



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: 02/05/2024  
FROM: Joseph Molnar  
SUBJECT: Fifth Amendment Real America

*Marcus D. Jones* Pres/V-Pres

ATTEST: *Vivian A. Hallie* Secretary

Date: *February 8, 2024*

APPROVED  Not Approved

SOUTH BEND REDEVELOPMENT COMMISSION

Which TIF? (circle one) River West; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST: Separation of LIHTC and Market Rate Closing Dates

Specifics: In 2021, Real America and the RDC approved an agreement to sell RDC owned real estate at the northwestern corner of South St. and Lafayette Blvd. for the construction of affordable income restricted and market rate apartment units. The agreement gave Real America two years to receive Indiana State Tax Credits (LIHTC) for the project. The second round of tax credits were initially scheduled to be awarded in November of 2022. However, due to the rise in interest rates, the State desired that applicants resubmit their projects with updated financial considerations in January 2023. Real America was awarded tax credits for the project during winter 2023. Real America now intends to break ground on the LIHTC portion of the project in late winter 2024.

In the process of clearing the site for construction with the Indiana Department of Environmental Management, soil testing identified contamination in the soil in the northwestern portion of the site that still requires further testing. Soil contamination issues only exist for the northwestern portion of the market rate parcel. To ensure that the LIHTC portion of the project continues as quickly as possible, this fifth amendment separates out the market rate and LIHTC parcels for separate closing dates. This will ensure that all LIHTC deadlines are met by Real America and that construction can begin late winter 2024.

This fifth amendment sets the closing for the LIHTC parcel for no later than March 31, 2024, and for the market rate parcel for no later than December 31, 2024. These dates ensure that both the LIHTC and market rate portions of the project move forward as quickly as possible.

Staff requests approval.

**FIFTH AMENDMENT TO  
REAL ESTATE PURCHASE AGREEMENT**

This FIFTH AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT (this "**Amendment**") is made and entered into to be effective as of February 8th, 2024, by and between South Bend Redevelopment Commission ("**Seller**"), as Seller, and RealAmerica Development, LLC, an Indiana limited liability company ("**Buyer**"), as Buyer.

**RECITALS**

A. Seller and Buyer entered into that certain Real Estate Purchase Agreement, dated effective as of July 22, 2021, as amended by the First Amendment to Real Estate Purchase Agreement, dated effective as of May 26, 2022, as further amended by the Second Amendment to the Real Estate Purchase Agreement, dated effective as of November 21, 2022, as further amended by the Third Amendment to the Real Estate Purchase Agreement, dated effective as of May 25, 2023, and as further amended by the Fourth Amendment to the Real Estate Purchase Agreement, dated effective as of December 14<sup>th</sup> 2023 (the "**Agreement**"), for the purchase and sale of certain real property located in the in St. Joseph County, City of South Bend, State of Indiana as more particularly described in Exhibit A of the Agreement (the "**Property**"). All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

B. Seller and Buyer now desire to amend the Agreement to incorporate the recent subdivision of parcels included in the Property and to specify different closing dates for each parcel of the Property now being transferred, all as set forth hereunder.

**AGREEMENT**

NOW, THEREFORE, in consideration of these premises, and the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. **Recitals.** The recitals set forth above, including each and every recital contained therein, are incorporated into and made a part of this Amendment as though fully set forth herein.
2. **Amendments.** The Agreement is hereby amended as follows:
  - a) **Section 4(d)** shall be deleted in its entirety and replaced with the following:

In anticipation of performing its obligations under Section 9 below, Buyer will prepare plans and specifications for constructing three new residential buildings on the Property and all other related improvements (collectively, the "Property Improvements") and share such plans and specifications with the Seller's Planning Department for review and comment.

