

**RESOLUTION NO. 2019-09**

**RESOLUTION OF THE TOWN COUNCIL  
OF THE TOWN OF WHITESTOWN, INDIANA APPROVING AN  
AMENDED AND RESTATED ECONOMIC DEVELOPMENT AGREEMENT**

**(EUSON LINDSAY HEALTH HOLDINGS)**

WHEREAS, the Town Council of the Town of Whitestown, Indiana (the "Council" and the "Town," respectively) has been advised by its staff of a proposed Amended and Restated Economic Development Agreement between Euson Lindsay Health Holdings, LLC (the "Developer"), the Town, and the Town of Whitestown Redevelopment Commission, the form of which agreement is attached hereto as Exhibit A and incorporated herein by reference (the "Economic Development Agreement"), pursuant to which the Developer has proposed to undertake a certain economic development and redevelopment project in the Town (the "Project") and the Town and Commission have taken certain actions (the "Commission Actions") in connection therewith to facilitate the development of the Project; and

WHEREAS, the Council has reviewed the Economic Development Agreement and considered the information provided to it by its staff and others relating to the proposed Project and the Commission Actions in connection therewith and finds that the terms of the Economic Development Agreement are consistent with the provisions of Indiana Code 36-7-14 and Indiana Code 36-7-25, each as amended (collectively, the "Act") and will serve to foster and encourage economic development and redevelopment of the Town and will be of public benefit to the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA, as follows:

Section 1. The Economic Development Agreement, attached hereto as Exhibit A, is hereby approved and the President of the Commission is hereby authorized to execute said Economic Development Agreement.

Section 2. The President of the Commission is hereby authorized and empowered to approve such amendments, additions, deletions and changes to the Economic Development Agreement and related documents as he deems necessary or advisable, and his approval shall be signified by his execution of said Economic Development Agreement.


Section 3. The President and Secretary of the Commission, the Executive Director of the Commission, the President of the Council, the Clerk-Treasurer and such other staff members, service providers and firms as they may direct are hereby authorized and directed to take any and all other actions on behalf of the Commission and the Town as may be necessary or appropriate to carry out the purposes of this resolution.

Section 4. This Resolution shall take effect immediately upon its adoption by the Council.


Adopted the 10<sup>th</sup> day of April, 2019.

THE TOWN COUNCIL OF THE  
TOWN OF WHITESTOWN, INDIANA

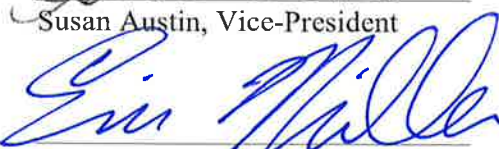
YAY/NAY

  
\_\_\_\_\_  
Clinton Bohm, President

Yay

  
\_\_\_\_\_  
Susan Austin, Vice-President

Yes

  
\_\_\_\_\_  
Eric Miller

Yes

  
\_\_\_\_\_  
Kevin Russell

YAY

  
\_\_\_\_\_  
Jeffrey Wishek

Yes

**ATTEST:**

  
\_\_\_\_\_  
Matt Sumner, Clerk-Treasurer  
Town of Whitestown, Indiana

3608563

**EXHIBIT A**

*Form of Amended and Restated Economic Development Agreement*

## AMENDED AND RESTATED ECONOMIC DEVELOPMENT AGREEMENT

This **AMENDED AND RESTATED ECONOMIC DEVELOPMENT AGREEMENT** (this "**Agreement**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 (the "**Effective Date**") by and among the **TOWN OF WHITESTOWN, INDIANA**, a municipality and a political subdivision organized and existing under the laws of the State of Indiana ("**Town**"), the **WHITESTOWN REDEVELOPMENT COMMISSION** ("**Commission**"), a redevelopment commission organized and existing under the provisions of the Act (as hereinafter defined), and **EUSON LINDSAY HEALTH HOLDINGS LLC**, an Indiana limited liability company (the "**Developer**") for the purpose of providing certain public infrastructure improvements to support the development and construction of a skilled nursing care facility to be located within the corporate limits of the Town.

### PREAMBLE

**WHEREAS**, the Developer is the owner of or has negotiated the right to acquire a parcel of land comprising approximately 10.5 acres located within the corporate limits of the Town of Whitestown, in Boone County, Indiana, as more fully described on the attached **Exhibit A** (the "**Property**"); and

**WHEREAS**, the Town and the Commission previously entered into an Economic Development Agreement with MS Whitestown, LLC ("**MSW**"), approved by the Town Council of the Town of Whitestown on July 27, 2016, a copy of which is attached hereto as **Exhibit B** (the "**Original EDA**"), under which the Town and Commission made certain Town Improvements (as defined in the Original EDA) at the Property; and

**WHEREAS**, the Town and Commission have made the Town Improvements as contemplated by the Original EDA and to induce the development of the Property; and

**WHEREAS**, the Developer desires to develop a skilled nursing care facility on the Property as more fully described and approximately depicted on the attached **Exhibit C** (the "**Project**"); and

**WHEREAS**, the Developer estimates that its construction investment in the Project, not including land acquisition costs, furniture, fixtures, or equipment, will equal or exceed Ten Million Five Hundred Thousand and *Noll* 00 Dollars (\$10,500,000.00) (the "**Project Investment**"); and

**WHEREAS**, the Project will (i) benefit the public health, safety, morals, and welfare for the Town; (ii) increase the economic well-being of the Town and the State of Indiana by creating jobs and employment opportunities; (iii) serve to protect and increase property values in the Town and the State of Indiana; and (iv) attract a major new business enterprise to the Town; and

**WHEREAS**, as an inducement to the Developer to construct the Project and make the Project Investment, the Commission and the Town find that this Agreement should be

entered into setting forth a new timeline for the completion of the Project and Project Investment by the Developer; and

**WHEREAS**, the Commission has paid for costs of the Town Improvements from funds on hand of the Commission which were held by the Commission in furtherance of economic development activities for and on behalf of the Town; and

**WHEREAS**, the Commission has previously determined that it is necessary and appropriate and in the best interest of the Town to designate the area in which the Property is located as an economic development area and has also established such economic development area, which includes the Property, as an allocation area (such economic development area and allocation area, collectively, the "**TIF Area**") pursuant to Indiana Code 36-7-14 and Indiana Code 36-7-25, as supplemented and amended (collectively, the "**Act**"); and

**WHEREAS**, the Town and Commission (together, the "**Town Parties**") anticipate that the tax increment revenues generated from the Project (the "**Project TIF Revenues**") will be used by the Commission to reimburse it for costs of the Town Improvements and to provide additional infrastructure and related improvements in the TIF Area all in furtherance of the Act and the economic development of the Town; and

**WHEREAS**, the Town Parties have each authorized the execution of this Agreement by resolution of their respective governing bodies.

**NOW, THEREFORE**, in consideration of the promises and mutual obligations and covenants of the parties hereto contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and the Town Parties agree as follows:

## **AGREEMENT**

### **A. COMMITMENTS BY DEVELOPER**

1. **Covenant to Construct the Project.** The Developer shall construct the Project on the Property in accordance with permits and approvals to be issued by the Town Building Commissioner. The total cost of the Project shall equal or exceed the Project Investment, without including any cost of the Town Improvements. The Project shall be completed (as evidenced by the issuance of a conditional or temporary certificate of occupancy) by December 31, 2020 ("**Completion Date**"). Notwithstanding the foregoing, in the event the Developer assigns this Agreement to its lender pursuant to Section C.5. below and thereafter lender forecloses upon or otherwise realizes upon the collateral identified in any related mortgage, the Completion Date shall be extended to December 31, 2021. The Developer is responsible for providing or arranging to provide for the funding of all costs to complete the Project. Such funding and cost is separate and apart from the costs of the Town Improvements to be provided by the Town Parties from funds on hand of the Commission.

2. **Records, Reporting.** For a period up to and including five (5) years following the Completion Date, the Developer shall keep and maintain in its offices complete and accurate records and supporting documents relating to the receipt and expenditures related

to the construction and completion of the Project.

3. **Inspection of Records.** The Developer will cooperate with and pennit any duly authorized representative of the Town Parties, during regular business hours of Developer and upon not less than ten (10) days' prior written notice, to have access to and the right to examine the records and supporting documents required to be kept and maintained under this Agreement. Such access and right will terminate five (5) years following the Completion Date. Prior to such termination, the Developer will cooperate reasonably with the Town Parties in connection with any such examination. Any examination will be at the expense of the Town Parties.

