

DECLARATION OF RESTRICTIONS AND COVENANTS

THIS DECLARATION OF RESTRICTIONS AND COVENANTS (this "Declaration") is made this 8<sup>th</sup> day of May, 2014 ("Effective Date") by and between MS CROWN POINT, LLC, a limited liability company organized and existing under the laws of the State of Indiana ("Declarant") and the CITY OF CROWN POINT, INDIANA, a political subdivision duly organized and validly existing under the laws of the State of Indiana (the "City").

RECITALS

WHEREAS, Declarant is the owner of a certain parcel of real estate located in Lake County, Indiana that is more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the "Excess Property"); and

WHEREAS, the Excess Property was originally part of a larger parcel of real estate that Declarant used to construct a skilled nursing and assisted living facility thereon (the "SNF Property");

WHEREAS, in connection with the development of the SNF Property, Declarant entered into a Financing and Covenant Agreement dated May 1, 2014, with the City, whereby the City agreed to provide certain property tax incentives for the SNF Property, and in exchange for the incentives, Declarant agreed to impose certain covenants and restrictions on the Excess Property for so long as Declarant or an affiliate of Declarant owns the Excess Property or any interest therein (the "Agreement"); and

WHEREAS, pursuant to the terms of the Agreement, Declarant now desires to impose mutually beneficial restrictions and covenants on the Excess Property and for the benefit of Declarant, any affiliate of Declarant, and the City.

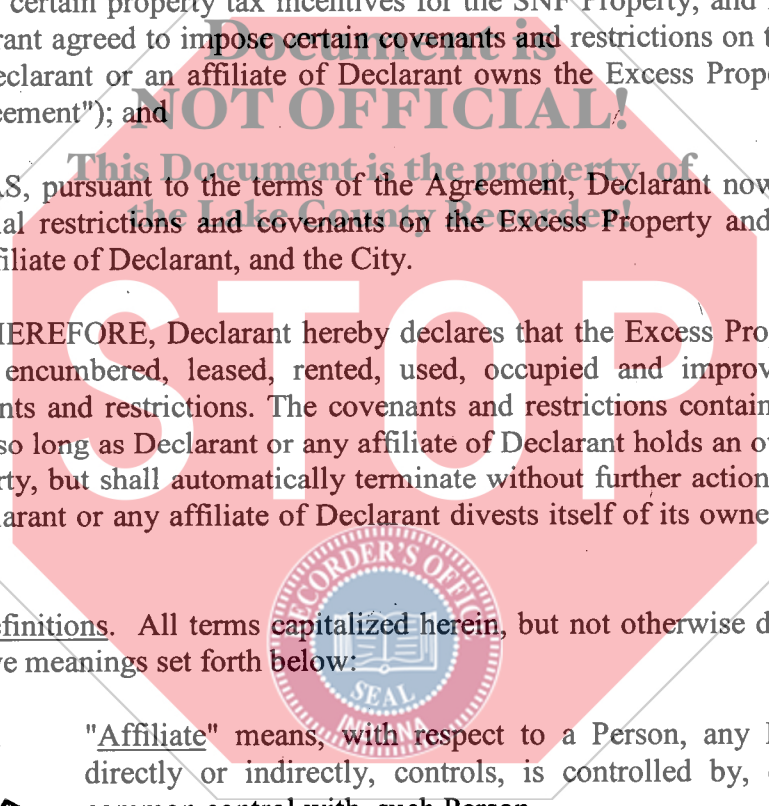
NOW, THEREFORE, Declarant hereby declares that the Excess Property shall be held, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants and restrictions. The covenants and restrictions contained herein shall run with the land for so long as Declarant or any affiliate of Declarant holds an ownership interest in the Excess Property, but shall automatically terminate without further action by either party, on the date that Declarant or any affiliate of Declarant divests itself of its ownership interest in the Excess Property.

1. Definitions. All terms capitalized herein, but not otherwise defined herein, shall have the respective meanings set forth below:

1.1 "Affiliate" means, with respect to a Person, any Person that, directly or indirectly, controls, is controlled by, or is under common control with, such Person.

