

## ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of this \_\_\_\_ day of December, 2011, by and among the City of Westfield, Indiana (the "City") and the City of Westfield, Indiana Redevelopment Commission (the "RDC" collectively with the City, the "Local Government Bodies") and MS WESTFIELD, LLC a limited liability company organized and existing under the laws of the State of Indiana (together with any assignees, the "Company").

### WITNESSETH:

**WHEREAS**, the Local Government Bodies desire to foster economic development and redevelopment within the City; and

**WHEREAS**, the Company is contemplating the development and redevelopment of a certain skilled nursing and senior living facility to be located within the City, as more particularly described in Exhibit A attached hereto (the "Project"); and

**WHEREAS**, as part of the Project, the Company intends to make a total capital investment of approximately Fourteen Million Two Hundred Fifty Thousand Dollars and 00/100 (\$14,250,000); and

**WHEREAS**, the Project is expected to provide significant economic development and redevelopment activity in the City, including the creation of one hundred forty (140) jobs associated with the Project, additional development and redevelopment throughout the City; and

**WHEREAS**, in connection with and in addition to the Company's investment in the Project, the Company will agree to provide for certain Community Investments as more particularly described in Exhibit B attached hereto (the "Community Investments"); and

**WHEREAS**, the Local Government Bodies have determined that the completion of the Project is in the best interests of the citizens of the City, and, therefore, the Local Government Bodies desire to take certain steps in order to induce the Company to complete the Project; and

**WHEREAS**, to stimulate and induce the development and completion of the Project, the Local Government Bodies have agreed, subject to further proceedings as required by law, to use their best efforts to provide certain public infrastructure and to take certain other actions all as described herein.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

**ARTICLE I.**

**RECITALS**

Section 1.01. Recitals Part of Agreement. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

**ARTICLE II.**

**MUTUAL ASSISTANCE**

Section 2.01. Mutual Assistance. The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the Local Government Bodies, their best efforts to hold certain public hearings and adopt certain ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent. In addition, the Local Government Bodies will use their best efforts to assist the Company in its application and or pursuit of any allocation of tax-exempt bonds (i.e. Disaster Area Bonds) for the Project.

**ARTICLE III.**

**PROJECT DEVELOPMENT AND COMMUNITY INVESTMENT**

Section 3.01. Property. Subject to the performance by the Local Government Bodies of their respective obligations under this Agreement and the closing of financing satisfactory to the Company, the Company will improve the Project Site (as described in Exhibit A) and shall construct the Project as more particularly described in Section 3.02 hereof and will provide for the Community Investments as more particularly described in Section 3.03 hereof.

Section 3.02. Project Description and Development. The Project shall consist of the items and/or parameters set forth in Exhibit A attached hereto as updated and amended from time to time. The Company shall commence construction of the Project not later than sixty (60) days following the closing of the Bonds (as described herein) if the closing of the Bonds occurs on or after April 1, 2012, and not later than June 1, 2012 if the closing of the Bonds occurs on or before March 31, 2012, and shall use its best efforts to complete construction and equipping of the Project no later than 15 months following commencement of construction, subject to permitted delays provided for in Section 3.04 hereof.

Section 3.03. Community Investment. The Community Investment shall consist of the items and/or parameters set forth in Exhibit B attached hereto as updated and amended from time to time. The Company shall commence construction of the Community Investments not later than thirty (30) days following the closing of the Bonds (as described herein), and shall use its best efforts to complete construction and equipping of the Community Investments no later than

15 months following commencement, subject to permitted delays provided for in Section 3.04 hereof.

Section 3.04. Permitted Delays. Whenever performance is required of any party hereunder, such party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, inability to obtain the required permits, or damage to work in progress by reason of fire or other casualty or similar causes beyond the reasonable control of a party (other than financial reasons), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances. If (i) there should arise any permitted delay for which the Company or the Local Government Bodies are entitled to delay performance under this Agreement and (ii) the Company or the Local Government Bodies anticipate that such permitted delay will cause a delay in their performance under this Agreement, then the Company or the Local Government Bodies, as the case may be, agree to provide written notice to the other parties of this Agreement of the nature and the anticipated length of such delay.