4. **Inspection of Project.** Any duly authorized representative of the Town Parties shall, during regular business hours of Developer, upon not less than five (5) calendar days' written notice to Developer, have access to and the right to inspect the Project. The Developer will cooperate reasonably with the Town Parties in connection with any such inspection. Any inspection will be at the expense of the Town Parties.

5. **Nondiscrimination.** Developer and its officers, agents and employees will not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions or privileges of employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability or United States military service veteran status.

6. **Information Reportin2.** The Developer shall cooperate in all reasonable ways and provide necessary and reasonable information to the Town Parties or any other applicable governmental authority to enable the Town Parties to review Developer's perfonnance of its obligations under this Agreement, assure its compliance with the tenns of this Agreement, prepare any reports required by applicable law, and to comply with any other reporting requirements of the Act and/or this Agreement.

## **B. COMMITMENTS BY TOWN PARTIES**

1. **Construction of Town Improvements.** The Town Parties represent and warrant, and the Developer acknowledges, confinnis, and accepts that, as of the Effective Date, the Town Parties have constructed, as suppoli for the Project, the Town Improvements as contemplated by the Original EDA and to applicable Town standards at the time, at a cost to the Town Parties of Five Hundred Eighty Thousand One Hundred Twenty Five Dollars (\$580,125.00). The Town Improvements are separate and apart from the Project and the cost of the Town Improvements shall not be considered a part of the Project Investment.

2. **Cooperation.** The Town Parties covenant and agree to take or cause to be taken (and shall cooperate with Developer to enable Developer to take or cause to be taken) all actions necessary or desirable under statutes, regulations and rules applicable to the Project, and to execute and deliver or cause to be executed and delivered (and shall cooperate with Developer to enable Developer to execute and deliver or cause to be executed and delivered) such agreements, instruments, documents, indentures, applications and other papers

as may be necessary or desirable under such statutes, regulations and rules to assist and pennit Developer to undertake and complete the Project.

3. **Building Approvals.** The Town Parties shall hold such meetings and assist Developer with all necessary permit applications and other submittals to each and any other applicable board, commission or office of the Town to facilitate procurement, by the Developer, of all necessary and appropriate authorizations, approvals, permits and other entitlements required or otherwise associated with the Project to accommodate the timely construction of the Project.

4. **Exculpation.** Subject to the tenns and conditions contained herein, the Town Parties covenant and agree that the Developer will not be specifically liable for or with respect to the costs of the Town Improvements (other than payment of taxes levied on the Propeliy and any other taxes or municipal services charges generally applicable to residents of and property owners in the Town).

5. **Certificates.** On Developer's request, the Town Parties shall each execute and deliver a certificate stating: (a) that this Agreement is in full force and effect or will provide a written explanation of why this Agreement is not in full force and effect; (b) that Developer is not in default under the terms of this Agreement or specifying why Developer is in default; or (c) any other matters which the Developer reasonably requests. When Developer has satisfied all of its obligations under this Agreement then, on Developer's request, the Town Parties shall each execute an instrument in recordable form evidencing the tennination of this Agreement and releasing the covenants.

### C. **OTHER AGREEMENTS**

1. **Best Efforts.** Each party shall use its best efforts to perform its obligations made in this Agreement in a timely manner.

2. **Unavoidable Delay - Force Maieure.** If any party to this Agreement is delayed or prevented from perfonning any act required by this Agreement by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, or governmental regulations, without fault and beyond the reasonable control of the party obligated (financial inability excepted), the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Changes in laws or regulations enacted by any one of the Town Parties will not be deemed a force majeure event to the detriment of Developer.

3. **Agreement Binding on the Town Parties.** No covenant, obligation or other agreement in this Agreement shall be deemed to be a covenant, obligation or agreement of any past, present or future member, official, officer, agent or employee of the Town Parties, other than in his or her official capacity, and neither the officers of the governing bodies of the respective Town Piiies executing this Agreement shall be liable personally by reason of the covenants, obligations or agreements of the Town Parties under this Agreement.

4. **Developer's Failure to Perform.** If the Developer fails to perform any material obligation under this Agreement within thirty (30) days after the Developer's receipt of written notice from the Town Parties or to show cause why it should not be deemed in default, then the Developer shall be in default of this Agreement. In the event of such a default, the Developer shall be liable to the Town Parties for the cost of the Town Improvements, together with legal fees and other costs of collection that may be paid or incurred by the Town Parties or any other governmental office or authority in connection with the collection of all amounts due from the Developer hereunder.

5. **Assignment.** Developer may not assign its interests, rights and responsibilities under this Agreement without the written consent of the Town Parties, which consent shall not be unreasonably withheld, conditioned or delayed. The President of the Commission is hereby authorized to grant or deny any such written consent on behalf of the Town Parties. Notwithstanding the foregoing, no such consent on the part of the Town Parties shall be required following the completion of the Project. In addition, and without limitation, the Town Parties acknowledge and agree that the Developer may encumber its interest in the Project with a mortgage and assign this Agreement to such lender and that upon the occurrence of any default or event of default thereunder, the holder(s) of each and any such mortgage and assignment shall have the right, without the consent of the Town Parties, to foreclose upon or otherwise realize upon the collateral identified in any such mortgage or assignment, and that any transfer of the Property or the Project done in connection with or in lieu of any foreclosure or in connection with the exercise of any other rights by any such lender or holder shall not require the consent of the Town Parties, including any transfer of the Property or the Project to any one or more third parties by any such lender or holder, and the transferee thereunder will be deemed to have assumed all of the rights and obligations of the Developer under this Agreement to the extent first arising from and after the date of such transfer. In such a case, the Developer (or any duly approved or deemed approved successor thereto, if applicable) will not be released or otherwise relieved of or from any obligations hereunder. Town Parties agree to give notices to such lender simultaneous with any notices to Developer if lender notifies Town Parties at the address provided in Section 8 below of the assignment of Developer's interest in the Project.

6. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon Developer, the Commission, the Town and their respective legal representatives, and permitted successors and assigns.

7. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

8. **Notices.** Except as otherwise specifically set forth in the Agreement, all notices, demands, consents or approvals given in connection with this Agreement (the "Notice") shall be in writing and shall be deemed sufficiently given or delivered: (a) on the date the Notice is delivered by personal delivery; (b) on the date the Notice is delivered by any nationally recognized overnight delivery service providing tracking service; (c) on the date the return receipt is signed or refused for any Notice sent by certified mail, postage prepaid, return receipt requested; so long as in each case, the Notice is delivered at the



addresses set forth below, or to any other address for which notice is given as provided in this Section:

*If to Developer:* Euson Lindsay Health Holdings LLC  
1824 Boardwalk Drive  
Lawrenceburg, IN, 47025  
Attn: Matt Euson

*with copies to:* Bingham Greenebaum Doll LLP  
2700 Market Tower  
10 West Market Street  
Indianapolis, IN 46204  
Attn: Matthew M. Price

*If to Commission :  
and/or Town* Town of Whitestown  
6210 Veterans Drive  
Whitestown, Indiana 46075  
Attention: Town Manager

*with copies to:* Bose McKinney & Evans LLP  
111 Monument Circle, Suite 2700  
Indianapolis, IN 46204  
Attn: Stephen Unger

9. **Wordim.::** Any word used in this Agreement shall be construed to mean either singular or plural as indicated by the number of signatures hereto. All references to the Act, the Indiana Code, and codified ordinances, rules, or any other statute, regulation or ordinance are intended to refer to the provisions presently in effect and to all future amendments, modifications, replacements or successor provisions.

10. **Construction.** This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana. No representations or promises shall be binding on the parties hereto except those representations and promises contained herein or in some future writing signed by the parties making such representations and promises. This Agreement may only be amended by a written instrument executed by each of the parties to this Agreement, or their permitted successors or assigns.

11. **Default of Developer.** Upon the occurrence of any default on the part of the Developer hereunder, the Commission, on behalf of the Town Parties, shall give Developer written notice (herein a "**Developer Default Notice**") of the circumstances constituting that default and the Developer shall have thirty (30) days following its receipt of such Developer Default Notice in which to cure any such default or such longer period as may be reasonably required, provided that Developer commences such cure within that thirty (30) day period and diligently pursues such cure to completion. In the event that Developer fails to timely cure any such default hereunder, the Town Parties may:

(a) suspend or terminate the Town Parties' obligation to fund and construct the Town Improvements; and

(b) institute any action, suit or other proceeding in law or in equity or otherwise, which the Town Parties deem necessary or appropriate for the protection of their interests.

Notwithstanding anything in this Agreement to the contrary, the Town Parties may not institute any action, suit or other proceeding in law, in equity or otherwise, that might or would result in Developer being required to involuntarily expend additional sums towards the Project Investment.