2014 MAY 09 02:63:62

STATE OF INDIANA  
LAKE COUNTY  
RECORDED  
2014 MAY -9 AM 10:38  
MICHAEL E. BROWN  
RECORDER



**FILED**  
MAY 09 2014  
PEGGY HOLINGA KATONA  
LAKE COUNTY AUDITOR

30  
CS  
AD  
IN/C

012475

- 1.2 "BFP" means any Person who is not Declarant or an Affiliate of Declarant.
- 1.3 "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or by contract.
- 1.4 "Entity" means any public, private, foreign, domestic or governmental corporation, trust, limited liability company, general partnership, limited partnership, limited liability partnership, association, joint stock association, joint venture, firm, business trust, land trust, cooperative, or similar structure.
- 1.5 "Occupant" means Declarant, any Affiliate of Declarant or any other Person from time to time lawfully entitled to the use and occupancy of any portion of the Excess Property under an ownership right or under any lease, sublease, mortgage, license, concession or other similar agreement or instrument.
- 1.6 "Ordinance" means the City's Land Use Ordinance, which is currently set forth in the Title XV, Chapter 150, Section 19 of the City's Code of Ordinances, as the same may be amended from time to time.
- 1.7 "Owner" means Declarant or any Affiliate of Declarant that owns any legal or equitable interest in all or any portion of the real estate that makes up the Excess Property.
- 1.8 "Person" means any individual or Entity.
- 1.9 "Prohibited Uses" means any uses prohibited by the Statute or any use prohibited by the zoning classification for the Excess Property according to the Ordinance.
- 1.10 "Statute" means I.C. 36-7-11.9-3.
- 1.11. "Transfer" means an assignment, conveyance or transfer of an ownership interest in the Excess Property or any ownership interest, through voting rights or management control, in any Entity holding an ownership interest in the Excess Property whether by sale, gift, exchange or any other means.

2. Restrictive Covenant. During the Term of this Declaration, Owner covenants and agrees that the Excess Property shall not be used by an Owner or Occupant for any Prohibited Uses unless otherwise approved by the City, in writing, which approval shall not be unreasonably withheld, conditioned or delayed. The Director of the City's Planning and Building

Department (or any successor department in the event such Department is no longer operating) (the "Director"), for purposes of this Declaration, has been appointed by the City as its representative to review and approve or deny, in accordance with this Declaration, any request to use the Excess Property for a Prohibited Use. If an Owner or an Occupant desires to use and develop the Excess Property for a Prohibited Use during the Term of this Declaration, then the Owner or Occupant shall deliver written notice to the Director describing the proposed use ("Notice") prior to the implementation of such proposed use on the Excess Property. The Director shall, within twenty (20) calendar days from the date that the Notice is submitted to the Director (the "Approval Period"), either approve or deny the proposed use, or, to the extent necessary, request additional information about the proposed use. If the Director requests any additional information about the proposed use during the Approval Period, the Owner or Occupant, as the case may be, shall provide the requested information to satisfy any reasonable request by the Director; provided, however, in no event will the Owner or Occupant be required to provide any confidential information or proprietary information about the proposed use or the project to the Director. Any request for additional information shall be made only once by the Director, and after the Owner or Occupant responds to the request, the Approval Period shall be extended for a period of ten (10) calendar days from the date of such response. If the Director fails to approve or deny the proposed use set forth in the Notice within the Approval Period (as the same may be extended), then the proposed use shall be deemed to have been approved by the Director. Once a proposed use has been approved by the Director (or deemed approved) then, provided that the Excess Property is developed in a manner consistent with the approval, no additional notices or approvals which are contemplated by this paragraph, shall be required except to the extent that an Owner or Occupant desires to use the Excess Property for a Prohibited Use that is different than the approved Prohibited Use, in which case, the Owner or Occupant shall be required to seek the approval of the Director of the proposed use in accordance with the procedures set forth above. It is the intention of the parties to this Declaration that the Director only be given the right to approve or deny a proposed use of the Excess Property during the Term of this Declaration that involves a Prohibited Use. Any other proposed use or development of the Excess Property will not be subject to the review or approval of the Director. Nothing in this paragraph shall prevent or restrict the right of an Owner or Occupant, in the event that a proposed use is denied by the Director, from submitting or re-submitting from time to time a Notice describing a revised, modified or new proposed use, in which case, the provisions of this paragraph shall continue to apply to such submission or re-submission as if it were the initial submission of a Notice. The approval process described above shall in no way eliminate the need for an Owner or Occupant to seek any other approvals required by the Ordinance (e.g., a special use permit to the extent required by the Ordinance) in connection with the use and development of the Excess Property; provided, however, the City or any representative of the City agrees that it will not advocate for or ask that any planning or zoning commission or board (e.g., the City's Board of Zoning Appeals or Plan Commission) request, as a condition of approval, that an Owner or Occupant make commitments that incorporate the concepts, covenants or restrictions set forth in this Declaration, as a means of extending the concepts, covenants or restrictions set forth in this Declaration beyond the Term of this Declaration. It be the intention of the parties that the Owner or Occupant of the Excess Property seeking approval from any planning or zoning commission or board only be required make commitments requested by the City or any planning or zoning commission or board that are related to the

proposed use and how the proposed use may impact the Excess Property and any surrounding use or how the proposed use may impact the City's comprehensive plan.

