



Department of
Community Investment

Memorandum

March 26, 2015

TO: South Bend Redevelopment Commission
FROM: David Relos, Economic Resources *DR*
SUBJECT: Resolution No. 3281 and 3282
Real America Agreements for the Hotel La Salle project

On November 24, 2014, the Commission and Real American (RA) entered in to a Development Agreement for the redevelopment of the Hotel La Salle. Referenced within this Agreement were subsequent agreements to be entered in to, to allow for construction staging, construction management, parking for residents, an option in the event new development were to occur along Michigan St. between the La Salle and the Morris Civic, etc.

Upon substantial completion of this project, and to accommodate parking for the La Salle, the current City owned lot along Main St. is to be leased to RA for resident parking. Resolution No. 3281 accepts this parcel from the City and allows it to be included in the Parking Lease below.

Resolution No. 3282 approves and explains the Development Agreement's subsequent agreements, which are:

- Temporary Construction Easement Agreement
 - Allows RA to utilize the parking lot between the La Salle & Morris for construction staging
- Parking Lease
 - Upon substantial completion of the project, leases the parking lot between the La Salle & Morris and the currently owned City parking lot along Main St.



- Option & Right of First Refusal Agreement
 - Grants RA a 10 year option for development along Michigan St. between the La Salle & Morris, or the right of first refusal in the event a third party presents an offer for development in this area
- Construction Management Agreement
 - Names RA the Commission's construction manager, in conjunction with the Board of Public Works, to oversee public improvements to the building
- Historic Tax Credit Application
 - Authorizes RA to apply for historic tax credits
- Grant of Temporary Easement
 - RA grants the Commission an easement on the La Salle building to allow the public improvements to be made
 - No Commission action needed
- RA affiliated entities
 - This memo is informational only, and outlines the various commonly owned entities of RA, which will have certain responsibilities during the project
 - No Commission action needed

To allow for the closing on this property and this major downtown project to proceed, staff requests approval of Resolution No. 3281 and 3282.

MEMORANDUM

TO: South Bend Redevelopment Commission

FROM: Ryan Kelly, CFO of RealAmerica Development, LLC

DATE: March 6, 2015

RE: Relationship between RealAmerica Development, LLC and certain affiliates

This Memorandum provides a summary description of the relationship among RealAmerica Development, LLC (“RealAmerica Development”) and the affiliates listed below in connection with the development of the mixed-use project to be located in South Bend, Indiana, and commonly referred to as The LaSalle (the “Project”) pursuant to that certain Development Agreement, dated November 24, 2014 (the “Development Agreement”), executed by and between RealAmerica Development and South Bend Redevelopment Commission (“Commission”).

- 1) The LaSalle Apartments, LLC (“LaSalle”). LaSalle is owned 100% by Executive Investments, LLC which is an entity owned by RealAmerica Development and Ronda Shrewsbury Weybright, as Trustee of the Ronda Shrewsbury Weybright Revocable Trust U/D/T dated June 18, 2003, as amended and restated (the “RSW Trust”). LaSalle was formed at the direction of RealAmerica Development to hold fee title to the Project. LaSalle shall perform all obligations under the Development Agreement that are applicable to the fee title owner of the Project including, without limitation, obligations related to the Commission’s construction of the Local Public Improvements (as defined in the Development Agreement).
- 2) RealAmerica Construction, LLC (“RealAmerica Construction”). RealAmerica Construction is owned by RealAmerica Development and Ronda Shrewsbury Weybright, personally and as Trustee of the RSW Trust. For projects in which RealAmerica Development is involved, Construction generally performs the role of construction manager. It is RealAmerica Development’s intent that RealAmerica Construction perform all construction management obligations under the Development Agreement.
- 3) RealAmerica Funding Corporation (“RealAmerica Funding”). RealAmerica Funding is owned 100% by Ronda Shrewsbury Weybright. For projects in which RealAmerica Development is involved, RealAmerica Funding generally performs the role of providing conduit funding to the entity that holds fee simple title in those structures where it is beneficial to have such funding flow through a corporation. With respect to the Project, it is RealAmerica Development’s desire to have the Funding Amount (as defined in the Development Agreement) delivered by Commission for the cost of constructing the Local Public Improvements flow through RealAmerica Funding to Owner.

Although RealAmerica Development has assigned or delegated certain obligations under the Development Agreement to the foregoing entities, it has not been released from said

Development Agreement and, as such, shall remain obligated to Commission to cause the performance of all obligations of “Developer” thereunder.

