SECTION XIV. The provisions of this Ordinance and the First Mortgage Indenture securing the Bonds shall constitute a contract which shall be binding between the City of Bloomington and the Holders of the Series A 1980 Bonds to be issued hereunder, and after the issuance of said Bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such Holders so long as any of said Bonds or the interest thereon remains unpaid. All prior resolutions or ordinances of the City or parts thereof inconsistent herewith are hereby appropriately amended or repealed.

SECTION XV. 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 4th day of September, 1980.

Al Towell

Al Towell, President Pro-Tem
Bloomington Common Council

ATTEST:

Nora M. Connors

Nora M. Connors, City Clerk

PRESENTED by me to the Mayor of the City of Bloomington upon this 4th day of September, 1980.

Nora M. Connors

Nora M. Connors, City Clerk

SIGNED and APPROVED by me upon this 4th day of September, 1980.

Francis X. McCloskey

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 $2,755,000 and will be used for the K-Mart project on Whitehall Pike. The city has no liability for these bonds if approved.

I HEREBY MOVE THAT XX ORDINANCE ____ APPROPRIATION ORDINANCE # 80- 73 , ENTITLED TO AUTHORIZE THE ISSUANCE OF EDC BONDS FOR K-MART CORPORATION

BE INTRODUCED AND READ FOR FIRST READING BY TITLE ONLY AT THE COUNCIL MEETING HELD ON AUGUST 21 , 1980.

Lloyd W. Olcott

(Signature)