ORDINANCE NO. 11-28

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $16,000,000 AGGREGATE PRINCIPAL AMOUNT OF ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2011 (MS WESTFIELD PROJECT) OF THE CITY OF WESTFIELD, INDIANA, THE PROCEEDS OF WHICH SHALL BE PROVIDED TO THE BORROWER, TO FINANCE THE ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF AN ECONOMIC DEVELOPMENT FACILITY AND CERTAIN PUBLIC INFRASTRUCTURE IMPROVEMENTS LOCATED IN THE CITY OF WESTFIELD, INDIANA; APPROVING A BOND PURCHASE AGREEMENT; APPROVING A LEASE AMONG THE BORROWER AND THE WESTFIELD REDEVELOPMENT COMMISSION AND MS WESTFIELD LLC AS CO-LESSEES; PROVIDING FOR THE PLEDGE AND ASSIGNMENT OF REVENUES FOR THE PAYMENT OF SAID BONDS; AUTHORIZING CERTAIN DOCUMENTS WITH RESPECT TO THE BONDS AND THE PROJECT; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, the City of Westfield, Indiana (the "City" or the "Issuer") is a municipal corporation and political subdivision of the State of Indiana, and by virtue of the constitution and laws of the State, including Indiana Code, Title 36, Article 7, Chapters 11.9, 12 and 14, as supplemented and amended (the "Act"), is authorized and empowered, among other things, to (a) provide funds for the acquisition, construction, installation and equipping of economic development facilities; (b) issue its revenue bonds for the purpose set forth herein; (c) secure such revenue bonds by a pledge and assignment of revenues and other documents as provided for herein; and (d) enact this Ordinance (the "Ordinance"), execute the Economic Development Agreement (hereinafter defined), execute those of the Financing Agreements (hereinafter defined) to which the Issuer is a signatory and all other documents to be executed by it, upon the terms and conditions provided therein; and

WHEREAS, Westfield Community Development Corporation (the "Borrower") has advised the Westfield Economic Development Commission (the "Economic Development Commission") and the Issuer of its proposal that the Issuer issue and sell one or more series of its economic development tax increment revenue bonds, any series of which may be taxable or tax-exempt, and loan the proceeds of such bonds to the Borrower for the purpose of paying all or a portion of the costs of (a) the acquisition, design, construction, improvement and equipping of a new assisted living and skilled nursing facility consisting of approximately 100 units (70 skilled nursing units and 30 assisted living units) to be located in Westfield, Indiana on approximately 7.5 acres of land on the south side of the future 186th Street just west of Tomlinson Road; (b) construction of certain public infrastructure improvements including the extension of 186th Street in or directly serving and benefitting the Grand Junction Consolidated Economic Development Area including the Mainstreet Project Sub-Area; and (c) any costs related thereto (collectively, the "Projects"); and

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WHEREAS, the Economic Development Commission has performed all actions required of it by the Act preliminary to the adoption of this Ordinance; and

WHEREAS, the Borrower will own and will complete the Projects and lease all or a portion thereof to MS Westfield, LLC ("MS Westfield") and the Westfield Redevelopment Commission (the "Redevelopment Commission"), as co-lessees, pursuant to a Lease Agreement among the Borrower, MS Westfield and the Redevelopment Commission (the "Lease Agreement") to support MS Westfield's assisted living and skilled nursing facility development to be located in the City (the "Facilities"); and

WHEREAS, the Common Council of the Issuer (the "Common Council") finds, determines, and does hereby confirm, that it is estimated that completion of the Projects and the Facilities will result in the diversification of industry, the creation of approximately One Hundred Forty (140) new jobs and the creation and retention of business opportunities in the City and will increase business opportunities within the City, and will be to the benefit of the health and general welfare of the citizens of the City, and that the Issuer, by assisting with the financing of the Projects through the issuance of revenue bonds in the aggregate principal amount not to exceed $16,000,000, will be acting in a manner consistent with and in furtherance of the provisions of the Act; and