- b) The first sentence of **Section 6(a)** shall be amended to insert the word “each” before the term “Closing” and the word “the” will be deleted. **Section 6(a)** will now read as follows:

Seller hereby represents and warrants to Buyer that all of the following are true, correct and complete on and as of the date hereof, and shall continue to be true, correct and complete as of each Closing Date:

- c) The last sentence of **Section 6(a)(iv)** shall be amended to insert the word “each” before “Closing” and the word “the” will be deleted. **Section 6(a)(iv)** will now read as follows:

Neither Seller nor any person or entity claiming by, through or under Seller has done or suffered anything whereby any lien, encumbrance, claim or right of another has been created against the Property or any portion thereof or any interest therein other than this Agreement, the Permitted Exceptions and possible construction or materialmen's lien claims arising out of Seller's Work or any other work performed by or on behalf of Seller which will be removed at or before each Closing.

- d) **Section 7** of the Agreement shall be deleted in its entirety and replaced with the following:

7. CLOSING.

(a) Provided that all conditions of closing hereunder have been satisfied or waived, closing shall occur in two separate transactions on two separate closing dates at the offices of the Title Company (collectively, “Closing”). The first closing date will pertain to Lot 2 of the Diamond View Minor Subdivision (the “Affordable Units Parcel”) and shall take place on March 31, 2024, or such earlier or later date as may be agreed upon in writing by Seller and Buyer (“First Closing”). The second closing date will pertain to Lot 1 of the Diamond View Minor Subdivision (the “Market Rate Units Parcel”) and shall occur on December 31, 2024, or such earlier or later date as may be agreed to in writing by Seller and Buyer (“Second Closing”). At Buyer's option, each closing shall take place as an escrow closing, with the Title Company acting as the closing escrow agent.

(b) The following shall occur on or before the First Closing and on or before the Second Closing, as each item pertains to each parcel being transferred:

- (i) Seller shall deliver all of the following to Buyer, all of which shall be fully-executed by Seller, as appropriate:

[a] A special warranty deed in the applicable form attached hereto as Exhibit B sufficient to convey and

warrant to Buyer fee simple absolute title to the Property, to the extent such title is affected by Seller's actions, subject to only the Permitted Exceptions (the "Special Warranty Deed"), which Special Warranty Deed will restrict Buyer's use of the Property in connection with the Intended Use and will prohibit Buyer from discriminating in the sale, lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property;

[b] An affidavit of title in customary form covering the closing date and showing title in Seller, subject only to the Permitted Exceptions;

[c] Any required real estate disclosure;

[d] Four copies of the closing statement;

[e] A sworn affidavit stating Seller's Federal Employer Identification Number or Social Security Number and that Seller is not a foreign person for purposes of the Foreign Investors Real Property Tax Act of 1980, as amended, and as decided in Section 1445 of the United States Revenue Code of 1986, as amended, and the regulations applicable thereto (the "FIRPTA Affidavit"); and if Seller fails to furnish a FIRPTA Affidavit, Buyer may withhold from the Purchase Price an amount sufficient to comply with the provisions of Section 1445 of the United States Internal Revenue Code of 1986, as amended, and the regulations applicable thereto; and

[f] Such other documents as may be necessary or proper to comply with this Agreement or required (by the Title Company or otherwise) to carry out its terms.

(ii) Buyer shall deliver all of the following to Seller, all of which shall be fully executed by Buyer, as appropriate:

[a] At the First Closing, the sum of Five Hundred Dollars (\$500.00), by wire transfer or otherwise in immediately available funds;

[b] At the Second Closing, the balance of the Purchase Price, plus or minus prorations, credits and other adjustments, by wire transfer or otherwise in immediately available funds;

[c] For each closing, any required real estate sales disclosure;

[d] For each closing, our copies of the closing statement; and

[e] For each closing, such other documents as may be necessary or proper to comply with this Agreement or required to carry out its terms.

(iii) Seller shall cause the Title Company to issue to Buyer at both the First Closing and the Second Closing a current ALTA Form owner's policy of title insurance, with extended coverage, pursuant to the Title Commitment and containing all amendments and endorsements required by this Agreement or otherwise reasonably required by Buyer, which policy and endorsements shall be at Buyer's sole cost, and which shall only be subject to the Permitted Exceptions.

