

ORDINANCE NO. 01-03

ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY OF LEBANON, INDIANA ADJUSTABLE RATE DEMAND ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2001 (UNITED MANAGEMENT SERVICES, INC. PROJECT), AND THE LENDING OF THE PROCEEDS THEREOF TO UNITED MANAGEMENT SERVICES, INC. AND AUTHORIZING AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the City of Lebanon, Indiana (the "City"), is a municipal corporation and political subdivision of the State of Indiana and by virtue of I.C. 36-7-11.9 and I.C. 36-7-12 (collectively, the "Act"), is authorized and empowered to adopt this ordinance (this "Bond Ordinance") and to carry out its provisions;

WHEREAS, United Management Services, Inc. (the "Borrower"), desires to finance and refinance the acquisition, design, construction and/or equipping of its catered living retirement facility located at 610 CrownPointe Drive in the City (the "Project");

WHEREAS, the Borrower has advised the City of Lebanon Economic Development Commission (the "Commission") and the City that it proposes that the City issue revenue bonds in an amount not to exceed Three Million Five Hundred Thousand Dollars (\$3,500,000) (the "Bonds") under the Act and loan the proceeds of such Bonds to the Borrower for the purpose of financing the Project and refinancing certain prior indebtedness incurred in connection with the Project;

WHEREAS, the completion of the Project results or has resulted in the diversification of industry, the creation and/or retention of approximately ~~twelve~~ fourteen to fifteen (~~12~~14 - 15) jobs and the creation of business opportunities in the City;

WHEREAS, pursuant to I.C. § 36-7-12-24, the Commission published notice of a public hearing (the "Public Hearing") on the proposed issuance of the Bonds to finance and refinance the Project;

WHEREAS, on March 26, 2001, the Commission held the Public Hearing on the Project and received uncontroverted evidence that there are no facilities which are similar to the Project and have already been constructed or operating in or near the City; and

WHEREAS, the Commission has performed all actions required of it by the Act preliminary to the adoption of this Bond Ordinance and has approved and forwarded to the Common Council the forms of: (1) a Loan Agreement, between the City and the Borrower (including a Series 2001 Note) (the "Loan Agreement"); (2) a Trust Indenture, with respect to the Bonds, between the City and Fifth Third Bank, Indiana, as trustee (the "Trustee") (the "Indenture"); (3) the Bonds; (4) a Bond Placement Agreement among the City, the Borrower and Fifth Third Securities, Inc. (the "Placement Agent") (the "Bond Placement Agreement"); (5) a Remarketing Agreement between the Borrower and Fifth Third Securities, Inc. (the "Remarketing Agreement"), (6) a Private Placement Memorandum with respect to the Bonds (the "Private Placement Memorandum"); and (7) this Bond Ordinance (the Loan Agreement, the Indenture, the Bonds, the Bond Placement Agreement, the Remarketing Agreement, the Private Placement Memorandum, and this Bond Ordinance, collectively, the "Financing Agreements");

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF LEBANON, INDIANA, THAT:

**Section 1. Findings; Public Benefits.** The Common Council hereby finds and determines that the Project involves the acquisition, design, construction and equipping of an "economic development facility" as that phrase is used in the Act; that the Project has or will increase employment opportunities and increase diversification of economic development in the City, has or will improve and promote the economic stability, development and welfare in the City, has or will encourage and promote the expansion of industry, trade and commerce in the City and the location of other new industries in the City; that the public benefits to be accomplished by this Bond Ordinance, in tending to overcome insufficient employment opportunities and insufficient diversification of industry, are greater than the cost of public services (as that phrase is used in the Act) which will be required by the Project; and, therefore, that the financing and refinancing of the Project by the issue of the Bonds under the Act: (i) will be of benefit to the health and general welfare of the City; and (ii) complies with the Act.

**Section 2. Approval of Financing.** The proposed financing and refinancing of the Project by the issuance of the Bonds under the Act, in the form that such financing was approved by the City of Lebanon Economic Development Commission, is hereby approved.

**Section 3. Authorization of the Bonds.** The issuance of the Bonds, payable solely from revenues and receipts derived from the Financing Agreements, is hereby authorized.