**12. Reimbursement Obligations.** Subject to this Section C.12, under certain circumstances, Developer will be obligated to reimburse a portion of the costs of the Town Improvements to the Commission ("**Reimbursement Obligations**"):

(a) **Failure to Use Town Improvements.** If the Town Parties determine that the Town Improvements become unnecessary or non-essential to the use of the Project because of a change of scope, design or other circumstances beyond the Town Parties' control relating to the Project which renders the Town Improvements as unnecessary or non-essential to the use of the Project, the Developer will reimburse the Commission within thirty (30) days of the date of delivery of a written request for reimbursement of the costs of the Town Improvements, or the costs of necessary modifications to the Town Improvements to make them necessary and essential to the Project. For the avoidance of doubt, this provision will require the Developer to reimburse the Commission in full for the costs of the Town Improvements if the Developer does not construct or complete the Project or abandons the Project such that it is not used for its intended purpose.

(b) **Failure to Meet Project Investment Target.** If the Commission determines that the Developer has failed to perform by not meeting or exceeding its Project Investment, the Developer agrees to make payments to the Commission equivalent to the projected lost real property tax increment revenues resulting from the shortfall in the minimum Project Investment (such payments, herein "**Developer Shortfall Payments**"). The calculation of Developer Shortfall Payments shall be undertaken by the Commission's financial advisor on or before March 1 of each year, commencing from the date of first assessment of the Project and continuing for a period ending the shorter of when (i) the actual real property tax increment revenues generated from the Project Investment equal the costs of the Town Improvements or (ii) the actual real property tax increment revenues generated from the Project Investment, that have been paid, plus the Developer Shortfall Payments paid equal the cost of the Town Improvements. If in any year the Commission determines, based upon the calculations of its financial advisor, that a Developer Shortfall Payment is due, the Commission shall invoice the Developer for a Developer Shortfall Payment which the Developer shall pay to the Commission within thirty (30) days' of mailing by the Commission. In any event, the obligations to calculate and make Developer Shortfall

Payments hereunder shall expire and be of no effect once the real property tax increment revenues that have been paid, together with any then paid Developer Shmifall Payments, equal or exceed the cost of the Town Improvements.

13. **Default of Town Parties.** Upon the occurrence of any default on the part of the Town Parties hereunder, the Developer shall give the Town Parties written notice ("**Town Default Notice**") of the circumstances constituting that default and the Town Parties shall have thirty (30) days following its receipt of such Town Default Notice in which to cure any such default or such longer period as may be reasonably required, provided that the Town Parties commence such cure within that thirty (30) day period and diligently pursue such cure to completion. In the event that the Town Parties fail to timely cure any such default hereunder, the Developer may commence the dispute resolution procedures as provided in Section C.15. below.

14. **Governing Law.** Except to the extent preempted by federal law, the laws of the State of Indiana shall govern all aspects of this Agreement, including execution, interpretation, performance and enforcement.

15. **Dispute Resolution.** Any lawsuit arising out of or relating to this Agreement must be brought in a state or federal court of appropriate jurisdiction situated in the State of Indiana. The Town Parties and Developer consent to the jurisdiction of such court and irrevocably waive any objections they may have to such jurisdiction or venue.

16. **No Waiver.** Neither failure nor delay on the part of the Town Parties or Developer in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any depmiure by Developer or the Town Parties therefrom shall be effective unless the same shall be in writing, signed on behalf of the Town Parties or Developer by a duly authorized officer thereof, and the same shall be effective only in the specific instance for which it is given. No notice to or demand on the Town Pmiies or Developer shall entitle the Town Parties or Developer to any other or further notices or demands in similar or other circumstances, or constitute a waiver of any of the Town Parties' or Developer' right to take other or further action in any circumstances without notice or demand.

17. **Counterparts.** This Agreement may be executed in several counterpmis, each of which shall be deemed an original for all purposes.

18. **Binding of Successors, Assigns.** Subject to the further provls10ns of this Agreement, the terms and provisions of this Af.,rreement shall be binding upon and inure to the benefit of the Town Parties and Developer and their respective successors and assigns.

19. **Further Assurances.** Subject to the fmihier provisions of this Agreement, Developer and the Town Parties shall, at such pmiy' s expense, upon request of the other such party, duly execute and deliver, or cause to be executed and delivered, such further instruments and perfonn or cause to be perfonned such further acts as may be reasonably

necessary or proper in the reasonable opinion of the Town Parties or Developer to carry out the provisions and purposes of this Agreement.

20. **Severability.** The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity, legality or enforceability of the remaining provisions.

21. **Headings.** The headings of the articles, sections and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

22. **Original EDA and Entire Agreement.** Contemporaneous with the execution of this Agreement, Developer, MSW, and the Town Parties are executing that certain Assignment and Assumption of Economic Development Agreement attached hereto as **Exhibit D** and incorporated herein by reference, whereby MSW assigned, transferred, and set over unto Developer, its successors and assigns, all of MSW's rights, interests, obligations, and liabilities in, to, and under the Original EDA, and Developer accepted such assignment and assumed the obligations and liabilities of MSW under the Original EDA. This Agreement and its exhibits attached hereto, incorporated herein by this reference, shall and hereby do fully replace and supersede the Original EDA. This Agreement and its attached exhibits constitute the entire agreement by and between the Town Parties and Developer and supersede all prior agreements, written or verbal, between the Town Parties and Developer including, but not limited to, the Original EDA. No statements, promises or agreements whatsoever, explicit or implied, in writing or verbally, in conflict with the terms of this Agreement have been made by the Town Parties or Developer that in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations of this Agreement.

23. **Public Use of Town Improvements.** The parties hereby acknowledge and agree that nothing herein shall be deemed to provide the Developer with any preferential or special legal entitlements (e.g., license, lease, franchise or other special right) to the use of the Town Improvements and that the Town Improvements shall be available for use by the general public.

24. **Force Majeure.** Each party shall be excused for any failure or delay in performing any of its obligations under this Agreement, if such failure or delay is caused by an event of Force Majeure. As used herein, the term "**Force Majeure**" means any act of God; any accident (including equipment failure, HVAC failure or electricity outage for extended periods of time, destruction or damage to equipment not caused by the party relying upon such circumstance or event); any explosion; any fire, flood, ice, earthquake, lightning, tornado, hurricane or other severe weather condition or calamity; any civil disturbance, labor dispute or labor or material shortage; any sabotage or act (or specific, imminent threatened act) of terrorism; any act of a public enemy, uprising, insurrection, civil unrest, war or rebellion; any action or restraint by court order or public or governmental authority or lawfully established civilian authority; a material adverse change in the national financial economic situation in the United States; the establishment of a general banking moratorium by Federal or State of Indiana authorities; a major financial crisis or material

disruption in commercial banking or securities markets; or any other circumstance or event beyond the reasonable control of the party relying upon such circumstance or event. Each party shall diligently make efforts to perform any obligations delayed under this Section C.24 immediately upon the event of Force Majeure no longer preventing such obligation from being performed.

**25. Interpretation.** The headings in this Agreement are inserted for convenience and identification only and are not intended to aid in the interpretation of this Agreement. Unless the context requires otherwise, (i) the singular includes the plural and vice versa, (ii) the recitals, all schedules, attachments and exhibits identified herein form a part of this Agreement, (iii) the word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it, and (iv) where a term is defined, another part of speech or grammatical form of that term shall have a corresponding meaning.

**26. Authority.** Each party hereto represents and warrants to the other that it has the requisite power and authority to execute and deliver this Agreement and to consummate the transactions and perform its obligations set forth in this Agreement.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES ON NEXT PAGES.]*

**IN WITNESS WHEREOF**, the Town Pmiies and Developer have executed this Agreement to be effective on the Effective Date.

