ORDINANCE 83-55

TO AUTHORIZE THE CITY OF BLOOMINGTON TO APPROVE AND EXECUTE A SECOND SUPPLEMENTAL LOAN AGREEMENT AND MORTGAGE PERTAINING TO THE INDIANA UNIVERSITY RETIREMENT COMMUNITY, INC. PROJECT

WHEREAS, the City of Bloomington has heretofore adopted ordinances approving a Loan Agreement and Mortgage, Trust Indenture, and a First Supplemental Loan Agreement and Mortgage and First Supplemental Trust Indenture (the "Financing Documents") pertaining to the I. U. Retirement Community Project; and

WHEREAS, the City has issued its Economic Development First Mortgage Revenue Bonds, Series A (The Indiana University Retirement Community, Inc. Project) in the principal amount of $10,000,000, and its Economic Development First Mortgage Revenue Bonds, Series B (The Indiana University Retirement Community, Inc. Project) in the principal amount of $6,000,000; and

WHEREAS, the financing documents contain certain limitations and restrictions pertaining to the borrowing of funds by I. U. Retirement, which limitations and restrictions can be amended or supplemented by agreement of the parties as may be necessary or desirable to effectuate the purposes and intent of the Loan Agreement and if the amendments are not to the prejudice of the Trustee or the Bondholders; and

WHEREAS, I. U. Retirement, I. U. Foundation and American Fletcher National Bank and Trust Company, as Trustee, the other parties to the Financing Documents, have approved a Second Supplemental Loan Agreement and Mortgage amending the limitations and restrictions on additional borrowings by I. U. Retirement for the reasons and under the conditions set forth therein; and

WHEREAS, the City has been asked to approve and execute said Second Supplemental Loan Agreement and Mortgage; and

WHEREAS, said additional borrowing will be made directly by I. U. Retirement and will not require any execution or obligation by the City and will not constitute an indebtedness of or charge against the City;

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

SECTION 1. It is hereby found that approval and execution of the Second Supplemental Loan Agreement and Mortgage presented to this Common Council complies with the purposes and provisions of I.C. 36-7-12 and will be of benefit to the health and welfare of the City of Bloomington and its citizens.

SECTION 2. The form of the Second Supplemental Loan Agreement and Mortgage is hereby approved, is incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk.

SECTION 3. The Mayor and Clerk are authorized and directed to execute the Second Supplemental Loan Agreement and Mortgage approved herein on behalf of the City and any other documents which may be necessary or desirable to consummate the transactions contemplated therein. By their execution thereof, the Mayor and Clerk may approve such modifications and amendments as may be desirable in said document.

SECTION 4. 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 20 day of October, 1983.

Katherine Dilcher
Katherine Dilcher, President
Bloomington Common Council

ATTEST:

Patricia Williams
Patricia Williams, City Clerk

PRESENTED by me to the Mayor upon this 20 day of October, 1983.

Patricia Williams
Patricia Williams, City Clerk

SIGNED AND APPROVED by me upon this 20th day of October, 1983.

Tomilea Allison
Tomilea Allison, Mayor
City of Bloomington

SUMMARY

This Ordinance approves an amendment to the Loan Agreement between the City of Bloomington, the I. U. Retirement Community, Inc. and the I. U. Foundation to permit additional borrowing by the I. U. Retirement Community, Inc. Under the terms of the 1981 Agreement, the City's approval is necessary for any amendment. This amendment imposes no obligation on the City.

SECOND SUPPLEMENTAL LOAN
AGREEMENT AND MORTGAGE

This is a SECOND SUPPLEMENTAL LOAN AGREEMENT AND MORTGAGE dated as of _____ 1, 1983, supplementing and amending a certain Loan Agreement and Mortgage, dated as of February 1, 1981, and a First Supplemental Loan Agreement and Mortgage, dated as of April 1, 1981 (herein collectively referred to as the "Loan Agreement") among THE INDIANA UNIVERSITY RETIREMENT COMMUNITY, INC., an Indiana not-for-profit corporation ("I.U. Retirement"), INDIANA UNIVERSITY FOUNDATION, an Indiana not-for-profit corporation ("I.U. Foundation") and the CITY OF BLOOMINGTON, INDIANA (the "Issuer"), a municipal corporation organized under the laws of the State of Indiana, as mortgagee.