WHEREAS, pursuant to an Indenture of Trust (the "Indenture") between the Issuer and Regions Bank, as trustee (the "Bond Trustee"), the Issuer proposes to issue a principal amount of revenue bonds collectively not to exceed $16,000,000 of its Economic Development Revenue Bonds, Series 2011 A (MS Westfield Project) (the "Series A Bonds") and its Economic Development Revenue Bonds, Series 2011 B (MS Westfield Project) (the "Series B Bonds" and together with the Series A Bonds, the "Bonds") to provide funds for the acquisition, construction, installation and equipping of the Projects, by lending such funds to the Borrower pursuant to the Loan Agreement relating to the Bonds between the Issuer and the Borrower (including the form of the promissory note(s) (the "Note(s)") which Loan Agreement and an Economic Development Agreement by and among the City, the Redevelopment Commission, the Economic Development Commission and MS Westfield (the "Economic Development Agreement") prescribe the terms and conditions related to the funding of the Projects (the Indenture, the Loan Agreement, the Bond Purchase Agreement (hereinafter defined), the Bonds, the Economic Development Agreement, the Lease Agreement and this Ordinance, collectively, the "Financing Agreements"); with all of the foregoing being for the purpose of financing or providing reimbursement for a portion of the cost of the Projects and to pay a portion of the costs of issuance of the Bonds (as defined herein); and

WHEREAS, the Issuer will sell and Regions Capital Advantage, Inc. (the "Bond Purchaser") will agree to buy the Bonds pursuant to a Bond Purchase Agreement (the "Bond Purchase Agreement") among the Issuer, the Borrower and the Bond Purchaser; and

WHEREAS, the Redevelopment Commission, at a meeting held on November 21, 2011, after publishing notice pursuant to Indiana Code, Title 36, Article 7, Chapter 14, Section 25.2 and Indiana Code, Title 5, Article 3, Chapter 1 of a public hearing regarding the Lease Agreement which was held on November 21, 2011 at which all interested parties were provide an opportunity to be heard, adopted a resolution finding that the rental payments to be paid by

MS Westfield and the Commission, pursuant to the terms of the Lease Agreement (the "Lease Rentals"), through the expiration of the Lease Agreement, are fair and reasonable, and that the use of the Leased Premises (as defined in the resolution) throughout the term of the Lease Agreement will serve the public purpose of the City and is in the best interests of its residents; and

WHEREAS, the Common Council desires to approve the Lease Agreement pursuant to Indiana Code, Title 36, Article 7, Chapter 14, Section 25.2, which provides that any lease approved by a resolution of the Redevelopment Commission must be approved by an ordinance of the fiscal body of the unit; and

WHEREAS, the Common Council has determined that it will be of public utility and benefit to pledge the City's distributive share of county option income tax revenues ("COIT Revenues") to secure the payment of the Lease Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL that:

Section 1. Definitions. In addition to the words and terms defined in this Ordinance, the words and terms used in this Ordinance shall have the meanings set forth in the Economic Development Agreement, the Indenture, the Loan Agreement, and in the form of the Bonds unless the context or use indicates another or different meaning or intent, which forms are before this meeting, are hereby incorporated by reference in this Ordinance and the Clerk-Treasurer of the Issuer is hereby directed to insert them into the minutes of the Issuer and to keep them on file as specified in Section 16 hereof.

Any reference herein to the Issuer, or to any officers thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms "hereof," "hereby," "hereto," "hereunder," and similar terms, mean this Ordinance.

Section 2. Determination of Issuer. At a meeting open to the public held on September 12, 2011, by the Economic Development Commission, the Economic Development Commission adopted a Resolution including therein a Report and Findings of Fact, finding, among other things, that the proposed financing will be of benefit to the health and general welfare of the citizens of the City of Westfield, Indiana and complies with the provisions of the Act. The Common Council hereby acknowledges the Economic Development Commission's Report and Findings of Fact.

At a public hearing held on September 12, 2011 by the Economic Development Commission, pursuant to the provisions of Indiana Code, Title 36, Article 7, Chapter 12, Section 24(a) of which notice was published in *The Times* on September 1, 2011, pursuant to Indiana Code, Title 5, Article 3, Chapter 1, the public was given an opportunity to express their views for or against the Projects. The Common Council hereby acknowledges the public hearing.

