

ORDINANCE NO. 80-68

To Ratify and Approve an Agreement in Lieu
of Annexation with the I. U. Retirement Community

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


SECTION 1. The Agreement in Lieu of Annexation between the
City of Bloomington and the I. U. Retirement Community, approved
by the Board of Public Works is hereby ratified and approved by the
Common Council of the City of Bloomington.

SECTION 2. The monies received by the City pursuant to this
Agreement shall be deposited in the Special Non-Reverting Improvement
Fund created by Ordinance 80-70.

SECTION 3. Severability. If any section, sentence or provision
of this Ordinance, or the application thereof to any person or cir-
cumstance shall be declared invalid, such invalidity shall not affect
any of the other sections, sentences, provisions, or applications of
this Ordinance which can be given effect without the invalid provision
or application, and to this end the provisions of this Ordinance are
declared to be severable.

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 18th day of September,
1980.


Tomilea Allison, President
Bloomington Common Council

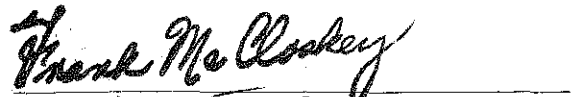
ATTEST:


Nora M. Connors, City Clerk

PRESENTED by me to the Mayor of the City of Bloomington, Monroe
County, Indiana, upon this 19th day of September, 1980.


Nora M. Connors, City Clerk

SIGNED and APPROVED by me upon this 20 day of September, 1980.


Francis X. Mc Closkey, Mayor
City of Bloomington

SYNOPSIS

State law permits cities to enter into contracts with businesses
instead of annexing them. This Ordinance approves such a contract
with the I. U. Retirement Community. The Retirement Community will
pay the City \$100,000.00 over five years and the City will provide
police and fire protection for five years.

A G R E E M E N T

THIS AGREEMENT, made and entered into as of the 18 day of September 1980, by and between the City of Bloomington, Indiana, hereinafter referred to as the "City", and I.U. Retirement Community, Inc., an Indiana Non-Profit Corporation, doing business in Bloomington Township, in Monroe County, Indiana, hereinafter referred to as the "Developer", WITNESSETH:

WHEREAS, the City of Bloomington and the Developer located in the vicinity of but beyond the corporate limits of the City recognize mutual interests and benefits in relationship to each other; and the Developer volunteers to share some of the financial support of the City even though it is tax exempt, and the City recognizes the need to provide certain services to the benefit of the Developer and the community adjacent to the Developer; and the Developer has petitioned the City to issue its Economic Development bonds in an amount of \$16,000,000 to finance the Developer's Retirement Community; and

WHEREAS, the Developer is the owner and/or lessee of personal property and real estate in Bloomington Township, Monroe County, Indiana, located outside of but contiguous to and/or in the vicinity of the City of Bloomington, Indiana; said real estate being set forth and described in Exhibit "A" attached hereto and made a part hereof; it is with such understanding that this Agreement is entered into.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS OF THE PARTIES, IT IS AGREED AND STIPULATED AS FOLLOWS:

(1) This Agreement is entered into pursuant to the provisions of Section 404 of Chapter 239 of the 1969 Acts of the General Assembly of the State of Indiana, I.C. 1971, 18-5-10-22, and is for a term of five (5) years, beginning on the date that the Developer obtains an occupancy permit and ending five (5) years thereafter, unless otherwise terminated by the Parties as hereinafter provided.

(2) The parties hereto agree and declare as follows:

- (A) The Developer is a distinct asset to the Bloomington community and is a tax exempt entity;
- (B) The Developer desires the City to issue its Economic Development Bonds, which are tax exempt municipal bonds, in an amount of \$16,000,000 so that Developer may build the development.

(C) The Developer benefits both directly and indirectly by the fact of its residence in the Bloomington community and by the issuance of the above-mentioned bonds.

(D) It is to the mutual interest of the parties hereto and of the community in general that the Developer receive services of the City and share the financial support of the City.

(3) It is agreed by the parties that the Developer shall contribute yearly to the City, beginning at such time as the Developer obtains an occupancy permit, the amount of Twenty Thousand Dollars (\$20,000.00).