All words and phrases defined in the Loan Agreement and in the Indenture (hereinafter defined) shall have the same meaning in this Second Supplemental Loan Agreement and Mortgage.

PRELIMINARY STATEMENT

The Issuer has been empowered and authorized pursuant to the Indiana Code, Title 18, Article 6, Chapter 4.5 (the "Act") recodified as Title 36, Article 7, Chapter 12, to issue revenue bonds to promote economic development by providing funds for economic development facilities which will promote the public purposes of providing additional job opportunities and assisting the health and welfare of the people of the City of Bloomington, Indiana.

The Issuer has issued its Economic Development First Mortgage Revenue Bonds, Series A (The Indiana University Retirement Community, Inc. Project) (the "Series A Bonds") in the aggregate principal amount of $10,000,000 pursuant to the Act and a Trust Indenture dated as of February 1, 1981 (the "Indenture") from the Issuer to American Fletcher National Bank and Trust Company, as Trustee (the "Trustee"), and has loaned the proceeds of the Series A Bonds pursuant to the provisions of this Loan Agreement to I.U. Retirement (i) for the purpose of paying the cost of the Project, (ii) for funding interest on the Bonds, (iii) for expenses of financing and (iv) for establishing certain reserves.

The Issuer has also issued its Economic Development First Mortgage Revenue Bonds, Series B (The Indiana University Retirement Community, Inc. Project) (the "Series B Bonds") in the aggregate principal amount of $6,000,000 pursuant to the Act and a First Supplemental Trust Indenture dated as of April 1, 1981 (the "Indenture") from the Issuer to American Fletcher National Bank and Trust Company, as Trustee, and loaned the proceeds of the Series B Bonds pursuant to the provisions of the Loan Agreement to I.U. Retirement (i) for the purpose of paying the cost of the Project, (ii) for funding interest on the Bonds, (iii) for expenses of financing and (iv) for establishing certain reserves.

The Loan Agreement contains certain limitations and restrictions pertaining to the borrowing of funds by I.U. Retirement. These limitations and restrictions can be amended or supplemented by agreement of the parties as may be necessary or desirable to effectuate the purposes and intent of the Loan Agreement and if the amendments are not to the prejudice of the Trustee or the Bondholders.

Since the dates of the issuance of the Bonds there have been unanticipated delays in construction and completion of the Project and increased costs of construction for completion of the Project. Further, the continuing high level of interest rates and limited amounts of funds available for mortgages has resulted in a depressed housing market which has contributed to an inability of prospective residents of the Project to sell their present homes and relocate as residents of the Project.

These conditions have caused a shortage of funds available to I.U. Retirement to complete construction of the Project, to provide adequate working capital for operating the Project and for marketing efforts required to develop the Project, and have resulted in a depletion of funds available for reserves and for payment of principal of and interest on the Bonds.

The foregoing have created an unanticipated need for I.U. Retirement to borrow additional funds to provide for the financial requirements set forth above. The Loan Agreement limitations and restrictions on the borrowing of additional funds by

I.U. Retirement were established on the basis that the Project would be more fully developed at this time and that borrowings based upon a percentage of Adjusted Gross Revenues would be realistic. Because of the problems set forth above, the Project has not produced significant Adjusted Gross Revenues and the borrowing limitations and restrictions are now unrealistic and the Loan Agreement needs to be amended to provide for additional borrowings.

Such additional borrowings are to be subordinate in all respects to the rights of the Bondholders and of the Trustee, will enable the Project to develop as originally contemplated and will provide funds necessary for operational expenses and meeting debt service. Such additional borrowings, accordingly, effectuate the purposes and intent of the Loan Agreement and will not prejudice the rights of the Bondholders or the Trustee under the terms of the Loan Agreement and the Loan Agreement should be appropriately amended to permit such additional borrowings.