#### **ARTICLE IV.**

#### **PUBLIC PARTICIPATION**

Section 4.01. Zoning. The City, subject to further proceedings required by law, will support the Company's request for approval of the Project pursuant to the Grand Park Overlay by the planning commission. The City shall, in good faith, consider and recommend to the planning commission that it consider, in good faith, the Company's input into the establishment of the General Park Overlay. To the extent the Company is dissatisfied with the ultimate Grand Park Overlay which would be applicable to the Project Site, the Company may terminate this agreement and shall have no further obligations hereunder.

Section 4.02. Economic Development Revenue Bonds. The City shall, subject to further proceedings required by law, including, but not limited to, the receipt by the Common Council of a recommendation by the EDC, use its best efforts to cause the issuance of one or more series of economic development revenue bonds pursuant to Indiana Code § 36-7-12 (collectively the "EDC Bonds"), in an aggregate principal amount of approximately Fifteen Million Three Hundred Ninety Thousand Dollars (\$15,390,000), the exact amount to be determined on the basis of the financing structure selected by the Company, consisting of (i) Series A EDC Bonds (the "Series A EDC Bonds") to which a portion of the City's share of the Hamilton County Option Income Tax Revenues (the "COIT Revenues") will be pledged as a back-up to the Company's repayment obligation of the loan of the net proceeds of such Series A EDC Bonds to the Company (the "Series A EDC Loan") and (ii) Series B EDC Bonds (the "Series B EDC Bonds") to which TIF Revenues (as defined in Section 4.04 hereof) will be pledged as the primary source of payment of the Company's repayment obligation of the loan of the net proceeds of such Series B EDC Bonds in the form of a credit against the Company's repayment obligation of the loan of the net proceeds of such Series B EDC Bonds (the "Series B EDC Loan"), provided, however, if at any time only while the Series A EDC Bonds, or any portion

thereof, are outstanding, the amount of TIF Revenues available is insufficient to make any scheduled payment then due on the Company's repayment obligation of the Series B EDC Loan, then a portion of the City's share of the COIT Revenues will be pledged as a backup credit to the TIF Revenues in an amount sufficient to fully credit such Series B EDC Loan payment. The Company understands and agrees that, after the Series A EDC Bonds are no longer outstanding, pursuant to the foregoing sentence, until the TIF Revenues are sufficient to fully pay the debt service on the Series B EDC Bonds, the Company shall make such payments as are necessary, when aggregated with available TIF Revenues, to fully pay any Series B EDC Loan payment when due. The Series A EDC Bonds shall mature over a period not to exceed twenty-five (25) years. The Series B EDC Bonds shall mature over a period not to exceed twenty-five (25) years. The net EDC Bond proceeds (after paying costs of issuance) shall be loaned: (i) to the Company or (ii), in order to accommodate the City's debt limits, if applicable, to a community development corporation which will subsequently lease the Project to the Company and the Redevelopment Commission, and shall be used for the payment (or reimbursement to the Company, of the prior payment) of all or a portion of the costs of the Project and the Community Investment. At the direction and in the sole discretion of the Company, the EDC Bonds may be offered publicly by a qualified bond underwriter or privately placed with a financial institution.

Section 4.03. [RESERVED]

Section 4.04. Creation of Economic Development Area and Pledge of TIF Revenues. The Local Government Bodies shall, subject to further proceedings required by law, use their best efforts to create, pursuant to Ind. Code § 36-7-14, an economic development sub-area and a tax increment financing sub-allocation area ("TIF Area"), the boundaries of each of which are coterminous with the Project Site. It is currently contemplated that the Project and resulting increases in assessed valuation of the real and personal property will generate tax increment revenues (the "TIF Revenues"). The Local Government Bodies shall, subject to further proceedings required by law, use their best efforts to cause a portion of the TIF Revenues to be pledged to the payment of the Series B EDC Bonds, thereby reducing the Company's obligations to repay the Series B EDC Bonds.

Section 4.05. Public Participation. For so long as any portion of the Series A EDC Bonds are outstanding, the Local Government Bodies shall, subject to further proceedings required by law, use their best efforts to cause a portion of the City's certified share of the Hamilton County Option Income Tax Revenues (the "Local Revenues") to be pledged (i) as a backup to the Company's Series A EDC Loan repayment obligation to the extent the pledged funds of the Company are not sufficient in any year to make the debt service payment on the Series A EDC Bonds; and (ii) to the extent that pledged TIF Revenues are not sufficient in any year to make the debt service payment on the Series B EDC Bonds in an amount sufficient, when added to the available TIF Revenues, to pay such debt service.