**Section 4. Terms of the Bonds.** The Bonds, in the aggregate principal amount not to exceed Three Million Five Hundred Thousand Dollars (\$3,500,000), shall (i) be executed at or prior to the closing date by the manual or facsimile signatures of the Mayor and the Clerk-Treasurer of the City; (ii) be dated as of ~~April 1, 2001~~ **the first day of the month in which the Bonds are sold**; (iii) mature on a date not later than ~~twenty-five years after the date of issuance~~ **December 1, 2031**; (iv) bear interest at such rates as determined through the marketing of the Bonds by the Placement Agent on the date of sale and the remarketing of the Bonds as provided in the Indenture, with such interest payable as provided in the Financing Agreements; (v) be issuable in such denominations as set forth in the Financing Agreements; (vi) be issuable only in fully registered form; (vii) be subject to registration on the bond register as provided in the Indenture; (viii) be payable in lawful money of the United States of America; (ix) be payable at an office of the Trustee as provided in the Indenture; (x) be subject to optional redemption prior to maturity and subject to redemption as otherwise provided in the Financing Agreements; (xi) be issued in one or more series; and (xii) contain such other terms and provisions as may be provided in the Financing Agreements.

(b) The Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general credit or taxing power of, the City, but shall be special and limited obligations of the City, payable solely from revenues and other amounts derived from the Financing Agreements. Forms of the Financing Agreements are before this meeting and are by this reference incorporated in this Bond Ordinance, and the Clerk-Treasurer of the City is hereby directed, in the name and on behalf of the City, to insert them into the minutes of the Common Council and to keep them on file.

**Section 5. Sale of the Bonds.** The Mayor and the Clerk-Treasurer of the City are hereby authorized and directed, in the name and on behalf of the City, to sell the Bonds to the initial purchasers thereof at the direction of the Placement Agent, at the price, in the manner and at the time set forth in the Bond Placement

Agreement, at such prices as are determined on the date of sale and approved by the Mayor and the Clerk-Treasurer of the City.

**Section 6. Private Placement Memorandum.** The Common Council hereby approves, and authorizes and directs the Mayor and the Clerk-Treasurer of the City, for and on behalf of the City, to execute and deliver, and to distribute or cause to be distributed, the Private Placement Memorandum, in substantially the form presented at this meeting, with such changes thereto as the Mayor and the Clerk-Treasurer of the City determine to be necessary or appropriate, such determination to be conclusively evidenced by such execution, delivery and distribution.

**Section 7. Execution and Delivery of Financing Agreements.** The Mayor and the Clerk-Treasurer of the City are hereby authorized and directed, in the name and on behalf of the City, to execute or endorse and deliver the Loan Agreement, the Series 2001 Note from the Borrower to the City, dated as of April 1, 2001, the Indenture, the Bonds and the Bond Placement Agreement, submitted to the Common Council, which are hereby approved in all respects.

**Section 8. Changes in Financing Agreements.** The Mayor and the Clerk-Treasurer of the City are hereby authorized, in the name and on behalf of the City, without further approval of the Common Council or the Commission, to approve such changes in the Financing Agreements as may be permitted by Act, such approval to be conclusively evidenced by their execution thereof.

**Section 9. Public Hearing.** The Commission is hereby appointed to conduct a public hearing on behalf of the City pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended, and the Commission's having conducted such a hearing on March 26, 2001 (the "Public Hearing"), as such appointee, is hereby ratified and approved.

**Section 10. Public Approval.** The Common Council hereby approves the issue of the Bonds and the Project to be financed and refinanced by the Bonds, which facilities are described in the published notice of the Public Hearing.

**Section 11. Program Financing.** The City, pursuant to Section 18.5 of the Act, hereby initiates a program for financing economic development facilities (as defined in the Act), including without limitation the Project, for developers (as defined in the Act) and users (as defined in the Act), including without limitation the Borrower, in Indiana, through the issuance of taxable or tax-exempt bonds, including without limitation the Bonds, and, in furtherance of this objective, hereby authorizes and directs the lending of money, upon such terms and conditions as the City considers proper, to a developer or user, including without limitation the Borrower, under an installment purchase contract or loan agreement to: (i) finance, reimburse or refinance the cost of economic development facilities, including without limitation the Project; and (ii) take back a secured or unsecured promissory note evidencing such a loan or a security interest in the economic development facilities financed or refinanced with the loan, including without limitation the Project.

**Section 12. General.** The Mayor and the Clerk-Treasurer of the City, and each of them, are hereby authorized and directed, in the name and on behalf of the City, to execute or endorse any and all agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by them, or either of them, to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this Bond Ordinance (including the preambles hereto and the

documents mentioned herein), the Project, the issuance and sale of the Bonds, and the securing of the Bonds under the Financing Agreements, and any such execution, endorsement, performance or doing of other things heretofore effected be, and hereby is, ratified and approved.