**WHITESTOWN REDEVELOPMENT  
COMMISSION**

By: \_ Bryan Brackemyre, President

**TOWN OF WHITESTOWN, INDIANA**

By:

  
\_\_\_\_\_  
**Clinton Bohrn, President**

**EUSON LINDSAY HEALTH HOLDINGS LLC,**  
an Indiana limited liability company

By: \_\_\_\_\_  
Matthew E. Euson, Manager



## EXHIBIT A

### Legal Description of the Property

Part of the land conveyed to Eagle Alliance Church, Inc. in Instrument Number 9802618 as recorded in the Office of the Recorder of Boone County, Indiana and being part of the South Half of the Southeast Quarter of Section 31, Township 18 North, Range 2 East of the Second Principal Meridian, Eagle Township of Boone County, Indiana more particularly described as follows:

Commencing at a Harrison monument found marking the Southwest corner of the Southeast Quarter of said Section 31; thence along the along the south line of said quarter section North 88 degrees 22 minutes 43 seconds East (basis of bearing being the Indiana State Plane West Zone) a distance 1050.63 feet to the POINT OF BEGINNING; thence North 30 degrees 49 minutes 05 seconds East a distance of 402.63 feet to a point on a tangent curve to the left having a radius of 639.85 feet, the radius point of which bears North 59 degrees 10 minutes 55 seconds West; thence northeasterly along said curve an arc distance of 117.47 feet to a point which bears South 69 degrees 42 minutes 03 seconds East from said radius point; thence North 88 degrees 31 minutes 26 seconds East a distance of 741.56 feet; thence South 01 degrees 28 minutes 34 seconds East a distance of 67.08 feet; thence North 88 degrees 31 minutes 26 seconds East a distance of 194.66 feet to the west line of a parcel conveyed to The Boys & Girls Club of Zionsville, Inc. recorded as Instrument Number 0512257 in said Recorder's office; thence South 00 degrees 14 minutes 34 seconds East along said west line a distance of 374.81 feet to said south line of quarter section; thence South 88 degrees 22 minutes 43 seconds West along said south line a distance of 1,196.58 feet to the Point of Beginning, containing 10.50 acres of land, more or less

**EXHIBIT B**

Original EDA

See attached.

## ECONOMIC DEVELOPMENT AGREEMENT

This **ECONOMIC DEVELOPMENT AGREEMENT ("Agreement")** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and among the **TOWN OF WHITESTOWN, INDIANA**, a municipality and a political subdivision organized and existing under the laws of the State of Indiana ("**Town**"), the **WHITESTOWN REDEVELOPMENT COMMISSION ("Commission")**, a redevelopment commission organized and existing under the provisions of the Act (as hereinafter defined), and **MS WHITESTOWN, LLC**, an Indiana limited liability company ("**Developer**"), for the purpose of providing certain public infrastructure improvements to support the development and construction of a skilled nursing care facility to be located within the corporate limits of the Town.

### PREAMBLE

**WHEREAS**, the Developer is the owner of or has negotiated the right to acquire a parcel of land comprising approximately 1 0.5 acres located within the corporate limits of the Town, 111 Boone County, Indiana, as more fully described on the attached **Exhibit A** ("**Property**"); and

**WHEREAS**, the Developer desires to develop a skilled nursing care facility on the Property as more fully described on the attached **Exhibit B** ("**Project**"), provided that certain road and related public infrastructure improvements are made by the Town as described on the attached **Exhibit C** ("**Town Improvements**"), acting through the Commission, to support the Project; and

**WHEREAS**, the Developer estimates that its construction investment in the Project, not including land acquisition costs, furniture, fixtures, or equipment, will equal or exceed Ten Million One Hundred Thousand Dollars (\$10,100,000.00) ("**Project Investment**"); and

**WHEREAS**, the Project will (i) benefit the public health, safety, morals, and welfare for the Town; (ii) increase the economic well-being of the Town and the State of Indiana by creating jobs and employment opportunities; (iii) serve to protect and increase property values in the Town and the State of Indiana; and (iv) attract a major new business enterprise to the Town; and

**WHEREAS**, as an inducement to the Developer to construct the Project and make the Project Investment, the Commission and the Town find that the Town Improvements should be made to provide improved access to the Property and the Project and that the planning, design, construction of the Town Improvements should be undertaken by the Town, through the Commission; and

**WHEREAS**, the Town and Commission estimate that the costs of the Town Improvements will not exceed Six Hundred Thousand Dollars (\$600,000); and

**WHEREAS**, the Commission will pay for costs of the Town Improvements from funds on hand of the Commission which are held by the Commission in furtherance of economic development activities for and on behalf of the Town; and

**WHEREAS**, the Commission has previously determined that it is necessary and appropriate and in the best interest of the Town to designate the area in which the Property is

located as an economic development area and has also established such economic development area, which includes the Property, as an allocation area (such economic development area and allocation area, collectively, the "TIF Area") pursuant to Indiana Code 36-7-14 and Indiana Code 36-7-25, as supplemented and amended (collectively, the "Act"); and

**WHEREAS**, the Town and Commission (collectively, the "**Town Parties**") anticipate that the tax increment revenues generated from the Project (the "**Project TIF Revenues**") will be used by the Commission to reimburse it for costs of the Town Improvements and to provide additional infrastructure and related improvements in the TIF Area all in furtherance of the Act and the economic development of the Town; and

**WHEREAS**, the Town Parties have each authorized the execution of this Agreement by resolution of their respective governing bodies.

**NOW, THEREFORE**, in consideration of the promises and mutual obligations and covenants of the parties hereto contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and the Town Parties agree as follows:

## AGREEMENT

### A. COMMITMENTS BY DEVELOPER

1. **Covenant to Construct the Project.** The Developer shall construct the Project on the Property in accordance with permits and approvals to be issued by the Town Building Commissioner. The total cost of the Project shall equal or exceed the Project Investment, without including any cost of the Town Improvements. The Project shall be completed (as evidenced by the issuance of a conditional or temporary certificate of occupancy) by September 15, 2017 ("**Completion Date**"). Notwithstanding the foregoing, in the event the Developer assigns this Agreement to its lender pursuant to Section C.5. below and thereafter lender forecloses upon or otherwise realizes upon the collateral identified in any related mortgage, the Completion Date shall be extended to September 15, 2018. The Developer is responsible for providing or arranging to provide for the funding of all costs to complete the Project. Such funding and cost is separate and apart from the costs of the Town Improvements to be provided by the Town Parties from funds on hand of the Commission.

2. **Records, Reporting.** For a period up to and including five (5) year(s) following the Completion Date, the Developer shall keep and maintain in its offices complete and accurate records and supporting documents relating to the receipt and expenditures related to the construction and completion of the Project.

3. **Inspection of Records.** The Developer will cooperate with and pennit any duly authorized representative of the Town Parties, during regular business hours of Developer and upon not less than ten (10) days' prior written notice, to have access to and the right to examine the records and supporting documents required to be kept and maintained under this Agreement. Such access and right will tenninate five (5) years following the Completion Date. Prior to such termination, the Developer will cooperate reasonably with the Town Parties in connection with

any such examination. Any examination will be at the expense of the Town Parties.

4. **Inspection of Project.** Any duly authorized representative of the Town Parties shall, during regular business hours of Developer, upon not less than five (5) calendar days' written notice to Developer, have access to and the right to inspect the Project. The Developer will cooperate reasonably with the Town Parties in connection with any such inspection. Any inspection will be at the expense of the Town Parties.

5. **Nondiscrimination.** Developer and its officers; agents and employees will not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions or privileges of employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability or United States military service veteran status.

6. **Information Reporting.** The Developer shall cooperate in all reasonable ways and provide necessary and reasonable information to the Town Parties or any other applicable governmental authority to enable the Town Parties to review Developer's performance of its obligations under this Agreement, assure its compliance with the terms of this Agreement, prepare any reports required by applicable law, and to comply with any other reporting requirements of the Act and/or this Agreement.

## **B. COMMITMENTS BY TOWN PARTIES**

1. **Covenant to Construct Town Improvements.** Subject to and contingent upon the Town receiving a Deed and Dedication of Public Right-of-Way, free of encumbrances, for the area of the Town Improvements on the areas currently owned by Eagle Alliance Church, Inc., the Town Parties shall construct the Town Improvements on or before December 31, 2016 as generally depicted in **Exhibit C** attached hereto, as support for the Project. The Town Improvements shall be separate and apart from the Project and the cost of the Town Improvements shall not be considered a part of the Project Investment. The design, development and construction of the Town Improvements will be made, authorized and approved by the Commission, and as and to the extent appropriate any other departments, boards or other agencies of the Town, and will conform to the standards of construction related to and specific to the Town Improvements. The Town Parties will work with and inform the Developer of the construction of the Town Improvements in order to ensure that the Town Improvements conform to the needs and uses for the Project. The Town Parties will provide for the funding of the Town Improvements through funds on hand of the Commission.

2. **Cooperation.** The Town Parties covenant and agree to take or cause to be taken (and shall cooperate with Developer to enable Developer to take or cause to be taken) all actions necessary or desirable under statutes, regulations and rules applicable to the Project and the Town Improvements, and to execute and deliver or cause to be executed and delivered (and shall cooperate with Developer to enable Developer to execute and deliver or cause to be executed and delivered) such agreements, instruments, documents, indentures, applications and other papers as may be necessary or desirable under such statutes, regulations and rules to assist and permit Developer to undertake and complete the Project and enable the Town Parties to undertake and complete the Town Improvements.