Section 4.06. Public Participation Fee. As consideration for the public participation set forth above, the Company shall, commencing on the date of the issuance of the Series A EDC Bonds and the Series B EDC Bonds and, for so long as the Series A EDC Bonds remain outstanding, on each anniversary thereafter, pay to the City, or to such other entity or institution as designated by the City, an amount equal to One and Twenty-Five Hundredths Percent (1.25%)

of the aggregate principal amount of the Series A EDC Bonds and the Series B EDC Bonds outstanding on such anniversary date, after taking into account principal reduction payments, if any, made on such anniversary date (the “Public Participation Fee”), provided, however, in the year in which the Series A EDC Bonds are fully redeemed such payment shall be pro-rated and shall be paid on the date the Series A EDC Bonds are no longer deemed to be outstanding.

Section 4.07. Local Revenue Safeguards. As additional consideration for the public participation set forth above and as safeguards to protect against the use of Local Revenues to pay debt service on the Series A EDC Bonds and the Series B EDC Bonds, the Company will agree as follows:

(a) (i) TIF Revenues will provide for a primary source of repayment on the Series B EDC Bonds. TIF Revenues will serve to lower the amount of debt service payable from Project revenues;

(ii) COIT Revenues will provide a backup source to the Company’s funds of repayment on the Series A EDC Bonds and a backup source to the TIF Revenues of repayment on the Series B EDC Bonds, but for only so long as the Series A EDC Bonds are outstanding.

(b) The Company will enter into a Guaranteed Maximum Price Contract or Stipulated Sum Contract with an experienced, highly qualified general contractor. The Guaranteed Maximum Price Contract or Stipulated Sum Contract will mitigate the risk of any cost over-runs or construction delays. In addition, the Company will establish an owner’s construction contingency to cover any unforeseen construction items.

(c) The Company expects to lease the Project to a credit-worthy operator. Lease rentals payable by the operator will provide sufficient revenues to pay debt service on the EDC Bonds and will be guaranteed by the operator’s corporate parent.

(d) The Company will cause a debt service reserve fund on the Series A EDC Bonds and a debt service reserve fund on the Series B EDC Bonds in an amount equal to one year’s debt service on the respective Series A EDC Bonds and the Series B EDC Bonds to be established and maintained; such amounts may (subject to compliance with any applicable tax-exempt bond rules) be funded with proceeds of the respective Series A EDC Bonds and Series B EDC Bonds.

(e) The Company will agree to reimburse the City for any Local Revenues utilized to pay debt service on the Series A EDC Bonds and the Series B EDC Bonds .

(f) In order to secure such reimbursement obligation, the Company shall grant the City a mortgage on the Project which mortgage shall entitle the City to foreclose on the Project to the extent the Local Revenues are utilized to pay debt service on the Series A EDC Bonds or the Series B EDC Bonds. Such mortgage may be subordinated to any mortgage granted in favor of the holders of the Series A EDC Bonds and the Series B EDC Bonds.

(g) The Company's reimbursement obligation described above shall be jointly and severally guaranteed by the Company's parent companies; Mainstreet Property Group, LLC and Mainstreet Capital Partners, LLC.

(h) The receipt by the City or its designee of the annual Public Participation Enhancement Fee will **not** off-set, to the extent of such fee, any application of Local Revenues to pay debt service on the Series A EDC Bonds and the Series B EDC Bonds.

Section 4.08. Defeasance/Redemption of Series A EDC Bonds. The Company shall agree to use its best efforts to defease or redeem the Series A EDC Bonds on the earlier of the date of commencement of the permanent mortgage on the Project or the fourth (4<sup>th</sup>) anniversary date of the issuance of the Series A EDC Bonds. In the event the Company fails to do so, the Public Participation Fee shall be increased to Four and Twenty-Five Hundredths Percent (4.25%) of the outstanding aggregate amount of Series A EDC Bonds and the Series B EDC Bonds until such time as the Series A EDC Bonds are defeased or redeemed. Following the defeasance or redemption of the Series A EDC Bonds, the Series B EDC Bonds shall remain outstanding and shall continue to be secured by a first position pledge of the TIF Revenues, however, the Series B EDC Bonds will no longer be secured by COIT Revenues.

