

ORDINANCE NO. 80-69

To Ratify and Approve an Agreement in Lieu  
of Annexation with Whitehall Associates  
and Bloomington Square Associates

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

SECTION 1. The Agreement in Lieu of Annexation between the City of Bloomington and Whitehall Associates, an Indiana Limited Partnership and Bloomington Square Associates, an Indiana Limited Partnership 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 circumstance 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 4<sup>th</sup> 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, Monroe County, Indiana, upon this 5<sup>th</sup> day of September, 1980.

Nora M. Connors  
Nora M. Connors, City Clerk

SIGNED and APPROVED by me upon this 8<sup>th</sup> day of September, 1980.

Francis X. McCloskey  
Francis X. McCloskey, Mayor  
City of Bloomington

SYNOPSIS

State Law permits cities to enter into contracts with industries instead of annexing them. This Ordinance approves such a contract with the developers of the Westside K-Mart. The business will pay the City 75% of its potential City tax liability (if it were annexed) for fifteen years. The City will provide water, sewer, police and fire services. If, prior to the end of the Agreement, the City decides to annex the property then the developers agree not to remonstrate.

# A G R E E M E N T

THIS AGREEMENT, made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 1980, between the City of Bloomington, Indiana, hereinafter referred to as the "City", and Bloomington Square Associates, an Indiana Limited Partnership, and Whitehall Associates, an Indiana Limited Partnership, doing business in Van Buren Township, in Monroe County, Indiana, hereinafter jointly and severally referred to as the "Developer", said partnerships being jointly and severally liable for the complete and full performance of all of the covenants and promises contained herein, 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 desire to share some of the financial support of the City; and the City recognizes the need to provide certain services to the benefit of the Developer and the community adjacent to the Developer; and

WHEREAS, the Developer is the owner and/or lessee of personal property and real estate in Van Buren 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, IC 1971, 18-5-10-22, and is for a term of fifteen (15) years, beginning on the date of final approval by the Common Council of the City of Bloomington, Indiana, and ending fifteen (15) 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;

(B) The developer benefits both directly and indirectly by the fact of its residence in the Bloomington community;

(C) It is to the mutual interests of the parties hereto and to the community in general that the Developer receive services of the City and share the financial support of the City;

(D) Such mutual interests can best be served by the Developer making the payments herein stipulated to the City on a contractual basis, rather than by annexation of the Developer's properties to the City.

(3) It is agreed between the City and the Developer that the Developer will pay yearly to the City an amount equal to 75% of the taxes it would pay to the City if it were annexed to the City. The computation of the seventy-five percent (75%) shall be based on the regularly assessed valuation of the property and the then existing City tax rate.

(4) The yearly payments shall be made in two (2) equal installments on or before the first Monday of May and the first Monday of November of each year, beginning with the first May or November after final approval by the Common Council of the City of Bloomington, Indiana. At no time shall payments not be due and payable in May and November of each year. Provided, however, that, pursuant to the statute cited in Section 1, the obligations of the parties hereunder shall, if not sooner terminated, terminate fifteen (15) years from the effective date of this Agreement.

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

(6) So long as the Developer continues to make payments hereunder, as provided in Sections 3 and 4, the City agrees that it will furnish to the area described in Exhibit "A", City water, sanitary sewer, and first call police and fire protection.

(7) The Developer agrees to be bound by its obligations contained herein for the full term of this Agreement even in the event that it might cease operation or remove its operations to an area not included in Exhibit "A".

(8) 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 rights hereunder to such purchaser, lessee or sub-lessee, and in the event of such an assignment, such purchaser, lessee or sub-lessee 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.

(9) This Agreement shall become effective when executed by the parties hereto and approved and ratified by the Common Council of the City of Bloomington, Indiana.

(10) 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.

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 but not limited to annexation of property owned or leased by the defaulting party, or obtaining an injunction or restraining order prohibiting annexation.

11. The Developer agrees to waive any right that it, its heirs or assigns may have to remonstrate or protest annexation of the lands described in Exhibit A during the term of this Agreement or at such time as this Agreement may cease to be effective either through passage of time or default or breach of the parties. Such waiver shall be recorded and is given in consideration for the right to connect the development to City sewer lines and plants. If annexation occurs during the term of this Agreement then the parties agree that this Agreement shall cease to be effective or binding on the parties.

12. As stated earlier this Agreement is for a term of fifteen (15) years. At the end of said term if the land described in Exhibit A is not annexed then the parties may enter into a new Agreement. In the event that the land described in Exhibit A is not annexed at the end of the term of this Agreement and the parties do not enter into a new Agreement then the City reserves the right to discontinue all city services to said property. Services to be discontinued include, but are not limited to, sanitary sewer, water, police and fire service. Developer agrees not to pursue any claim or action against the City arising from the discontinuances of said services and to defend and hold harmless the City against any such claim.

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.

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 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.

Attest:

Norman A. Adams  
City Clerk

(Seal)

CITY OF BLOOMINGTON, INDIANA

BY:

Francis X. McCloskey  
Francis X. McCloskey, Mayor

BOARD OF PUBLIC WORKS, CITY OF  
BLOOMINGTON, INDIANA

Frank H. Husonals

Julietta E. Egleson

Martha E. Sims

Dated: 8-12-80

BLOOMINGTON SQUARE ASSOCIATES

BY:

John B. Urbahn, II  
JOHN B. URBANH, II, GENERAL PARTNER.

WHITEHALL ASSOCIATES

BY:

John B. Urbahn, II  
JOHN B. URBANH, II, GENERAL PARTNER.

I HEREBY MOVE THAT XX ORDINANCE        APPROPRIATION  
ORDINANCE #80- 69, ENTITLED TO RATIFY AND APPROVE AN  
AGREEMENT IN LIEU OF ANNEXATION WITH WHITEHALL ASSOCIATES  
AND BLOOMINGTON SQUARE ASSOCIATES

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

Donald W. Oscoff  
(Signature)