Section 13. Binding Effect. The provisions of this Bond Ordinance and the Financing Agreements shall constitute a binding contract between the City and the holders of the Bonds, and after issuance of the Bonds this Bond Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of the holders of the Bonds as long as the Bonds or interest thereon remains unpaid.

Section 14. Repeal. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 15. Effective Date. This Bond Ordinance shall be in full force and effect immediately upon adoption and compliance with I.C. § 36-4-6-14.

Section 16. Copies of Financing Agreements on File. Two copies of the Financing Agreements incorporated into this Bond Ordinance were duly filed in the office of the Clerk-Treasurer of the City, and are available for public inspection in accordance with I.C. § 36-1-5-4.

PASSED by the Common Council of the City of Lebanon, Indiana, on the 12 day of MARCH, 2001.

THE COMMON COUNCIL OF THE CITY OF LEBANON, INDIANA

Harold "Hub" Lewis

John W. [unclear]

Ray [unclear]

Andrea [unclear]

James K Urban

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(SEAL)

ATTEST:

Jamie A. [unclear]

Clerk-Treasurer of the City of Lebanon, Indiana

Presented by me to the Mayor of the City of Lebanon, Indiana, this 12 day of MARCH, 2001, at 7<sup>30</sup> o'clock P.m.

*Janice A. Brown*

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Clerk-Treasurer of the City of Lebanon, Indiana

Approved and signed by me this 12 day of MARCH, 2001, at 7<sup>30</sup> o'clock P.m.

*Jan M. Wilson*  
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Mayor of the City of Lebanon, Indiana

RESOLUTION NO. 01-03 a.A RESOLUTION APPROVING AND AUTHORIZING  
CERTAIN ACTIONS AND PROCEEDINGS WITH RESPECT TO  
CERTAIN PROPOSED ECONOMIC DEVELOPMENT REVENUE BONDS

WHEREAS, the City of Lebanon, Indiana (the "City"), is authorized by I.C. 36-7-11.9 and I.C. 36-7-12 (collectively, the "Act") to issue revenue bonds for the financing of economic development facilities, and loan the proceeds of the revenue bond issue to another entity to finance or refinance the acquisition, construction, renovation, installation and equipping of said facilities;

WHEREAS, United Management Services, Inc. (the "Borrower") desires to finance and refinance the acquisition, design, construction and/or equipping of a new building located in the City (the "Project");

WHEREAS, the Borrower owns and has completed the Project for use in the operation of its catered living retirement facility located at 610 CrownPointe Drive in the City;

WHEREAS, the Borrower has advised the City of Lebanon Economic Development Commission (the "Commission") and the City that it proposes that the City issue revenue bonds in an amount not to exceed Three Million Five Hundred Thousand Dollars (\$3,500,000) (the "Bonds") under the Act and loan the proceeds of such Bonds to the Borrower for the purpose of financing and refinancing the Project;

WHEREAS, the Commission has studied the Project and the proposed financing and refinancing of the Project and their effect on the health and general welfare of the City and its citizens;

WHEREAS, the completion of the Project results in the diversification of industry, the creation or retention of fourteen to fifteen (14 - 15) jobs and the creation and retention of business opportunities in the City;

WHEREAS, pursuant to I.C. § 36-7-12-24, the Commission published notice of a public hearing (the "Public Hearing") on the proposed issuance of the Bonds to finance and refinance the Project; and

WHEREAS, on the date hereof the Commission held the public hearing on the Project and received uncontroverted evidence that there are no facilities which are similar to the Project and have already been constructed or operating in or near the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF LEBANON ECONOMIC DEVELOPMENT COMMISSION AS FOLLOWS:

SECTION 1. The Commission hereby finds, determines, ratifies and confirms that the diversification of industry, the creation and retention of business opportunities and the creation and retention of opportunities for gainful employment within the jurisdiction of the City is desirable, serves a public purpose, and is of benefit to the health and general welfare of the City; and that it is in the public interest that the City take such action as it lawfully may to encourage the diversification of industry, the creation and retention of business opportunities, and the creation and retention of opportunities for gainful employment within the jurisdiction of the City.

SECTION 2. The Commission hereby makes a finding of fact, based upon the uncontroverted evidence presented at the Public Hearing, that there are no facilities which are similar to the Project and

already constructed or operating in or near the City and, based upon such finding of fact, hereby determines that the Project will not have, and have not had, an adverse competitive effect on any similar facilities already constructed or operating in or near the City.

SECTION 3. The Commission hereby approves the report with respect to the Project presented at this meeting. The Secretary of this Commission shall submit such report to the executive director or chairman of the plan commission of the City.