The Issuer has received from the Economic Development Commission its Resolution dated September 12, 2011, wherein the Economic Development Commission has found that the proposed financing will be of benefit to the health and general welfare of the citizens of the City of Westfield, Indiana, and that the proposed financing complies with the provisions of the Act, and further recommending a form of Ordinance for approval by this Common Council.

Based upon the Report and Findings of Fact and the Resolutions of the Economic Development Commission, the Issuer hereby finds and determines that the financing will be of benefit to the health and general welfare of the citizens of the City of Westfield, Indiana, and complies with the provisions of the Act.

Section 3. Findings; Public Benefits. The Common Council hereby finds and determines that the Projects involve the acquisition, construction and equipping of an "economic development facility" as that phrase is used in the Act; that the Projects will increase employment opportunities and increase diversification of economic development in the City, will improve and promote the economic stability, development and welfare in the City, will encourage and promote the expansion of industry, trade and commerce in the City and the location of other new industries in the City; and, therefore, that the financing of the Projects by the issuance of the Bonds under the Act and the parties thereto entering into the Lease Agreement: (i) will be of benefit to the health and general welfare of the City; (ii) complies with the Act; and (iii) will be of public utility and benefit in promoting redevelopment and economic development opportunities in the City.

Section 4. Approval of Financing Including Lease Agreement. The proposed financing of the Projects by the issuance of the Bonds under the Act, is hereby approved and the Lease Agreement, as approved by the Redevelopment Commission, is approved pursuant to Indiana Code, Title 36, Article 7, Chapter 14, Section 25.2.

Section 5. Authorization of the Bonds. It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided and authorized herein and pursuant to the authority of the Act, the Bonds in the maximum aggregate principal amount of not to exceed $16,000,000 designated as "City of Westfield, Indiana Economic Development Revenue Bonds, Series 2011 __ (MS Westfield Project) (with the appropriate Series designation completed)," the proceeds of which will be provided to the Borrower to pay the cost of acquisition, construction, installation and equipping of the Projects, which Projects will be used as economic development facilities within the meaning of the Act.

Section 6. Terms and Execution of the Bonds. The Bonds shall be issued in one or more series of tax-exempt or taxable bonds, one or more of which may be designated as "Midwest Disaster Area" tax-exempt bonds, with appropriate modifications to the name of such series to reflect such designation, as fully registered Bonds subject to registration on the bond register as provided in the Indenture, without coupons, in the denominations set forth in the Indenture, numbered consecutively as set forth in the Indenture, and shall be payable in lawful money of the United States of America at an office of the Trustee, and mature as provided in the Indenture. The Mayor and the Clerk-Treasurer of the Issuer are hereby authorized and directed, in the name of and on behalf of the Issuer to sell the Bonds at a price and at rates of interest determined through negotiation with the Bond Purchaser, with such interest payable at provided in the

Financing Agreements, which Bonds shall have such terms and be subject to mandatory and/or optional redemption as provided in the Financing Agreements heretofore presented to the Issuer and incorporated by reference herein. The Bonds shall be dated as of the date of their delivery and shall mature on a date or dates no later than twenty-five (25) years from their dated date. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signatures of the Mayor of the Issuer and attested by the Clerk-Treasurer of the Issuer, and the seal of the Issuer shall be impressed thereon or a facsimile of such seal placed thereon. In case any officer whose signature or a facsimile thereof shall appear on the Bonds shall cease to be such officer before the issuance or delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until after that time.

The form of the bonds submitted to this meeting, subject to appropriate insertions and revisions in order to comply with the provisions of the Indenture, be and the same is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated by the Indenture in an aggregate principal amount not to exceed $16,000,000 shall represent the approved form of Bonds of the Issuer.

The Bonds are special, limited obligations of the Issuer payable solely as to principal and interest solely from (i) payments made by the Company pursuant to the Financing Agreements, (ii) the City's distributive share of COIT, and (iii) with respect to the Series B Bonds incremental property tax revenues derived by the Redevelopment Commission from the Mainstreet Project Sub-Allocation Area, and upon such terms and conditions as otherwise provided in the Financing Agreements, this Ordinance and pursuant to the Resolution of the Westfield Redevelopment Commission pledging a sufficient amount of such incremental property tax revenues to the Series B Bonds as set forth in the Financing Agreements.