(vi) Exclusive occupancy of the Affordable Units Parcel shall be delivered to Buyer at the First Closing, and exclusive occupancy of the Market Rate Units Parcel shall be delivered to Buyer at the Second Closing, except for the continuation of any installations, equipment, or access by personnel upon the Property that Seller or Seller's representatives or contractors may require in connection with carrying out Seller's Work in accordance with the terms of this Agreement.

- e) The first sentence of **Section 8(a)** shall be amended to insert the word "each" before each instance of the word "Closing" and the word "the" will be deleted. **Section 8(a)** will now read as follows:

Buyer, and Buyer's successors and assigns, shall be liable for any and all real property taxes and assessments assessed and levied against the Affordable Units Parcel and the Market Rate Units Parcel with respect to the year in which each Closing takes place and for all subsequent years.

- f) The first two sentences of **Section 8(b)** shall be amended to insert the word "each" before each instance of the word "Closing" and will now read as follows:

At each Closing, Seller shall pay the costs of releasing all liens, judgments, and other encumbrances that are to be released and of recording such releases. At each Closing, Buyer shall pay (i) all fees and costs due Title Company for its closing, document preparation, and/or escrow services, (ii) the cost of the premium

for the Title Policy and all endorsements to the Title Policy (iii) the cost of the Survey, (iv) the cost of any lender's policy of title insurance or endorsements thereto, and (v) the cost of recordation of any instrument associated with the transaction contemplated in this Agreement, except as provided in the foregoing sentence.

- g) **Section 9(a)** shall be amended to insert the word "each" before each instance of the word "Closing" and will now read as follows:

(a) Property Redevelopment; Proof of Investment. Provided each Closing occurs, within six (6) months after the First Closing Date, Buyer will commence construction and redevelopment of the Affordable Units Parcel, and within six (6) months after the Second Closing Date, Buyer will commence construction and redevelopment of the Market Rate Units Parcel, each for the Intended Use. Buyer will expend an amount (including hard and soft costs) of not less than Twelve Million Dollars (\$12,000,000.00) to complete the Property Improvements to redevelop the Property for the Intended Use. Promptly upon completing the Property Improvements on the Affordable Units Parcel, which shall occur no later than a date that is thirty-six (36) months from the First Closing Date, Buyer will submit to Seller records proving the above required expenditures and will provide to Seller copies of the certificate(s) of occupancy for the Property Improvements. Promptly upon completing the Property Improvements on the Market Rate Units Parcel, which shall occur no later than a date that is thirty-six (36) months from the Second Closing Date, Buyer will submit to Seller records proving the above required expenditures and will provide to Seller copies of the certificate(s) of occupancy for the Property Improvements. Buyer shall permit Seller to perform reviews and monitor the progress of the construction of all Property Improvements on the Property.

- h) The first sentence of **Section 9(c)** shall be deleted and replaced with the following:

Remedies Upon Default. In the event Buyer fails to complete the Property Improvements in accordance with Section 9(a) above within thirty-six (36) months of the each respective Closing (subject to events of Force Majeure, as defined below), then, in addition to all other remedies available at law or in equity, Seller shall have the right to recover from Buyer a cash payment in an amount equal to the Appraised Value of the property in question, due and payable to Seller immediately upon demand.

- i) The first clause of **Section 12** shall be deleted and replaced with the following:

Between the date of this Agreement and each Closing, Seller shall:

**j) Section 13 (b) shall be amended as follows:**

(b) Notwithstanding any other provision of this Agreement, Buyer may extend the date for the First Closing or the Second Closing up to three (3) times for a period of thirty (30) days each by providing written notice to Seller prior to the respective closing date, as it may be extended.

**k) Exhibit A: Description of Property.** Exhibit A shall be replaced in its entirety with the new Exhibit A in the form attached hereto.

**l) Exhibit B: Special Warranty Deeds.** Exhibit B shall be replaced in its entirety with the new Exhibit B in the form attached hereto.

**3. Entire Agreement; Conflict.** Except as otherwise stated herein, all other terms, conditions and agreements contained in the Agreement remain unmodified and in full force and effect. To the extent a conflict exists between the terms of this Amendment and the Agreement, the terms of this Amendment shall control.