3. **Building Approvals.** The Town Parties shall hold such meetings and assist

Developer with all necessary pennit applications and other submittals to each and any other applicable board, commission or office of the Town to facilitate procurement, by the Developer, of all necessary and appropriate authorizations, approvals, pennits and other entitlements required or otherwise associated with the Project to accommodate the timely construction of the Project.

4. **Exculpation.** The Town Parties covenant and agree that the Developer will not be specifically liable for or with respect to the costs of the Town Improvements (other than payment of tax.cs levied on the Property and any other taxes or municipal service charges generally applicable to residents of and property owners in the Town).

5. **Certificates.** On Developer's request, the Town Patties shall each execute and deliver a cettificate stating: (a) that this Agreement is in full force and effect or will provide a written explanation of why this Agreement is not in full force and effect; (b) that Developer is not in default under the terms of this Agreement or specifying why Developer is in default; or (c) any other matters which the Developer reasonably requests. When Developer has satisfied all of its obligations under this Agreement then, on Developer's request, the Town Parties shall each execute an instrument in recordable form evidencing the termination of this Agreement and releasing the covenants.

#### C. OTHER AGREEMENTS

1. **Best Efforts.** Each party shall use its best efforts to perform its obligations made in this Agreement in a timely manner.

2. **Unavoidable Delay - Force Majeure.** If any party to this Agreement is delayed or prevented from perfomling any act required by this Agreement by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, or governmental regulations, without fault and beyond the reasonable control of the party obligated (financial inability excepted), the perfomlance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Changes in laws or regulations enacted by any one of the Town Parties will not be deemed a force majeure event to the detriment of Developer.

3. **Agreement Binding on the Town Parties.** No covenant, obligation or other agreement in this Agreement shall be deemed to be a covenant, obligation or agreement of any past, present or future member, official, officer, agent or employee of the Town Parties, other than in his or her official capacity, and neither the officers of the governing bodies of the respective Town Parties executing this Agreement shall be liable personally by reason of the covenants, obligations or agreements of the Town Parties under this Agreement.

4. **Developer's Failure to Perform.** If the Developer fails to perform any material obligation wlder this Agreement within thirty (30) days after the Developer's receipt of written notice from the Town Parties or to show cause why it should not be deemed in default, then the Developer shall be in default of this Agreement. In the event of such a default, the Developer shall be l iable to the Town Parties for the cost of the Town Improvements, together with legal fees and other costs of collection that may be paid or incutTed by the Town Parties or any other governmental office or authority in connection with the collection of all amounts due from the Developer hereunder.

5. **Assignment.** Developer may not assign its interests, rights and responsibilities under this Agreement without the written consent of the Town Parties, which consent shall not be unreasonably withheld, conditioned or delayed. The President of the Commission is hereby authorized to grant or deny any such written consent on behalf of the Town Parties. Notwithstanding the foregoing, no such consent on the part of the Town Parties shall be required following the completion of the Project. In addition, and without limitation, the Town Parties acknowledge and agree that the Developer may encumber its interest in the Project with a mortgage and assign this Agreement to such lender and that upon the occurrence of any default or event of default thereunder, the holder(s) of each and any such mortgage and assignment shall have the right, without the consent of the Town Parties, to foreclose upon or otherwise realize upon the collateral identified in any such mortgage or assignment, and that any transfer of the Property or the Project done in connection with or in lieu of any foreclosure or in connection with the exercise of any other rights by any such lender or holder shall not require the consent of the Town Parties, including any transfer of the Property or the Project to any one or more third parties by any such lender or holder, and the transferee thereunder will be deemed to have assumed all of the rights and obligations of the Developer under this Agreement to the extent first arising from and after the date of such transfer. In such a case, the Developer (or any duly approved or deemed approved successor thereto, if applicable) will not be released or otherwise relieved of or from any obligations hereunder. Town Parties agree to give notices to such lender simultaneous with any notices to Developer if lender notifies Town Parties at the address provided in Section 8 below of the assignment of Developer's interest in the Project.

6. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon Developer, the Commission, the Town and their respective legal representatives, and permitted successors and assigns.

7. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

8. **Notices.** Except as otherwise specifically set forth in the Agreement, all notices, demands, consents or approvals given in connection with this Agreement (the "Notice") shall be in writing and shall be deemed sufficiently given or delivered: (a) on the date the Notice is delivered by personal delivery; (b) on the date the Notice is delivered by any nationally recognized overnight delivery service providing tracking service; (c) on the date the return receipt is signed or refused for any Notice sent by certified mail, postage prepaid, return receipt requested; so long as in each case, the Notice is delivered at the addresses set forth below, or to any other address for which notice is given as provided in this Section:

*If to Developer:* MS Whitestown, LLC  
c/o Mainstreet Property Group, LLC  
14390 Clay Terrace Blvd., Suite 205  
Camel, IN 46032  
Attention: Angela L. Gidley, Counsel

*If to Commission ;  
and/or Town :* Town of Whitestown  
6210 Veterans Drive

Whitestown, Indiana 46075  
Attention: Town Manager

9. **Wording.** Any word used in this Agreement shall be construed to mean either singular or plural as indicated by the number of signatures hereto. All references to the Act, the Indiana Code, and codified ordinances, rules, or any other statute, regulation or ordinance are intended to refer to the provisions presently in effect and to all future amendments, modifications, replacements or successor provisions.

10. **Construction.** This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana. This Agreement shall constitute the entire agreement of Developer, Town and Commission and no oral, verbal or implied agreement or understanding shall cancel, modify or vary the terms of this Agreement. No representations or promises shall be binding on the parties hereto except those representations and promises contained herein or in some future writing signed by the parties making such representations and promises. This Agreement may only be amended by a written instrument executed by each of the parties to this Agreement, or their pennitted successors or assigns.

11. **Default of Developer.** Upon the occurrence of any default on the part of the Developer hereunder, the Commission, on behalf of the Town Parties, shall give Developer written notice (herein a "**Developer Default Notice**") of the circumstances constituting that default and the Developer shall have thirty (30) days following its receipt of such Developer Default Notice in which to cure any such default or such longer period as may be reasonably required, provided that Developer commences such cure within that thirty (30) day period and diligently pursues such cure to completion. In the event that Developer fails to timely cure any such default hereunder, the Town Parties may:

- (a) suspend or terminate the Town Parties' obligation to fund and construct the Town Improvements; and
- (b) institute any action, suit or other proceeding in law or in equity or otherwise, which the Town Parties deem necessary or appropriate for the protection of their interests.

Notwithstanding anything in this Agreement to the contrary, the Town Parties may not institute any action, suit or other proceeding in law, in equity or otherwise, that might or would result in Developer being required to involuntarily expend additional sums towards the Project Investment.

12. **Reimbursement Obligations.** Subject to this Section C.12, under certain circumstances, Developer will be obligated to reimburse a portion of the costs of the Town Improvements to the Commission ("**Reimbursement Obligations**"):

- (a) **Failure to Use Town Improvements.** If the Town Parties determine that the Town Improvements become unnecessary or non-essential to the use of the Project because of a change of scope, design or other circumstances beyond the Town Parties' control relating to the Project which renders the Town Improvements as unnecessary or non-essential to the use of the Project, the Developer will reimburse the Commission within thirty (30) days of the date of delivery of a written request for reimbursement of the



costs of the Town Improvements, or the costs of necessary modifications to the Town Improvements to make them necessary and essential to the Project. For the avoidance of doubt, this provision will require the Developer to reimburse the Commission in full for the costs of the Town Improvements if the Developer does not construct or complete the Project or abandons the Project such that it is not used for its intended purpose.

(b) **Failure to Meet Project Investment Target.** If the Commission determines that the Developer has failed to perform by not meeting or exceeding its Project Investment, the Developer agrees to make payments to the Commission equivalent to the projected lost real property tax increment revenues resulting from the shortfall in the minimum Project Investment (such payments, herein "**Developer Shortfall Payments**"). The calculation of Developer Shortfall Payments shall be undertaken by the Commission's financial advisor on or before March 1 of each year, commencing from the date of first assessment of the Project and continuing for a period ending the shorter of when (i) the actual real property tax increment revenues generated from the Project Investment equal the costs of the Town Improvements or (ii) the actual real property tax increment revenues generated from the Project Investment, that have been paid, plus the Developer Shortfall Payments paid equal the cost of the Town Improvements. If in any year the Commission determines, based upon the calculations of its financial advisor, that a Developer Shortfall Payment is due, the Commission shall invoice the Developer for a Developer Shortfall Payment which the Developer shall pay to the Commission within thirty (30) days' of mailing by the Commission. In any event, the obligations to calculate and make Developer Shortfall Payments hereunder shall expire and be of no effect once the real property tax increment revenues that have been paid, together with any then paid Developer Shortfall Payments, equal or exceed the cost of the Town Improvements.