3. Term and Termination. The term of this Declaration (the "Term") will commence on the Effective Date and will expire automatically as to all of the Excess Property, without further action by either party, on the date that each Owner (i.e., Declarant and/or any Affiliate of Declarant) completely divests itself of all of its ownership interests in the Excess Property (or any portion thereof so transferred) through a Transfer to a BFP or the date in which this Declaration is terminated for any reason whatsoever (the "Termination Date"). At the request of any Person holding an ownership interest in the Excess Property or a BFP (each, a "Holder"), and within ten (10) calendar days from the request, the City agrees to execute any commercially reasonable instrument that may be proposed by a Holder to confirm the release and termination of this Declaration. Subject to the ten (10) day notice requirement set forth in the previous sentence, the City agrees to execute such instrument in advance of a Transfer and to provide the same to any title insurance company or escrow agent directed by the Holder so that the same may be recorded in the public records at the time of a Transfer to a BFP. In all cases, the instrument shall be in recordable form and the City authorizes the Holder to record or have recorded the instrument in the Lake County, Indiana public records. On the Termination Date, the BFP and any Occupant (that is not Declarant or any Affiliate of Declarant) will not be bound by the obligations set forth herein or be restricted from using or occupying the Excess Property for a Prohibited Use even if the Prohibited Use was limited in scope or denied by the Director at the time that the use was reviewed by the Director during the Term of this Declaration; provided, however, to the extent that an Owner or Occupant made any commitments to the City in connection with a planning or zoning approval (e.g., zoning commitments regarding use) during the Term of this Declaration, then those commitments shall continue to bind the affected portion of the Excess Property independent of this Declaration and pursuant to the terms of the commitment itself. The City's rights under the Ordinance shall be independent of its rights under this Declaration. The termination of this Declaration shall in no way be interpreted as a waiver by the City of its rights to enforce the Ordinance, pursuant to the terms thereof, against the Excess Property after the Termination Date.

4. Automatic Subordination. All liens, encumbrances, restrictions, easements and other matters which affect title to the Excess Property and which first appear of record after the date of recording of this Declaration shall be subordinate to this Declaration and the rights of the parties set forth herein.

5. Severability. If any clause, phrase, sentence, condition or other portion of this Declaration shall be or become invalid, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion of this Declaration shall not be affected thereby and such remaining portions shall remain in full force and effect.

6. Proceedings for Enforcement. Enforcement of these restrictions may be by any proceeding at law or in equity against any appropriate party by means of an action for: (a) specific performance; (b) an action to restrain or enjoin said violation; and (c) any other remedy available at law or equity. The failure by an Owner or Occupant of any portion of the Excess Property or the City to enforce any restriction set forth herein shall in no event be deemed to be a

waiver of the right to do so thereafter. The remedies given by the provisions of this Declaration may be exercised cumulatively or independently. In the event that an Owner or Occupant of any portion of the Excess Property breaches any covenant or restriction set forth herein, the City or any other Owner or Occupant of a portion of the Excess Property may, but will not be required to exercise any remedy available to it hereunder, at law or in equity, and recover from the breaching party all amounts expended in connection with exercising any such remedy (including without limitation, court costs and reasonable attorneys' fees). The City shall be a third party beneficiary of the covenants and restrictions set forth herein.

7. Covenants and Restrictions Running With the Land. During the Term of this Declaration, Section 2 of this Declaration, including the benefits and burdens set forth therein, shall be deemed to be real covenants and restrictions which touch and concern the Excess Property, and all portions thereof, shall run with the Excess Property, and all portions thereof, and shall inure to the benefit of any Owner and the City.

8. Governing Law. This Declaration shall be interpreted, applied and enforced in accordance with the laws of the State of Indiana.

9. Captions. The captions contained in this Declaration are for convenience of reference only and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions thereof.

10. Authority of Persons Executing Agreement. The undersigned individuals executing this Declaration on behalf of the City and Declarant (each, a "Party", and collectively, the "Parties"), represents that he/she is the duly authorized agent on behalf of such Party and has been fully empowered to execute this Declaration for and on behalf of such Party.

[Signatures are on the following page]



IN WITNESS WHEREOF, the Parties have caused this Declaration to be executed upon the date first above written.