Section 7. Payment of Lease Rentals. The Common Council hereby acknowledges that payment of Lease Rentals will be made from the following sources and in the following order: (a) payments made by MS Westfield under the Lease Agreement; (b) guarantee of Mainstreet Property Group, LLC, and (c) in the event that amounts derived from the sources described in (a) and (b) above are ever insufficient to make Lease Rentals when due, the Common Council shall appropriate funds from COIT Revenues to make such payments.

Section 8. Indenture, Loan Agreement, Bond Purchase Agreement, Economic Development Agreement and All Other Documents to be Executed or Accepted by the Issuer. The Mayor and the Clerk-Treasurer of the Issuer, and each of them, are authorized and directed to execute or endorse, acknowledge and deliver, in the name and on behalf of the Issuer, the Financing Agreements and any and all other documents and instruments to be executed or accepted by it, 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 Ordinance (including the preambles hereto and the documents mentioned herein), and the entering into of the Lease Agreement by the Commission, the Projects, 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. The Financing Agreements are hereby approved, with such changes therein not inconsistent with this Ordinance and not substantially adverse to the Issuer as may be permitted by the Act and approved by the

officers executing the same on behalf of the Issuer without further approval of the Common Council or of the Economic Development Commission if such changes do not affect terms set forth in Indiana Code, Title 36, Article 7, Chapter 12, Sections 27(a)(1) through (a)(10). The approval of such changes by such officers to the extent such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution or acceptance of receipt of any of the foregoing documents by such officers. Forms of the Financing Agreements are before this meeting and are by this reference incorporated in this Ordinance, and the Clerk-Treasurer of the Issuer is hereby directed, in the name and on behalf of the Issuer, to insert them into the minutes of the Common Council and to keep them on file.

Section 9. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, or in the Bonds, the Financing Agreements, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Financing Agreements, shall be had against any member, director, or officer or attorney, as such, past, present or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of the Bonds secured thereby, or otherwise, of any sums that may be due and unpaid by the Issuer upon any of such Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director or officer or attorney, as such, to respond by reason of any act or omission on his or her part, or otherwise, for directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to any owner or holder of the Bonds, or otherwise, of any sum that may remain due and unpaid upon the Bonds hereby secured or any of them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Financing Agreements and the issuance of the Bonds.

Section 10. No General Debt. The Bonds and the interest thereon do not and shall never constitute a general obligation of, indebtedness of, or a charge against the general credit or taxing power of the Issuer, the State or any political subdivision thereof, and the holders or owners thereof shall have no right to have taxes levied by the Issuer, the State or of any political subdivision, for the payment of the principal thereof or interest thereon except from the TIF Revenues (with respect to the Series B Bonds only) and COIT Revenues (each as hereinafter defined) pledged thereto.

Section 11. Pledge of COIT Revenues. Pursuant to Indiana Code, Title 36, Article 7, Chapter 14, Section 25.5, the City hereby pledges to the payment of all Lease Rentals under the Lease the COIT Revenues imposed by Indiana Code, Title 6, Article 3.5, Chapter 6 and distributed by the City. Except for such taxes, no funds of the City are pledged to pay the Lease Rentals, and neither the full faith and credit nor the general taxing power of the City is so pledged.

Section 12. Issuance of Parity Obligations. The City reserves the right to authorize and issue additional bonds or incur additional lease rental obligations payable from COIT Revenues, ranking on a parity with the City's pledge of the COIT Revenues to the payment of the Lease Rentals hereunder (the "Parity Obligations"), for the purposes permitted under Indiana Code,

Title 6, Article 3.5, Chapter 6. The authorization and issuance or incurrence of Parity Obligations shall be subject to the following conditions precedent:

(a) All interest and principal payments with respect to all bonds and all lease payments payable from the COIT Revenues, including but not limited to the Lease Rentals, shall have been paid in accordance with their terms.