SECTION 4. The Commission finds, determines, ratifies and confirms that the issuance and sale of the Bonds in an amount not to exceed Three Million Five Hundred Thousand Dollars (\$3,500,000) and the loan of the proceeds of the Bonds to the Borrower for the financing and refinancing of the Project will be of benefit to the health and general welfare of the City, will serve the public purposes referred to above in accordance with the Act, and fully comply with the Act.

SECTION 5. The financing and refinancing of the Project through the issuance of the Bonds, in an amount not to exceed Three Million Five Hundred Thousand Dollars (\$3,500,000), is hereby approved.

SECTION 6. The Commission hereby approves the terms of the following documents in the form presented at this meeting: (i) a Loan Agreement (including the Series 2001 Note), between the City and the Borrower; (ii) a Trust Indenture, between the City and Fifth Third Bank, Indiana (the "Trustee"); (iii) a Bond Placement Agreement, among the City, the Borrower and Fifth Third Securities, Inc.; (iv) a Remarketing Agreement between the Borrower and Fifth Third Securities, Inc.; (v) a Private Placement Memorandum with respect to the Bonds; and (vi) an Ordinance of the Common Council of the City.

SECTION 7. The Commission hereby recommends that the City, pursuant to Section 18.5 of the Act, initiate a program for financing economic development facilities (as defined in the Act), including without limitation the Project, for developers (as defined in the Act) and users (as defined in the Act), including without limitation the Borrower, in Indiana, through the issuance of taxable or tax-exempt bonds, including without limitation the Bonds, and, in furtherance of this objective, lend money, upon such terms and conditions as the City considers proper, to a developer or user, including without limitation the Borrower, under an installment purchase contract or loan agreement to: (i) finance, reimburse or refinance the cost of economic development facilities, including without limitation the Project; and (ii) take back a secured or unsecured promissory note evidencing such a loan or a security interest in the economic development facilities financed or refinanced with the loan, including without limitation the Project.

SECTION 8. Any officer of the Commission is hereby authorized and directed, in the name and on behalf of the Commission, to execute any and all other agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by him to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this resolution (including the preambles hereto and the documents mentioned herein), the Project and the issuance and sale of the Bonds, and any such execution, performance, approval or doing of other things heretofore effected be, and hereby is, ratified and approved.

SECTION 9. The Secretary of this Commission shall transmit this resolution, together with the forms of the documents approved by this resolution, to the Common Council of the City.

SECTION 10. This resolution shall be in full force and effect upon adoption.



Adopted this 26<sup>th</sup> day of March, 2001.

CITY OF LEBANON ECONOMIC  
DEVELOPMENT COMMISSION

*Lois J. Bunker*

Member

*Gerry D. Wraley*

Member

Member

**REPORT OF THE CITY OF LEBANON  
ECONOMIC DEVELOPMENT COMMISSION CONCERNING  
THE PROPOSED FINANCING OF ECONOMIC DEVELOPMENT  
FACILITIES FOR UNITED MANAGEMENT SERVICES, INC.**

The City of Lebanon Economic Development Commission (the "Commission") proposes to recommend to the Common Council of the City of Lebanon, Indiana (the "City"), that it loan the proceeds of certain economic development revenue bonds to United Management Services, Inc. (the "Applicant") for the financing and refinancing of certain economic development facilities in the City.

In connection therewith, the Commission hereby reports as follows:

A. The proposed economic development facilities consist of a new building that is being used in connection with the Applicant's catered living retirement facility located at 610 CrownPointe Drive, Lebanon, Indiana (the "Project").

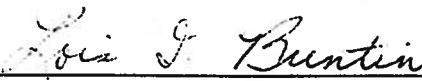
B. The Commission estimates that no additional public works or services, including public ways, schools, water, sewer, street lights and fire protection, will be made necessary or desirable by the Project, because any such works or services already exist or have been or will be provided by the Applicant or other parties.

C. The Commission estimates that the total costs of financing and refinancing the Project will be approximately \$3,500,000.

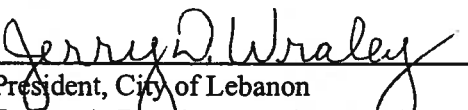
D. The Commission estimates that the Project has created approximately 14 - 15 jobs with an annual payroll of approximately \$213,000.

E. There are no facilities similar to the Project that are already constructed or operating in the City, and consequently, the Project will have no adverse competitive effect on similar facilities already constructed or operating in the City of Lebanon, Indiana.

Adopted this 26<sup>th</sup> day of March, 2001.

  
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Secretary, City of Lebanon  
Economic Development Commission

ATTEST:

  
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President, City of Lebanon  
Economic Development Commission