13. **Default of Town Parties.** Upon the occurrence of any default on the part of the Town Parties hereunder, the Developer shall give the Town Parties written notice ("**Town Default Notice**") of the circumstances constituting that default and the Town Parties shall have thirty (30) days following its receipt of such Town Default Notice in which to cure any such default or such longer period as may be reasonably required, provided that the Town Parties commence such cure within that thirty (30) day period and diligently pursue such cure to completion. In the event that the Town Parties fail to timely cure any such default hereunder, the Developer may commence the dispute resolution procedures as provided in Section C.15 below.

14. **Governing Law.** Except to the extent preempted by federal law, the laws of the State of Indiana shall govern all aspects of this Agreement, including execution, interpretation, performance and enforcement.

15. **Dispute Resolution.** Any lawsuit arising out of or relating to this Agreement must be brought in a state or federal court of appropriate jurisdiction situated in the State of Indiana. The Town Parties and Developer consent to the jurisdiction of such court and irrevocably waive any objections they may have to such jurisdiction or venue.

16. **No Waiver.** Neither failure nor delay on the part of the Town Parties or Developer in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of

any other right. No waiver of any provision of this Agreement or consent to any departure by Developer or the Town Parties therefrom shall be effective unless the same shall be in writing, signed on behalf of the Town Parties or Developer by a duly authorized officer thereof, and the same shall be effective only in the specific instance for which it is given. No notice to or demand on the Town Parties or Developer shall entitle the Town Parties or Developer to any other or further notices or demands in similar or other circumstances, or constitute a waiver of any of the Town Parties' or Developer' right to take other or further action in any circumstances without notice or demand.

17. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original for all purposes.

18. **Binding of Successors. Assigns.** Subject to the fullher provisions of this Agreement, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Town Parties and Developer and their respective successors and assigns.

19. **Further Assurances.** Subject to the fullher provisions of this Agreement, Developer and the Town Parties shall, at such party's expense, upon request of the other such party, duly execute and deliver, or cause to be executed and delivered, such further instruments and perform or cause to be performed such further acts as may be reasonably necessary or proper in the reasonable opinion of the Town Parties or Developer to carry out the provisions and purposes of this Agreement.

20. **Severability.** The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity, legality or enforceability of the remaining provisions.

21. **Headings.** The headings of the articles, sections and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

22. **Entire Agreement.** This Agreement and the document incorporated by reference herein constitutes the entire agreement by and between the Town Parties and Developer and supersedes all prior agreements, written or verbal, between the Town Parties and Developer. No statements, promises or agreements whatsoever, in writing or verbally, in conflict with the terms of this Agreement have been made by the Town Parties or Developer that in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations of this Agreement.

23. **Public Use of Town Improvements.** The parties hereby acknowledge and agree that nothing herein shall be deemed to provide the Developer with any preferential or special legal entitlements (e.g., license, lease, franchise or other special right) to the use of the Town Improvements and that the Town Improvements shall be available for use by the general public.

24. **Force Majeure.** Each party shall be excused for any failure or delay in performing any of its obligations under this Agreement, if such failure or delay is caused by an event of Force Majeure. As used herein, the term "Force Majeure" means any act of God; any accident (including equipment failure, HYAC failure or electricity outage for extended periods of time, destruction or damage to equipment not caused by the party relying upon such circumstance or

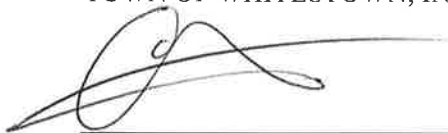
event); any explosion; any fire, flood, ice, earthquake, lightning, tornado, hurricane or other severe weather condition or calamity; any civil disturbance, labor dispute or labor or material shortage; any sabotage or act (or specific, imminent threatened act) often-orism; any act of a public enemy, uprising, insurrection, civil unrest, war or rebellion; any action or restraint by court order or public or governmental authority or lawfully established civilian authority; a material adverse change in the national financial economic situation in the United States; the establishment of a general banking moratorium by Federal or State of Indiana authorities; a major financial crisis or material disruption in commercial banking or securities markets; or any other circumstance or event beyond the reasonable control of the party relying upon such circumstance or event. Each party shall diligently make efforts to perform any obligations delayed under this Section C.24. immediately upon the event of Force Majeure no longer preventing such obligation from being performed.

25. **Interpretation.** The headings in this Agreement are inserted for convenience and identification only and are not intended to aid in the interpretation of this Agreement. Unless the context requires otherwise, (i) the singular includes the plural and vice versa, (ii) the recitals, all schedules, attachments and exhibits identified herein form a part of this Agreement, (iii) the word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it, and (iv) where a term is defined, another part of speech or grammatical form of that term shall have a corresponding meaning.

(SJGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Town Parties and Developer have executed this Agreement the day and year first written above.

TOWN OF WHITESTOWN, INDIANA



Town Council President

Attest:

\_\_\_\_\_  
Clerk-Treasurer

WHITESTOWN REDEVELOPMENT  
COMMISSION

\_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

MS WHITESTOWN, LLC  
-Plymouth, Indiana, 5M;  
is managed

(i) 1" 1"  
D.L. [Signature] \_\_\_\_\_  
Doug Pedersen, Vice President of Development

Attest:



3024415

EXHIBIT A

Property Legal Description

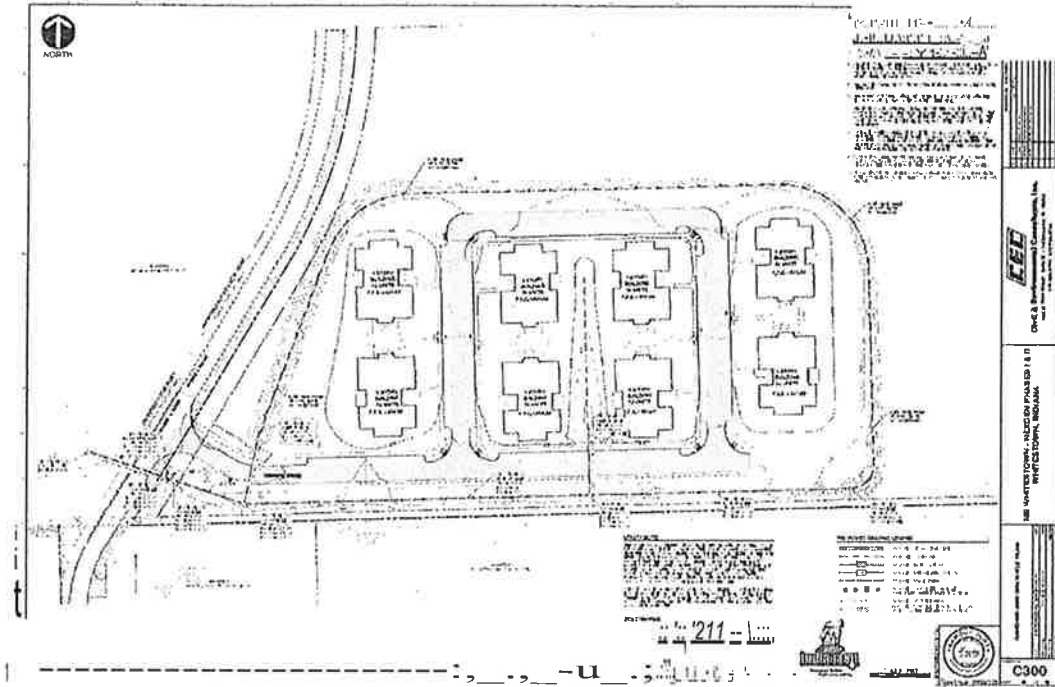
Part of the land conveyed to Eagle Alliance Church, Inc. in Instrument Number 9802618 as recorded in the Office of the Recorder of Boone County, Indiana and being part of the South Half of the Southeast Quarter of Section 31, Township 18 North, Range 2 East of the Second Principal Meridian, Eagle Township of Boone County, Indiana more particularly described as follows:

Commencing at a Harrison monument found marking the Southwest corner of the Southeast Quarter of said Section 31; thence along the along the south line of said quarter section North 88 degrees 22 minutes 43 seconds East (basis of bearing being the Indiana State Plane West Zone) a distance 1050.63 feet to the POINT OF BEGINNING; thence North 30 degrees 49 minutes OS seconds East a distance of 402.63 feet to a point on a tangent curve to the left having a radius of 639.8S feet, the radius point of which bears North 59 degrees 10 minutes 55 seconds West; thence northeasterly along said curve an arc distance of 117.47 feet to a point which bears South 69 degrees 42 minutes 03 seconds East from said radius point; thence North 88 degrees 31 minutes 26 seconds East a distance of 741.56 feet; thence South 01 degrees 28 minutes 34 seconds East a distance of 67.08 feet; thence North 88 degrees 31 minutes 26 seconds East a distance of 194.66 feet to the west line of a parcel conveyed to The Boys & Girls Club of Zionsville, Inc. recorded as Instrument Number 0512257 in said Recorder's office; thence South 00 degrees 14 minutes 34 seconds East along said west line a distance of 374.81 feet to said south line of quarter section; thence South 88 degrees 22 minutes 43 seconds West along said south line a distance of 1,196.58 feet to the Point of Beginning, containing 10.50 acres of land, more or less.