**4. Counterparts; Electronic or Facsimile Transmission.** This Amendment may be executed in counterparts which, when combined, shall constitute one instrument. The electronic or facsimile transmission of a signed counterpart of this Amendment shall be binding upon the party whose signature is contained on the transmitted copy.

**[Signature Page Follows.]**

IN WITNESS WHEREOF, Buyer and Seller have executed this Fifth Amendment to Real Property Purchase Agreement to be effective as of the date set forth above.

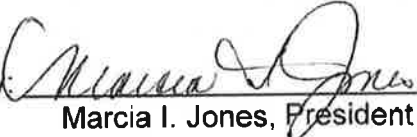
"BUYER":

RealAmerica Development, LLC

By:   
Ronda Shrewsbury, President

"SELLER":

South Bend Redevelopment Commission

By:   
Marcia I. Jones, President

Attest:   
Vivian Sallie, Secretary



**EXHIBIT A**

**Description of Property**

Market Rate Units Parcel:

**Legal Description:** Lot 1 of the Diamond View Minor Subdivision

Affordable Units Parcel:

**Legal Description:** Lot 2 of the Diamond View Minor Subdivision

**EXHIBIT B**

**Form of Special Warranty Deeds**

**AUDITOR'S RECORD**

TRANSFER NO. \_\_\_\_\_  
TAXING UNIT \_\_\_\_\_  
DATE \_\_\_\_\_  
KEY NO \_\_\_\_\_

**SPECIAL WARRANTY DEED**

THIS INDENTURE WITNESSETH, that the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, 1400 S. County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana (the "Grantor")

CONVEYS AND SPECIALLY WARRANTS to RealAmerica Development, LLC, an Indiana limited liability company and/or its related assigns with its principal place of business at 8250 Dean Road, Indianapolis, Indiana (the "Grantee"), for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the estate commonly known as 520 S Lafayette Boulevard, South Bend, Indiana, as more particularly described as Lot 1 of the Diamond View Minor Subdivision (the Property").

Grantor, as its sole warranty herein, specially warrants to Grantee, and to Grantee's successors and assigns, that Grantor will forever defend title to the Property against those claims, and only those claims, of all persons who shall claim title to or assert claims affecting the title to the Property, or any part thereof, under, by or through, or based upon the acts of Grantor, but not otherwise, subject to the following: (i) those matters listed on Exhibit 1 attached hereto and made a part hereof; and (ii) all current, non-delinquent real estate taxes and assessments.


Pursuant to Section 9 of that certain Real Estate Purchase Agreement executed between Grantor and Grantee (or Grantee's predecessor-in-interest) with respect to the Property (the "Purchase Agreement"), the Grantor conveys the Property to the Grantee by this deed for nominal consideration subject to Grantor agreeing to timely complete certain Property Improvements (as defined in the Purchase Agreement) provided, however, that in the event that the Grantee defaults in such obligation, the Grantor shall have the right to demand an additional cash payment equal to the full Appraised Value (as defined in the Purchase Agreement). The recordation of a Certificate of Completion in accordance with Section 9 of the Purchase Agreement will evidence Grantee's satisfaction of its obligations with respect to the Property Improvements set forth in the Purchase Agreement as referenced hereunder and shall be deemed to forever release and discharge the Grantor from all such obligations.

Grantee shall not discriminate in the lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property.

Each of the undersigned persons executing this deed on behalf of the Grantor represents and certifies that s/he is a duly authorized representative of the Grantor and has been fully empowered, by proper action of the governing body of the Grantor, to execute and deliver this deed, that the Grantor has full corporate capacity to convey the real estate described herein, and that all necessary action for the making of such conveyance has been taken and done.

