

ORDINANCE 17-2010 – Exhibit D

**AMENDED AND RESTATED
AGREEMENT FOR
WRITTEN COMMITMENTS**

This Amended and Restated Agreement for Written Commitments made this ____ day of _____, 2010 by 1st Source Bank as Trustee of Trust #13-2643 dated December 22, 1997, its successors and assigns (“1st Source”) and MS Valparaiso, LLC, its successors and assigns (“MS Valparaiso”) (1st Source and MS Valparaiso collectively referred to as “Owner”) for the creation of certain written commitments made to induce the Common Council of the City of Valparaiso (hereinafter referred to as “City”) to adopt an ordinance changing the zoning classification of certain real estate located now in the City of Valparaiso, Porter County, Indiana.

WITNESSETH

WHEREAS, MS Valparaiso is or is about to become the fee simple title owner of certain real property located in Porter County, Indiana, more particularly described on **Exhibit A** attached hereto and incorporated herein by reference; and

WHEREAS, 1st Source is the fee simple title owner of certain real property located in Porter County, Indiana, more particularly described on **Exhibit B** attached hereto and incorporated herein by reference (Exhibit A & Exhibit B collectively referred to as the “Real Estate”); and

WHEREAS, on or about October 16, 2008, Common Council of City of Valparaiso approved and executed a certain Agreement for Written Commitments regarding the Real Estate which was later recorded on January 7, 2009, as document number 2009-000360 in the Office of the Recorder of Porter County, Indiana (“2008 Commitments”); and

WHEREAS, on or about December 14, 2009, Common Council of City of Valparaiso approved and executed a certain Agreement for Written Commitments regarding the Real Estate which was later recorded on _____, as document number _____ in the Office of the Recorder of Porter County, Indiana (“2009 Commitments”); and

WHEREAS, said 2008 Commitments, including designation of the zoning of the Real Estate were only to be effective if said owner purchased the Real Estate; and

WHEREAS, said owner did not purchase the Real Estate and the 2009 Commitments replaced the owner with MS Valparaiso; and

WHEREAS, Owner desires to amend and restate the 2008 Commitments and 2009 Commitments and delete the restriction that the designation of the zoning of the Real Estate only be effective if MS Valparaiso purchases the Real Estate;

WHEREAS, Owner requests the zoning of the Real Estate be designated Campus (“CA”) District on the official zoning map for the City of Valparaiso; and

WHEREAS, Owner shall and does hereby agree to these certain commitments being placed upon and binding upon the Real Estate; and

WHEREAS, City after paying reasonable regard to the Comprehensive Plan, current conditions and character of current structures and uses in the district, the most desirable use for which the land is adapted, the conservation of property values throughout the jurisdiction, and the responsible development and growth of City, deems that the petition filed by Owner should be granted and zoning classification for the Real Estate be changed under certain and specific terms, conditions, and restrictions, all of which Owner is agreeable thereto.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and City covenant, promise and agree as follows;

1. **Ownership of the Real Estate.** Owner represents and warrants that it is or is about to be the holder of the fee simple title to the Real Estate and that the Real Estate is not encumbered with any contract purchase, lease, tenant farmer, or any other interest inconsistent with the grant of covenants, conditions and restrictions made herein.
2. **Zoning Classification.** The zoning classification of the Real Estate shall be Campus District (“CA”), subject, however, to the terms, conditions and restrictions on development, which are in addition to, and not in lieu of, all other zoning restrictions and limitations applicable to land located in the Campus District (“CA”) zoning classification in the City of Valparaiso.
3. **Conditions Precedent.** This entire Agreement is conditioned upon the approval of this Agreement by the City Council of the City of Valparaiso, by duly passed and adopted ordinance incorporating this Agreement and its terms therein or an ordinance otherwise becoming effective in accordance with the laws of the State of Indiana regarding such matters. In the event said City Council shall fail to so approve this Agreement or adopt the ordinance anticipated herein, this Agreement shall, ipso facto, be and become null and void and of no force or effect.
4. **Restriction on Use and Development of the Real Estate.** Owner shall be entitled to the uses on the Real Estate which are allowed in the Campus District (“CA”) as set forth in the City of Valparaiso Zoning Ordinance as modified only by this Agreement as follows:

- a. **Restricted Uses.** The following uses shall not be permitted on the Real Estate:
 - i. Hospitals
 - ii. Helipads, heliports, and helistops.
 - iii. Residential dwelling units for those employed within facilities located in the Campus District (“CA”) or associated with businesses or programs operated within the Campus District (“CA”) so long as such dwelling units are located above the first floor of a building occupied by one or more other permitted uses in the district, and with a minimum of 950 square feet per unit.
 - iv. Parking decks and garages
 - v. Hotels and specialized lodging facilities, including those with accessory conference centers and restaurants related to one or more hospitals operating in the district.
 - b. **Height Restriction.** The maximum height of building on the Real Estate shall be: 3 stories or 55 feet, whichever is lower. However, no building shall be set back from the perimeter of the district less than 1.25 feet for every foot of building height. A building with staggered height shall meet the setback at each height level.
5. **Subsequent Owners.** This agreement shall run with the land and be binding upon subsequent owners of the Real Estate, unless modified or terminated hereinafter.
 6. **Duration and Termination.** This Agreement shall be effective at such time as an Ordinance adopted and ordained by the Common Council of the City of Valparaiso, Indiana, is effective according to law changing the zoning classification of the Real Estate to the Campus District (“CA”) zoning classification pursuant to the City of Valparaiso Zoning Ordinance; and shall continue in full force and effect unless and until modified or terminated at a public hearing after notice, as provided by the provisions of Indiana Code 36-7-4-613, as amended from time to time.
 7. **Merger.** This Agreement constitutes the entire agreement of the parties, and all promises, undertakings, representations, agreements, understandings, and arrangements with reference to representations are herein merged.
 8. **Construction.** This Agreement is entered into the State of Indiana and shall be construed in accordance with the laws thereof. The headings appearing as titles for each of the provisions of this Agreement are included for purposes of convenience only and shall not be considered in the construction of any of the substantive provisions herein.

9. **Designated Party of Enforcement.** The City shall be the designated party of enforcement of this Agreement and the covenants and agreements contained herein.
10. **Enforceability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, this Agreement and the provisions herein shall be deemed to be null and void *ab initio* and of no force and effect whatsoever.
11. **Counterparts.** This Amended and Restated Agreement for Written Commitments may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, Owner has executed this Agreement upon the date and year first above written.

1st Source Bank as Trustee of Trust #13-
2643 dated December 22, 1997

By: _____

Printed: _____

Title: _____

MS Valparaiso, LLC

By: _____

Printed: _____

Title: _____

Mayor
City of Valparaiso, Indiana

Jon Costas

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public, in and for said County and State, this ___ day of _____, 2010, personally appeared _____, the _____ of 1st Source Bank as Trustee of Trust #13-2643 dated December 22, 1997, who acknowledged the execution of the foregoing instrument to be their free and voluntary act.

My Commission Expires:

County of Residence: _____

Notary Public
Printed: _____

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public, in and for said County and State, this ___ day of _____, 2010, personally appeared _____, the _____ of MS Valparaiso, LLC, who acknowledged the execution of the foregoing instrument to be their free and voluntary act.

My Commission Expires:

County of Residence: _____

Notary Public
Printed: _____

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. Christopher J. Lukaart

This Instrument Prepared By:
Christopher J. Lukaart, Esq.
Mainstreet Property Group, LLC
109 W. Jackson St. P.O Box 767
Cicero, Indiana 46034
317-420-0205

EXHIBIT A

Boundary Description

(Lots 2 and 3, the existing and proposed R/W of Silhavy Road and the R/W of Daylily Drive and Lilac Lane in the proposed Wildwind Subdivision)

Part of the Northwest Quarter of the Northwest Quarter in Section 17, Township 35 North, Range 5 West of the Second Principal Meridian, in Porter County, Indiana, more particularly described as follows:

Commencing at the Northwest Corner of the Northwest Quarter of said Section; thence along the North line thereof, South 89 degrees 32 minutes 30 seconds East 20.00 feet; thence parallel with the West line of said Quarter, South 00 degrees 02 minutes 41 seconds West 65.00 feet to the south line of a tract of land conveyed to the State of Indiana in Document 2001-010698, in the Office of the Recorder of Porter County, Indiana and being the point of beginning; thence along the said south line, South 89 degrees 32 minutes 30 seconds East 15.00 feet to the northwest corner of a tract of land conveyed to the State of Indiana in Deed Document 2009-022661 in the Office of said Recorder; thence along said State tract, South 00 degrees 02 minutes 41 seconds West 77.06 feet; thence continue along said State tract, North 22 degrees 35 minutes 50 seconds East 13.03 feet; thence South 00 degrees 02 minutes 41 seconds West 537.22 feet; thence South 89 degrees 29 minutes 34 seconds East 651.37 feet; thence North 54 degrees 11 minutes 27 seconds East 452.51 feet to a point on the southwest line of said tract conveyed to the State of Indiana in Document 2001-010698 and also being a 5/8" Rebar found with a cap stamped "BEEG", hereafter referred to as a Beeg Cap found; thence along said State tract, South 41 degrees 49 minutes 58 seconds East 405.53 feet to a Beeg cap found at the Northwest corner of a tract of land conveyed to Vandertoll in Deed Record 404, page 19 in the Office of said Recorder; thence along the West line of said tract, South 00 degrees 05 minutes 23 seconds West 464.13 feet to a Beeg Cap found at the Northeast corner of a tract of land conveyed to Vandertoll in Deed Record 403, page 133 in the office of said Recorder; thence along the north line of said Vandertoll tract, North 89 degrees 29 minutes 34 seconds West 1328.50 feet to the West line of the Northwest Quarter of said Section 17; thence along said west line, North 00 degrees 02 minutes 41 seconds East 1098.07 feet; thence South 89 degrees 32 minutes 30 seconds East 20.00 feet to the point of beginning and containing 17.53 acres, more or less.

Subject to and/or excepting therefrom a tract of land Quit-Claimed to the City of Valparaiso in Deed dated April 22, 2008.

EXHIBIT B

Boundary Description

(Lot 1 in the Proposed Wildwind Subdivision)

Part of the Northwest Quarter of the Northwest Quarter in Section 17, Township 35 North, Range 5 West of the Second Principal Meridian, in Porter County, Indiana, more particularly described as follows:

Commencing at the Northwest Corner of the Northwest Quarter of said Section; thence along the North line thereof, South 89 degrees 32 minutes 30 seconds East 20.00 feet; thence parallel with the West line of said Quarter, South 00 degrees 02 minutes 41 seconds West 65.00 feet to the south line of a tract of land conveyed to the State of Indiana in Document 2001-010698, in the Office of the Recorder of Porter County, Indiana; thence along the said south line, South 89 degrees 32 minutes 30 seconds East 15.00 feet to the northwest corner of a tract of land conveyed to the State of Indiana in Deed Document 2009-022661 in the Office of said Recorder; thence along said State tract, South 00 degrees 02 minutes 41 seconds West 77.06 feet; thence continue along said State tract, North 22 degrees 35 minutes 50 minutes East 13.03 feet to the point of beginning; thence continue North 22 degrees 35 minutes 50 minutes East 70.17 feet to a point on the south line of said tract conveyed to the State of Indiana in Document 2001-010698; thence along said State tract the following three (3) calls: 1) South 89 degrees 32 minutes 30 seconds East 293.47 feet to a 5/8" Rebar found with a cap stamped "BEEG", hereafter referred to as a Beeg Cap found; 2) South 68 degrees 21 minutes 37 seconds East 429.17 feet to a Beeg cap found; 3) South 58 degrees 34 minutes 40 seconds East 349.86 feet to a Beeg cap found; thence leaving said State tract, South 54 degrees 11 minutes 27 seconds West 452.51 feet; thence North 89 degrees 29 minutes 34 seconds West 651.37 feet; thence North 00 degrees 02 minutes 41 seconds East 537.22 feet to the point of beginning and containing 10.55 acres, more or less.