**EXHIBIT B**

**Description of Project**

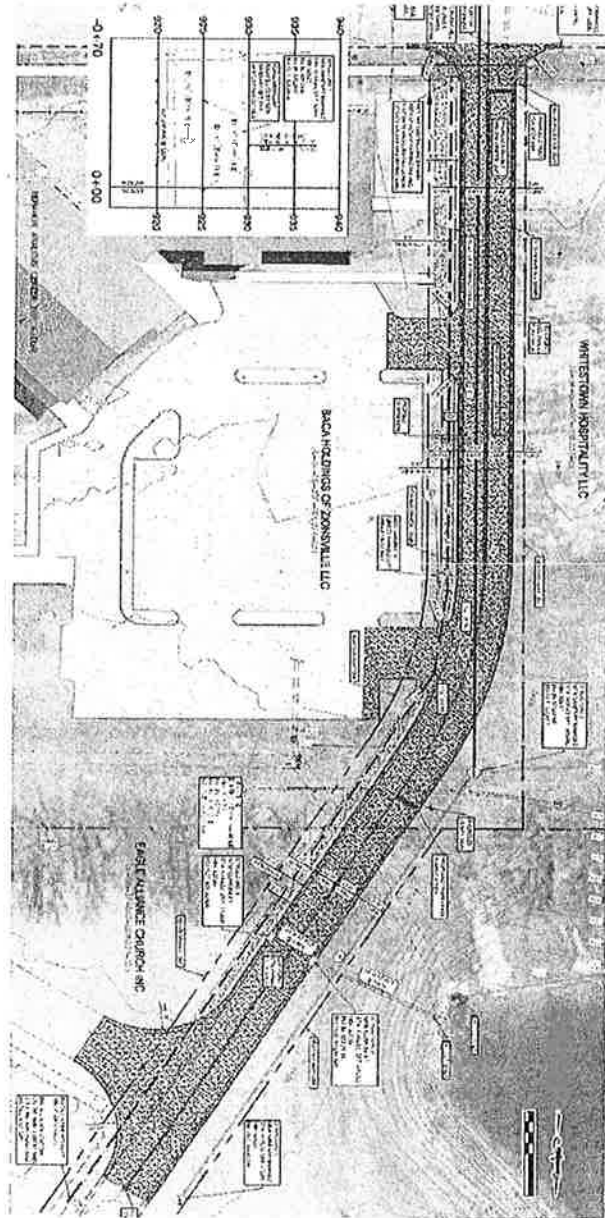
96 bed, 8 building licensed skilled nursing care facility generally depicted below



**EXHIBIT C**

**Description of Town Improvements**

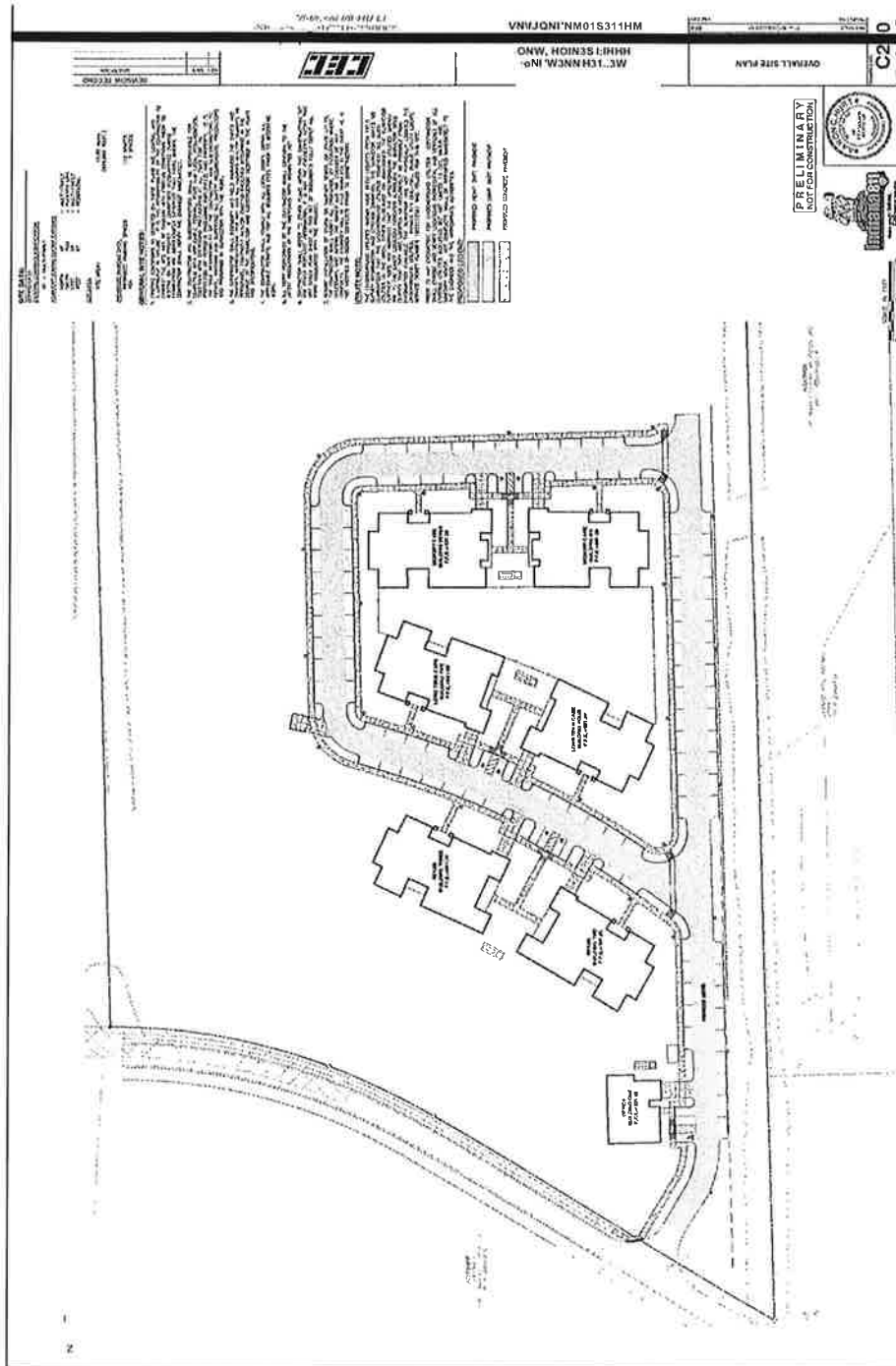
A new access road generally depicted below



# EXHIBIT C

## Description of the Project

72 bed, 6 building licensed skilled nursing care facility, plus one administrative office building, as generally depicted below:





**EXHIBIT D**

**Assignment and Assumption of Original EDA**

See attached.

**ASSIGNMENT AND ASSUMPTION OF  
ECONOMIC DEVELOPMENT AGREEMENT**

This **ASSIGNMENT AND ASSUMPTION OF ECONOMIC DEVELOPMENT AGREEMENT** (this "**Agreement**") is made effective this \_\_\_ day of \_\_\_\_\_ 2019 (the "**Effective Date**") by and among the **TOWN OF WHITESTOWN, INDIANA**, a municipality and a political subdivision organized and existing under the laws of the State of Indiana ("**Town**"), the **WHITESTOWN REDEVELOPMENT COMMISSION** ("**Commission**"), a redevelopment commission organized and existing under the provisions of Indiana Code 36-7-14 and Indiana Code 36-7-25, as supplemented and amended, **MS WHITESTOWN, LLC**, an Indiana limited liability company ("**MSW**"), and **EDSON LINDSAY HEALTH HOLDINGS LLC**, an Indiana limited liability company ("**ELHH**"). Town, Commission, MSW, and ELHH are referred to herein, collectively, as the "**Parties**" and, each, as a "**Party**".