(b) Either: (1) the COIT Revenues in the fiscal year immediately preceding the issuance or incurrence of any such Parity Obligations shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal and lease rental requirements of any outstanding bonds payable by COIT Revenues, the then outstanding Parity Obligations and the additional Parity Obligations proposed to be issued or incurred; or (2) the COIT Revenues for the first full fiscal year immediately succeeding the issuance of any such Parity Obligations shall be projected by a certified public accountant or independent financial advisor to be at least equal to one hundred twenty-five percent (125%) of the maximum annual interest and principal and lease rental requirements of the then outstanding Parity Obligations and the additional Parity Obligations proposed to be issued or incurred. For purposes of this subsection, the records of the City shall be analyzed and all showings prepared by a certified public accountant or independent financial advisor employed by the City for that purpose.

Except as otherwise provided in this Section, so long as any Parity Obligations are outstanding, no additional bonds or other obligations pledging any portion of the COIT Revenues shall be authorized, executed or issued by the City except such as shall be made subordinate and junior in all respects to the then outstanding Parity Obligations, unless all of such Parity Obligations are redeemed and retired coincidentally with the delivery of such additional bonds or other obligations, or funds sufficient to effect such redemption are available and set aside for that purpose at the time of issuance of such additional bonds or other obligations.

Section 13. TIF Revenue Pledge. Moneys raised by property taxation shall be obligated or pledged pursuant to the Resolution of the Redevelopment Commission Pledging Tax Increment, as adopted on September 12, 2011 (the "TIF Revenues," as defined therein), for the payment of principal of or interest on the Series B Bonds, and the Bonds shall be payable solely from the revenues and security interests pledged for their payment as authorized by the Economic Development Agreement and the Loan Agreement.

Section 14. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. Repeal of Conflicting Ordinances and Resolutions. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 16. Public Inspection. In compliance with Indiana Code, Title 36, Article 1, Chapter 5, Section 4, two (2) copies of the Financing Agreements are on file with the Clerk-Treasurer of the Issuer and are available for inspection upon request.

Section 17. Compliance with Open Door Law. It is hereby determined that all formal actions of the Common Council relating to the adoption of this Ordinance were taken in an open meeting of the Common Council, that all deliberations of the Common Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code, Title 5, Article 14, Chapter 1.5, et seq., as supplemented and amended.

Section 18. Binding Effect. The provisions of this Ordinance and the Financing Agreements shall constitute a binding contract between the Issuer and the holders of the Bonds, and after issuance of the Bonds this 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 19. Effective Date. This Ordinance shall be in full force and effect immediately upon adoption and compliance with Indiana Code, Title 36, Article 4, Chapter 6, et seq.

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ADOPTED AND PASSED THIS 28 DAY OF NOVEMBER, 2011, BY THE WESTFIELD COMMON COUNCIL, HAMILTON COUNTY, INDIANA.

WESTFIELD COMMON COUNCIL
Hamilton County, Indiana

WESTFIELD COMMON COUNCIL

Voting For	Voting Against	Abstain
John Dippel	John Dippel	John Dippel
Robert L. Horkay	Robert L. Horkay	Robert L. Horkay
Kenneth Kingshill	Kenneth Kingshill	Kenneth Kingshill
Bob Smith	Bob Smith	Bob Smith
Thomas Smith	Thomas Smith	Thomas Smith
Robert Stokes	Robert Stokes	Robert Stokes
Steven Hoover	Steven Hoover	Steven Hoover

ATTEST:

Cindy Gossard, Clerk-Treasurer
City of Westfield, Indiana

I hereby certify that ORDINANCE 11-___ was delivered to the Mayor of Westfield on the 29 day of NOVEMBER, 2011, at 11:00 A.m.

Cindy Gossard, Clerk-Treasurer

I hereby APPROVE Ordinance 11-28

this 30 day of NOVEMBER, 2011

at ___:___ __.m.

J. Andrew Cook, Mayor

I hereby VETO Ordinance 11-___

this _____ day of _____, 2011.

at ___:___ __.m.

J. Andrew Cook, Mayor

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Signed

This document prepared by
James T. Crawford, Jr., Esq.
KRIEG DEVAULT, LLP
949 East Conner Street, Suite 200
Noblesville, Indiana 46060
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