DECLARANT:

MS CROWN POINT, LLC,  
an Indiana limited liability company

By: Mainstreet Asset Management, Inc.,  
an Indiana corporation, its manager

By: [Signature]

Printed: Scott D. Higgins

Title: VP FINANCE

CITY:

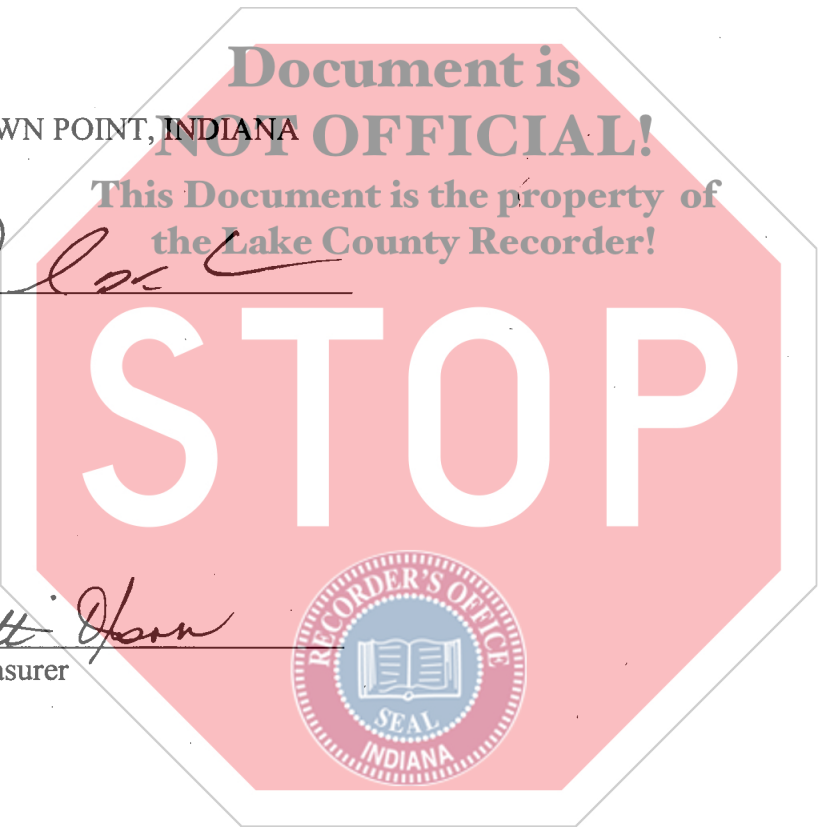
CITY OF CROWN POINT, INDIANA

By: [Signature]  
Mayor

(SEAL)

Attest:

By: [Signature]  
Clerk-Treasurer



STATE OF INDIANA )  
 ) SS:  
COUNTY OF Hamilton )

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, personally appeared Scott Higgs, the VP of Finance of Mainstreet Management, Inc., as the manager of MS Crown Point, LLC, who, having been duly sworn, acknowledged the execution of the foregoing Declaration to be his voluntary act and deed for and on behalf of Declarant.

Witness my hand and notarial seal this 5<sup>th</sup> day of May, 2014.

My Commission Expires:

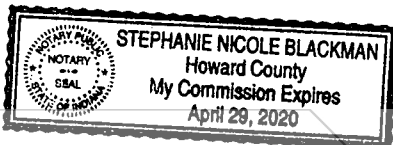
04/29/20

Stephanie N. Blackman  
Notary Public

Stephanie N. Blackman  
Printed

Resident of:

Howard County



STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF LAKE        )

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, personally appeared David Uran, the Mayor of the City of Crown Point, Indiana, a political subdivision duly organized and validly existing under the laws of the State of Indiana, and who, having been duly sworn, acknowledged the execution of the foregoing Declaration to be his voluntary act and deed for and on behalf of Declarant.

Witness my hand and notarial seal this 7<sup>th</sup> day of May, 2014.

My Commission Expires:

12/22/2020

Resident of:

LAKE

David H. Nichols  
Notary Public

DAVID H. NICHOLS  
Printed





STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF LAKE        )

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, personally appeared Patti Olson, the Clerk-Treasurer of the City of Crown Point, Indiana, a political subdivision duly organized and validly existing under the laws of the State of Indiana, and who, having been duly sworn, acknowledged the execution of the foregoing Declaration to be his voluntary act and deed for and on behalf of Declarant.

Witness my hand and notarial seal this 7 day of May, 2014.