**RECITALS**

**WHEREAS**, Town, Commission, and MSW entered into that certain Economic Development Agreement, approved by the Town Council of the Town of Whitestown on July 27, 2016, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference (the "**Original EDA**"); and

**WHEREAS**, MSW wishes to be released from any and all obligations and liabilities under the Original EDA including, but not limited to, the amounts due under the Original EDA of Five Hundred Eighty Thousand One Hundred Twenty Five Dollars (\$580,125.00) currently due to Commission for reimbursement of the costs of the Town Improvements (as defined in the Original EDA); and

**WHEREAS**, in connection with the sale of the land comprising approximately 10.5 acres located in the Town of Whitestown, in Boone County, Indiana, as more fully described on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Property**") to ELHH, MSW desires to assign its rights, interests, obligations, and liabilities in, to, and under the Original EDA to ELHH, and ELHH desires to assume such rights, interests, obligations, and liabilities; and

**WHEREAS**, ELHH desires to develop a skilled nursing care facility on the Property (the "**Project**"); and

**WHEREAS**, in accordance with Section C.5 of the Original EDA, and in consideration for ELHH's commitment to develop the Project as set forth in the New EDA (as defined below), Town and Commission (collectively referred to herein as the "**Town Parties**") have agreed to (i) waive any and all claims against MSW for failure to perform any obligations of the Developer under the Original EDA, (ii) consent to MSW's assignment and ELHH's assumption of MSW's rights, interests, obligations, and liabilities in, to, and under the Original EDA, and (ii) release MSW from the obligations and liabilities set forth in the Original EDA at such time as ELHH executes the New EDA; and

WHEREAS, ELHH has agreed to assume MSW's rights, interests, obligations, and liabilities under the Original EDA, so long as the Town Parties execute the Amended and Restated Economic Development Agreement between the Town Parties and ELHH, attached hereto as **Exhibit C** (the "New EDA"), contemporaneous with the complete execution of this Agreement; and

WHEREAS, the Town Parties have each authorized the execution of this Agreement and the New EDA by resolution of their respective governing bodies.

NOW, THEREFORE, in consideration of the promises and mutual obligations and covenants of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town Parties, MSW, and ELHH agree as follows:

### AGREEMENT

1. **Town Parties' Consent.** The Town Parties acknowledge that MSW wishes to assign its rights, interests, obligations, and liabilities in, to, and under the Original EDA to ELHH, and ELHH desires to accept and assume all rights, interests, obligations, and liabilities of MSW in, to, and under the Original EDA, and the Town Parties hereby consent to such assignment and assumption.

2. **Assignment and Assumption of the Original EDA.** MSW does hereby assign, transfer, and set over unto ELHH, its successors and assigns, all of MSW's rights, interests, obligations, and liabilities in, to, and under the Original EDA. ELHH hereby accepts such assignment and assumes the obligations and liabilities of MSW in, to, and under the Original EDA. MSW and the Town Parties each represent and warrant to ELHH that the document attached hereto as **Exhibit A** is a true, correct, and complete copy of the Original EDA.

3. **Town Parties' Waiver and Release.** In consideration for ELHH's assumption of the Original EDA, as set forth in Section 2, the Town Parties hereby (i) waive any right to receive payment from MSW for any and all fees incurred in connection with the improvements to the infrastructure servicing the Property, including but not limited to the amounts due under Original EDA of Five Hundred Eighty Thousand One Hundred Twenty Five Dollars (\$580,125.00) for the Town Improvements; and (ii) release MSW from all obligations and liabilities set forth in the Original EDA.

4. **Execution of the New EDA.** The Town Parties and ELHH shall execute and deliver to the other party the New EDA contemporaneous with the complete execution and exchange of this Agreement. Upon its full execution, the New EDA shall amend, restate, and replace the Original EDA in its entirety as set forth therein. The Town Parties acknowledge that, upon full execution of the New EDA, ELHH shall be released from its assumed obligations under the Original EDA except as set forth in the New EDA, which New EDA is and shall be binding and enforceable against ELHH according to its terms.

5. **Binding on Successors and Assigns.** This Assignment shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties.

6. **Authority.** Each party hereto represents and warrants to the other that it has the requisite power and authority to execute and deliver this Agreement and to consummate the transactions and perform its obligations set forth in this Agreement.

7. **Governing Law.** Except to the extent preempted by federal law, the laws of the State of Indiana shall govern all aspects of this Agreement, including execution, interpretation, performance, and enforcement.

8. **Severability.** Should any provision, covenant, agreement or portion of this Agreement, or its application, be held to be invalid, void or unenforceable, such invalidity, voidness, or unenforceability shall not affect the application, validity or enforceability of any other provisions, covenants, agreements or portions of this Agreement, and, to that end, any such invalid, void, or unenforceable provisions, covenants, agreements or portions of this Agreement are declared to be severable; further, the remaining provisions hereof shall remain in full force and effect, unimpaired by such holding.

9. **Recitals.** The recitals first set forth above are hereby incorporated herein by this reference.

10. **Complete Agreement.** This Assignment sets forth all the covenants, agreements, and conditions among the Parties concerning the Original EDA and the obligations and liabilities thereunder, and there are no covenants, agreements, conditions, or understandings, either oral or written, between the Parties other than as set forth herein and in the New EDA. This Assignment supersedes all prior agreements, representation, or warranties, if any, including, without limitation, the Original EDA. No subsequent alteration, amendment, change, or addition to this Assignment shall be binding upon the Parties unless reduced to writing and executed by the Parties.

11. **Terms of New EDA.** The Parties acknowledge and agree that MSW shall have no rights, interests, obligations, or liabilities in, to, or under the New EDA.

*[Remainder of Page Intentionally Left Blank; Signatures on the Following Four (4) Pages.]*

**IN WITNESS WHEREOF**, the Town Parties, MSW, and ELHH have executed this Agreement to be effective on the Effective Date.

**TOWN OF WHITESTOWN, INDIANA**

By: \_ Clinton Bohm, President

**WHITESTOWN REDEVELOPMENT  
COMMISSION**

By: \_ Bryan Brackemyre, President

**MS WHITESTOWN, LLC,**  
an Indiana limited liability company,

By: **MAINSTREET ASSET MANAGEMENT, INC.,**  
an Indiana for-profit corporation  
its Manager

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**EUSON LINDSAY HEALTH HOLDINGS LLC,**  
an Indiana limited liability company

By: \_ Matthew E. Euson, Manager



**EXHIBIT A**

Original EDA

See attached.

**EXHIBIT B**

Property

Part of the land conveyed to Eagle Alliance Church, Inc. in Instrument Number 9802618 as recorded in the Office of the Recorder of Boone County, Indiana and being part of the South Half of the Southeast Quarter of Section 31, Township 18 North, Range 2 East of the Second Principal Meridian, Eagle Township of Boone Countyt Indiana more particularly described as follows:

Commencing at a Harrison monument found marking the Southwest comer of the Southeast Quarter of said Section 31; thence along the along the south line of said quarter section North 88 degrees 22 minutes 43 seconds East (basis of bearing being the Indiana State Plane West Zone) a distance I 050.63 foet to the POINT OF BEGINNING; thence North 30 degrees 49 minutes 05 seconds East a distance of 402.63 feet to a point on a tangent curve to the left having a radius of 639.85 feet, the radius point of which bears North 59 degrees 10 minutes 55 seconds West; thence northeasterly along said curve an arc distance of 117.47 feet to a point which bears South 69 degrees 42 minutes 03 seconds East from said radius point; thence North 88 degrees 31 minutes 26 seconds East a distance of 741.56 feet; thence South 01 degrees 28 minutes 34 seconds East a distance of 67.08 feet; thence North 88 degrees 31 minutes 26 seconds East a distance of 194.66 feet to the west line of a parcel conveyed to The Boys & Girls Club of Zionsville, Inc, recorded as Instrument Number 0512257 in said Recorder's office; thence South 00 degrees 14 minutes 34 seconds East along said west line a distance of 374.81 feet to said south line of quarter section; thence South 88 degrees 22 minutes 43 seconds West along said south line a distance of 1,196.58 feet to the Point of Beginning, containing 10.50 acres of land, more or less