(4) The yearly contribution for the first year shall be made in four (4) quarterly installments as follows: beginning at the end of the first quarter in which the Developer obtains an occupancy permit, the amount of \$4,000.00; at the end of the second quarter, the amount of \$4,500.00; at the end of the third quarter, the amount of \$5,500.00; and at the end of the fourth quarter, the amount of \$6,000.00. The yearly contribution for all subsequent years shall be in four equal quarterly installments of \$5,000.00 each, payable on or before the last day of the quarter.

(5) The funds herein provided for to be contributed by the Developer to the City may be used for any legal public purpose.

(6) So long as the Developer continues to make contributions hereunder, as provided in Sections (3) and (4), the City agrees that it will furnish to the area described in Exhibit "A", first call police protection and first call fire protection equivalent to those furnished by the City within the City's corporate limits.

(7) The Developer, upon the sale or lease or sublease of any of its Bloomington area business facilities described in Exhibit "A" or a part thereof, may, but need not, assign all or part of its right hereunder to such purchaser, lessee or sublessee, and in the event of such an assignment, such purchaser, lessee or sublessee shall become a party to this Agreement and the new party and the City shall be bound by the terms hereof. Such conveyance or assignment shall not alter the obligation or rights of the City as contained herein.

(8) This Agreement shall become effective when executed by the parties hereto, approved and ratified by the Common Council of the City of Bloomington, Indiana, and when the Developer obtains an occupancy permit.

9. In the event that any party to this Agreement fails to timely perform any of the obligations specified in this Agreement, then the other party, after notice to such party as hereinafter provided, may: (a) at its option, declare this Agreement null and void as to the breaching party; or (b) deem such failure a breach of the Agreement.

In the event a party feels a failure to perform an obligation of this Agreement has occurred, it shall notify the defaulting party by certified mail of said failure, specifying the date by which such failure should be corrected, and may then initiate any action at law or equity to remedy such failure after the date specified if the default has not been cured. The date specified shall not be less than 60 days from the date of the notice. Any disputed amounts shall be placed with a mutually agreed upon escrow agent until such time as the dispute is resolved. Any payments made by the defaulting party under this Agreement shall remain with the other party as liquidated damages.

10. In the event the party deems that such failure renders this Agreement null and void, then it shall so notify the defaulting party by certified mail of the default and the date by which such failure must be corrected (which shall not be less than 60 days from the date of the Notice) and may proceed to institute any action it is legally authorized to initiate including discontinuance of services except those for which payment is made or tendered.

11. If upon the expiration of the term of this Agreement, the parties have not entered into a new agreement, the City reserves the right to discontinue first call police protection and first call fire protection services to said property. In such event, Developer agrees not to pursue any claim or action against the City arising from the discontinuance of said services and to defend and hold harmless the City against any such claim.

12. It is further agreed by the parties hereto that the failure of a party to pursue its remedies herein shall not be deemed a waiver of the right to proceed against the same party or any other party hereto at a future time.

13. The obligations of the Developer provided herein shall terminate in the event the subject property shall be annexed to the City of Bloomington, Indiana.

IN WITNESS WHEREOF, this Agreement is executed for and on behalf of the City of Bloomington, Indiana, by the Mayor and the Board of Public Works, and attested to by the City Clerk and the seal of the City affixed, and the Developer has caused this Agreement to be executed by its respective duly authorized officers and their seals affixed, all as of the date first above written. This

Agreement shall be in full force and effect when executed by the parties heretofore set forth and approved by the Common Council of the City of Bloomington, Indiana.

CITY OF BLOOMINGTON, INDIANA

By Francis X. McCloskey
Francis X. McCloskey, Mayor

Attest:

Mae J. Connors
City Clerk
(SEAL)

BOARD OF PUBLIC WORKS, CITY OF BLOOMINGTON, INDIANA

Dated: _____

I. U. RETIREMENT COMMUNITY, INC.,

By _____
Harry G. Day, President

ATTEST:

Zelia Von Tress, Secretary

I HEREBY MOVE THAT XX ORDINANCE APPROPRIATION
ORDINANCE #80- 68 , ENTITLED TO RATIFY AND APPROVE AN
AGREEMENT IN LIEU OF ANNEXATION WITH THE I.U. RETIREMENT
COMMUNITY

BE INTRODUCED AND READ FOR FIRST READING BY TITLE ONLY
AT THE COUNCIL MEETING HELD ON SEPTEMBER 4 , 1980

Reard W. Scott
(Signature)