My Commission Expires:

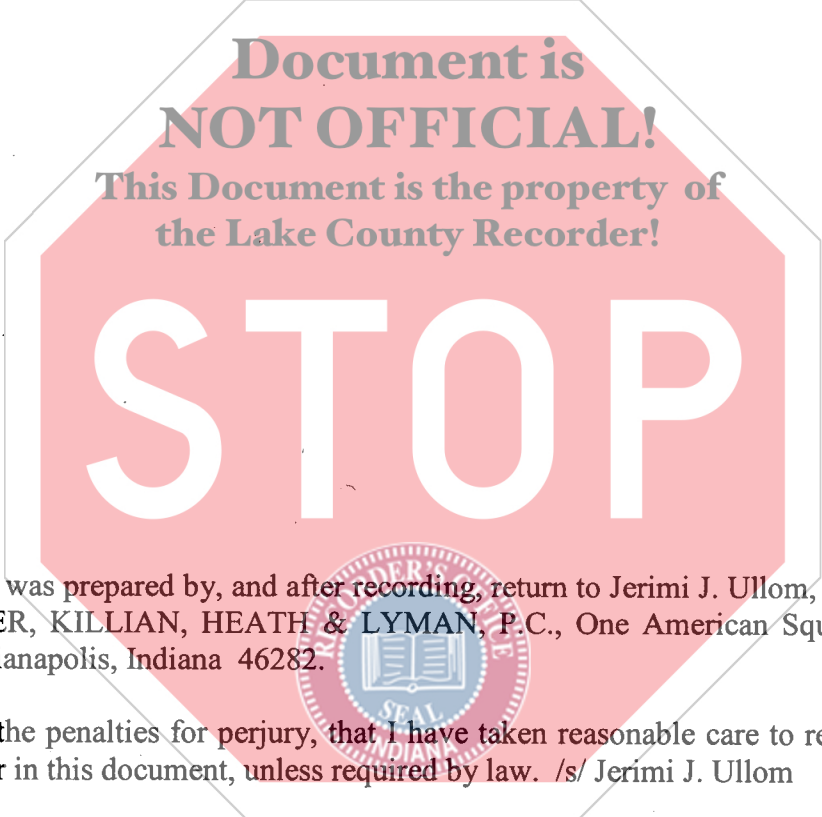
12/27/2020

Resident of:

LAKE

David H. Nichols  
Notary Public

DAVID H. NICHOLS  
Printed



This instrument was prepared by, and after recording, return to Jerimi J. Ullom, Attorney at Law, HALL, RENDER, KILLIAN, HEATH & LYMAN, P.C., One American Square, Suite 2000, Box 82064, Indianapolis, Indiana 46282.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s/ Jerimi J. Ullom

EXHIBIT A

LEGAL DESCRIPTION OF THE EXCESS PROPERTY

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 34 NORTH, RANGE 8 WEST OF THE SECOND PRINCIPAL MERIDIAN, LAKE COUNTY, INDIANA, EXCEPT THAT PART PLATTED AS MS CROWN POINT SUBDIVISION AS SHOWN IN PLAT BOOK 107, PAGE 5 IN THE RECORDER'S OFFICE OF LAKE COUNTY, INDIANA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTH HALF, SAID CORNER BEING THE SAME AS SHOWN ON AN A.L.T.A./A.C.S.M. LAND TITLE SURVEY BY PLUMB, TUCKETT AND ASSOCIATES, JOB NO. S13587, LAST REVISED 2/6/14 AND RECORDED IN SURVEY BOOK 26, PAGE 08 AS DOCUMENT NUMBER 2014 017121 ON MARCH 25, 2014 IN SAID RECORDER'S OFFICE, THENCE SOUTH 89 DEGREES 46 MINUTES 22 SECONDS EAST (BASIS OF BEARINGS IS PER SAID SURVEY), 791.31 FEET ALONG THE NORTH LINE OF SAID SOUTH HALF TO THE NORTHWEST CORNER OF LOT 1 IN SAID MS CROWN POINT SUBDIVISION; THENCE SOUTH 00 DEGREES 14 MINUTES 11 SECONDS WEST, 662.89 FEET ALONG THE WEST LINE OF SAID LOT 1 TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 89 DEGREES 46 MINUTES 45 SECONDS WEST, 788.25 FEET ALONG THE SOUTH LINE OF SAID SOUTH HALF TO THE SOUTHWEST CORNER OF SAID SOUTH HALF; THENCE NORTH 00 DEGREES 01 MINUTES 43 SECONDS WEST, 662.98 FEET ALONG THE WEST LINE OF SAID SOUTH HALF TO THE POINT OF BEGINNING, CONTAINING 12.02 ACRES MORE OR LESS.