GRANTOR:

CITY OF SOUTH BEND,  
DEPARTMENT OF REDEVELOPMENT

  
\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

  
\_\_\_\_\_  
Vivian Sallie, Secretary

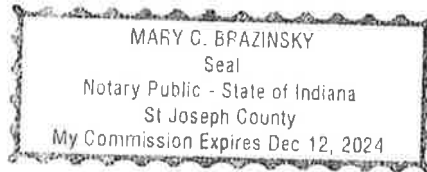
STATE OF INDIANA        )  
                                          ) SS:  
ST. JOSEPH COUNTY        )

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Marcia I. Jones and Vivian Sallie, known to me to be the President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Special Warranty Deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 8<sup>th</sup> day of February, 2024.

My Commission Expires:  
12-12-24

  
\_\_\_\_\_  
Notary Public  
Residing in St. Joseph County, Indiana



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/ Danielle Campbell Weiss

This instrument was prepared by Danielle Campbell Weiss, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

EXHIBIT 1

Permitted Encumbrances

**AUDITOR'S RECORD**  
TRANSFER NO. \_\_\_\_\_  
TAXING UNIT \_\_\_\_\_  
DATE \_\_\_\_\_  
KEY NO \_\_\_\_\_

**SPECIAL WARRANTY DEED**

THIS INDENTURE WITNESSETH, that the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, 1400 S. County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana (the "Grantor")

CONVEYS AND SPECIALLY WARRANTS to RealAmerica Development, LLC, an Indiana limited liability company and/or its related assigns with its principal place of business at 8250 Dean Road, Indianapolis, Indiana (the "Grantee"), for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the estate commonly known as 520 S Lafayette Boulevard, South Bend, Indiana, as more particularly described as Lot 2 of the Diamond View Minor Subdivision (the Property").

Grantor, as its sole warranty herein, specially warrants to Grantee, and to Grantee's successors and assigns, that Grantor will forever defend title to the Property against those claims, and only those claims, of all persons who shall claim title to or assert claims affecting the title to the Property, or any part thereof, under, by or through, or based upon the acts of Grantor, but not otherwise, subject to the following: (i) those matters listed on Exhibit 1 attached hereto and made a part hereof; and (ii) all current, non-delinquent real estate taxes and assessments.

Pursuant to Section 9 of that certain Real Estate Purchase Agreement executed between Grantor and Grantee (or Grantee's predecessor-in-interest) with respect to the Property (the "Purchase Agreement"), the Grantor conveys the Property to the Grantee by this deed for nominal consideration subject to Grantor agreeing to timely complete certain Property Improvements (as defined in the Purchase Agreement) provided, however, that in the event that the Grantee defaults in such obligation, the Grantor shall have the right to demand an additional cash payment equal to the full Appraised Value (as defined in the Purchase Agreement). The recordation of a Certificate of Completion in accordance with Section 9 of the Purchase Agreement will evidence Grantee's satisfaction of its obligations with respect to the Property Improvements set forth in the Purchase Agreement as referenced hereunder and shall be deemed to forever release and discharge the Grantor from all such obligations.

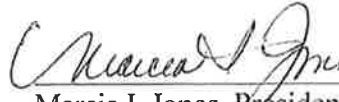
Grantee shall not discriminate in the lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property.

Each of the undersigned persons executing this deed on behalf of the Grantor represents and certifies that s/he is a duly authorized representative of the Grantor and has been fully empowered, by proper action of the governing body of the Grantor, to execute and deliver this

deed, that the Grantor has full corporate capacity to convey the real estate described herein, and that all necessary action for the making of such conveyance has been taken and done.

GRANTOR:

CITY OF SOUTH BEND,  
DEPARTMENT OF REDEVELOPMENT

  
\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

  
\_\_\_\_\_  
Vivian Sallie, Secretary


STATE OF INDIANA        )  
                                          ) SS:  
ST. JOSEPH COUNTY     )

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Marcia I. Jones and Vivian Sallie, known to me to be the President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Special Warranty Deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 8<sup>th</sup> day of February, 2024.

My Commission Expires:

12-12-24

  
\_\_\_\_\_  
Notary Public  
Residing in St. Joseph County, Indiana



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/ Danielle Campbell Weiss

This instrument was prepared by Danielle Campbell Weiss, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

EXHIBIT 1

Permitted Encumbrances