Section 4.09. Timing of Financing. The Local Government Bodies agree to use best efforts to complete the financings described herein within one hundred twenty (120) days following the date hereof.

## ARTICLE V.

### **ADDITIONAL REPRESENTATIONS, WARRANTIES COVENANTS, AND CONSENTS OF THE COMPANY**

Section 5.01. Authority. The Company represents and warrants that it has all requisite authority to enter into this Agreement.

Section 5.02. Compliance with Law. The Company agrees to comply in all material respects with all applicable laws related to the construction, development and use of the Site and the Project.

Section 5.03. City Costs. In the event the EDC Bonds fail to close, the Company shall pay costs incurred by the City in connection with the transactions contemplated by this Agreement, including reasonable attorney's fees and reasonable fees of the financial advisor to the City.

## ARTICLE VI.

### **AUTHORITY**

Section 6.01. Actions. The Local Government Bodies represent and warrant that they have taken or will use best efforts to take (subject to the Company's performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable

the Local Government Bodies to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on their part to be kept and performed as provided by the terms and provisions hereof.

Section 6.02. Powers. The Local Government Bodies represent and warrant that they have full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform their respective obligations under this Agreement.

## **ARTICLE VII.**

### **GENERAL PROVISIONS**

Section 7.01. Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 7.02. No Joint Venture of Partnership. Nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the Local Government Bodies and the Company or any affiliate thereof.

Section 7.03. Breach. Before any failure of any party to this Agreement to perform its obligations hereunder shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice. If after said thirty (30) days, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity.

Section 7.04. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, by the adoption of an ordinance or resolution of each of the Local Government Bodies approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

Section 7.05. No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

Section 7.06. Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

Section 7.07. Indiana Law. This Agreement shall be construed in accordance with the laws of the State of Indiana.

Section 7.08. Notices. All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To the Company:

MS Westfield, LLC  
109 W Jackson Street  
Cicero, IN 46034  
Attention: Paul Ezekiel “Zeke” Turner

With a copy to:

Hall, Render, Killian, Heath & Lyman, P.C.  
One American Square, Suite 2000  
Box 82064  
Indianapolis, IN 46282  
Attention: Jerimi J. Ullom

To the Local Government Bodies:

City of Westfield, Indiana  
130 Penn Street  
Westfield IN 46074  
Attention: Mayor Andy Cook

With a copy to:

Krieg DeVault LLP  
949 East Conner Street  
Noblesville, IN 46062  
Attention: James T. Crawford, Jr., Esq.

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

Section 7.09. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 7.10. Assignment. With prior written consent of the Local Government Bodies, the rights and obligations contained in this Agreement may be assigned by the Company to any affiliate thereof or successor thereto or to any other entity or person who agrees to undertake the Company’s obligations hereunder including the development and construction of the Project.

Section 7.11. No Third Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

Section 7.12. Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and each of the Local Government Bodies have approved or ratified this Agreement at public meetings.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF WESTFIELD, INDIANA

By: \_\_\_\_\_  
Andy Cook, Mayor

CITY OF WESTFIELD, INDIANA  
ECONOMIC REDEVELOPMENT COMMISSION

By: \_\_\_\_\_  
Pete Emigh, President

MS WESTFIELD, LLC

By: Mainstreet Asset Management, Inc.,  
its Manager

By: \_\_\_\_\_  
Paul Ezekiel Turner, President

## **EXHIBIT A**

### **DESCRIPTION OF PROJECT AND PROJECT SITE**

Development and construction of a healthcare facility to include short term rehabilitation, assisted living, skilled nursing facilities and related facilities consisting of approximately 65,000 square feet and approximately 100 units (70 skilled nursing units and 30 assisted living units).

**[LEGAL DESCRIPTION TO COME]**

## EXHIBIT B

### COMMUNITY INVESTMENTS

Construction of Extension of 186<sup>th</sup> Street as shown on the map below to road standards as approved by the City of Westfield, Indiana Public Works Department up to a maximum cost of \$[1,720,000]. Series B EDC Loan proceeds will be utilized for the purchase of the land for the 186<sup>th</sup> Street right of way and the development of such extension.