Now, therefore, Section 3.31 of the Loan Agreement and Mortgage is hereby amended to read as follows:

Section 3.31. Additional Debt. I.U. Retirement covenants and agrees that it will not incur, assume or guaranty any indebtedness or liabilities of any kind (including without limitation any indebtedness shown on the liability side of the balance sheet determined in accordance with generally accepted

accounting principles and also including any rentals payable by I.U. Retirement as lessee under any lease agreement) except for:

(a) indebtedness evidenced by the Notes from time to time issued and outstanding hereunder;

(b) indebtedness evidenced by Parity Obligations;

(c) liabilities (other than for borrowed money and other than for rentals payable by I.U. Retirement as lessee under any lease agreement) incurred by I.U. Retirement in its regular operations and related activities;

(d) Short Term Indebtedness, so long as the aggregate amount of Short Term Indebtedness together with the aggregate amount of liabilities described under clause (c) hereof shall not exceed 15% of Adjusted Gross Revenues of I.U. Retirement for the preceding Fiscal Year;

(e) indebtedness of I.U. Retirement for borrowed money (other than indebtedness evidenced by Notes or Parity Obligations), unsecured or secured by a security interest in or lien upon property not constituting a part of the Mortgaged Property, or indebtedness of I.U. Retirement represented by lease obligations; provided that the amount of such indebtedness, determined in the case of indebtedness for borrowed money, at the outstanding principal amount thereof and in the case of lease obligations, at the aggregate of the unpaid lease rentals, together with outstanding indebtedness described under

clause (d) and (f) hereof, shall not in the aggregate exceed 20% of Adjusted Gross Revenues of I.U. Retirement; or

(f) indebtedness of I.U. Retirement (other than indebtedness evidenced by Notes or Parity Obligations) secured by mortgages, liens or conditional sales contracts, or purchase money mortgages, given to secure the payment of all or a portion of the purchase price of machinery, equipment, fixtures, furniture or other personal property purchased on deferred payment plans; provided that the principal amount of such indebtedness, together with outstanding indebtedness described under clauses (d) and (e) hereof, shall not in the aggregate at any one time exceed 20% of Adjusted Gross Revenues of I.U. Retirement.

(g) indebtedness of I.U. Retirement which is junior and subordinate to all rights of the Trustee and of the Bondholders, and all obligations of the Issuer, I.U. Retirement and I.U. Foundation to the Trustee and the Bondholders under the Loan Agreement and the Indenture.

The indebtedness under this clause (g) shall not exceed at any one time the amount of $4,500,000, shall bear no interest until maturity and a rate or rates not to exceed 12% per annum after maturity, shall mature at such time as may be specified in the note or notes evidencing such debt, but no later than November 30, 1986, and shall be prepayable at any time from any funds without premium or penalty.

The proceeds of such indebtedness shall be expended only for costs of construction of the Project, for working capital for I.U. Retirement or for deposit with the Trustee into the Debt Service Reserve Fund and use by the Trustee for the purposes of said fund.

I.U. Retirement warrants that all of its indebtedness and liabilities will, after the delivery of the Series A Bonds to the Original Purchaser, fall within one of the above exceptions. For the purpose of computing the amount of additional debt that may be incurred under exceptions (d), (e) and (f) above, any outstanding indebtedness of the kinds described in said exceptions (d), (e) and (f) shall operate to reduce the amount of additional debt which may be incurred under said exceptions notwithstanding that such indebtedness may have been incurred prior to the delivery of the Series A Bonds, it being the intent hereof that such prior indebtedness be taken into account in computing the additional debt which I.U. Retirement may incur under said exceptions.

For purposes of clauses (d), (e) and (f) above, "Adjusted Gross Revenues" shall mean the Gross Revenues of I.U. Retirement for the last completed Fiscal Year preceding the year in which any such indebtedness shall be incurred, less any applicable bad debt allowances, adjustments for free services and reimbursement adjustments with Medicare, Medicaid, Blue Cross and equivalent insurance programs.

ARTICLE IX

Supplements and Amendments to this Loan Agreement

Section 9.1. Supplements and Amendments to this Loan Agreement. I.U. Retirement, I.U. Foundation and the Issuer may, with the consent of the Trustee, from time to time enter into such supplements and amendments to this Loan Agreement as to them may seem necessary or desirable to effectuate the purposes or intent hereof.

(End of Article IX)