RESOLUTION NO. 3282

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
REGARDING CERTAIN AGREEMENTS AND DOCUMENTS CONCERNING THE
HOTEL LASALLE DEVELOPMENT PROJECT**

WHEREAS, the South Bend Redevelopment Commission (the “Commission”), the governing body of the South Bend, Indiana, Department of Redevelopment (the “Department”) and of the Redevelopment District of the City of South Bend, Indiana (the “Redevelopment District”), exists and operates under the provisions of I.C. 36-7-14, as amended from time to time (the “Act”), and is a body corporate and politic; and

WHEREAS, on November 24, 2014, the Commission entered into a Development Agreement (the “Development Agreement”) with RealAmerica Development LLC (the “Developer”) relating to the redevelopment of the real property and improvements commonly known as Hotel LaSalle (the “Property”); and

WHEREAS, the Development Agreement provides that the Commission will convey the Property to the Developer at closing (the “Closing”) upon the satisfaction of certain conditions and that the Commission and the Developer will grant certain easements and enter into certain agreements to advance the redevelopment of the Property; and

WHEREAS, the Developer has assigned certain of its rights and obligations under the Development Agreement to its affiliated entities as set forth in a certain Assignment And Assumption Agreement dated _____, 2015 (the “Assignment Agreement,” attached hereto as **Exhibit A**); and

WHEREAS, pursuant to the Development Agreement and consistent with the Assignment Agreement, the following instruments have been prepared for the Commission’s approval and present execution: (1) Quit Claim Deed, pursuant to Section 3.2 of the Development Agreement, in favor of The LaSalle Apartments, LLC (attached hereto as **Exhibit B**); (2) Temporary Construction Easement Agreement, pursuant to Section 5.3(a) of the Development Agreement, with The LaSalle Apartments, LLC (attached hereto as **Exhibit C**); (3) Construction Management Agreement, pursuant to Section 6.1 of the Development Agreement, with RealAmerica Development LLC, RealAmerica Construction, LLC, The LaSalle Apartments, LLC, and RealAmerica Funding Corporation (attached hereto as **Exhibit D**); (4) Option And Right Of First Refusal Agreement, pursuant to Sections 6.2 and 6.3 of the Development Agreement, with The LaSalle Apartments, LLC (attached hereto as **Exhibit E**) (collectively, the “Commission’s Closing Documents”); and

WHEREAS, pursuant to Section 5.3(b) of the Development Agreement, a form of lease agreement providing for the lease of the Support Parcel and the Parking Lot (both, as defined in the Development Agreement) by the Commission to the Developer (the “Parking Lease,” attached hereto as **Exhibit F**) has been prepared for the Commission’s approval and later execution, in accordance with the terms of the Development Agreement; and

WHEREAS, in connection with the Developer's redevelopment of the Property, the Developer may seek the Commission's approval or non-remonstrance of the Developer's historic preservation plans for the Property and application(s) for historic preservation tax credits related thereto; and

WHEREAS, the Commission desires (a) to approve the Commission's Closing Documents and the form of Parking Lease and (b) to authorize certain Redevelopment staff members to take the necessary actions to conduct the Closing and to approve the Developer's historic preservation plans for the Property.

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH BEND REDEVELOPMENT COMMISSION AS FOLLOWS:

1. The Commission approves the Commission's Closing Documents, as identified in this Resolution.

2. The Commission approves the form of Parking Lease attached hereto as Exhibit F, to be executed by the Commission at a later date in accordance with the terms of the Development Agreement.

3. The Commission authorizes the following staff members to take any actions and execute any documents necessary to consummate the Closing of the sale of the Property to the Developer: Brock Zeeb or David Relos.

4. To the extent the Commission's approval or non-remonstrance is sought by any federal, state, or local agency or body to which the Developer has submitted historic preservation plans and applications, the Commission authorizes the following staff member, in consultation with the Design Review Committee, as required, to review and approve such plans and applications: David Relos.

5. This Resolution shall be in full force and effect upon its adoption.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on March 26, 2015, at 227 West Jefferson Boulevard, Room 1308, South Bend, Indiana 46601.

**CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT**

Signature

Printed Name and Title

South Bend Redevelopment Commission

ATTEST:

Signature

Printed Name and Title

South Bend Redevelopment Commission

EXHIBIT A

Assignment And Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made and entered into as of March 24, 2015 (the "Effective Date"), by and among REALAMERICA DEVELOPMENT, LLC, an Indiana limited liability company ("Assignor"), THE LASALLE APARTMENTS, LLC, an Indiana limited liability company ("LaSalle"), REALAMERICA CONSTRUCTION, LLC, an Indiana limited liability company ("RealAmerica Construction"), and REALAMERICA FUNDING CORPORATION, an Indiana corporation ("RealAmerica Funding" and being hereinafter referred to together with LaSalle and RealAmerica Construction as the "Assignees").

RECITALS:

WHEREAS, Assignor, as developer, entered into that certain Development Agreement dated November 24, 2014 (the "Development Agreement"), with the South Bend Redevelopment Commission, governing body of the South Bend Department of Redevelopment ("Commission"), in connection with Assignor's development of a mixed-use residential and retail rental project to be located in South Bend, Indiana, commonly referred to as The LaSalle (the "Project");

WHEREAS, each of the Assignees is an entity affiliated with Assignor; and

WHEREAS, to assist Assignor in developing the Project, Assignor desires to assign to the Assignees, and the Assignees desire to assume from Assignor, certain of Assignor's rights, interests, duties, liabilities and obligations under the Development Agreement as set forth in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and undertakings in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and the Assignees hereby agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated as representations by the parties hereto, as if fully set forth herein.
2. Definitions. All capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to such terms in the Development Agreement.
3. Assignments and Assumptions.
 - a. Fee Ownership of Project. Assignor hereby assigns to LaSalle all of its rights, interests, duties, liabilities and obligations under the Development Agreement with respect to the acquisition and ownership of the LaSalle Property including, without limitation, all of Assignor's rights, interests, duties, liabilities and obligations with respect to construction of the Local Public Improvements, and LaSalle hereby assumes and agrees to perform all such assigned rights, interests,

duties, liabilities and obligations of Assignor.

- b. Construction Management. Assignor hereby assigns to RealAmerica Construction all of its rights, interests, duties, liabilities and obligations under the Development Agreement with respect to construction management of the Project including, without limitation, management of the construction of the Local Public Improvements, but excluding those certain rights, interests, duties, liabilities and obligations of Assignor assigned to RealAmerica Funding pursuant to Section 3(c) below, and RealAmerica Construction hereby assumes and agrees to perform all such assigned rights, interests, duties, liabilities and obligations of Assignor.
 - c. Funding. Assignor hereby assigns to RealAmerica Funding all of its rights, interests, duties, liabilities and obligations under the Development Agreement with respect to management of the Funding Amount proceeds for the benefit of LaSalle (as assignee of those certain rights, interests, duties, liabilities and obligations of Assignor as set forth in Section 3(a) above) including, without limitation, receiving such proceeds from Commission for the benefit of LaSalle and transmitting the same to LaSalle or directly to General Contractors, as may be applicable, in order to pay the costs of construction of the Local Public Improvements, and RealAmerica Funding hereby assumes and agrees to perform all such assigned rights, interests, duties, liabilities and obligations of Assignor.
4. Representations and Warranties. Assignor represents and warrants to the Assignees as follows: (i) all obligations of the Assignor under the Development Agreement to be performed by Assignor prior to the Effective Date have been fully performed and satisfied; (ii) there is no default by Assignor existing under the Development Agreement; (iii) the Development Agreement remains in full force and effect, has not been further amended and has not been previously assigned in whole or in part by Assignor; and (iv) Assignor has provided each of the Assignees with a true and complete copy of the Development Agreement.
 5. Applicable Law. The parties intend that this Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.
 6. Successors. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by and against the parties hereto, their heirs, executors, administrators, successors and assigns.
 7. Third Party Beneficiary. Assignor and Assignees acknowledge that Commission is a third-party beneficiary of this Agreement. The various assignments and assumptions of rights and obligations by Assignor and Assignees under this Agreement are intended to benefit Commission through the satisfaction of all Assignor's responsibilities under the Development Agreement.
 8. Counterparts; Electronic Transmission. This Agreement may be executed in counterparts which, when combined, shall constitute one instrument. An executed counterpart copy of this Agreement transmitted by facsimile or by electronic mail shall

be effective as an original counterpart hereof.

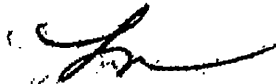
9. Entire Agreement. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof.

[Signature Page Follows.]

IN WITNESS WHEREOF, Assignor and the Assignees have caused this Assignment and Assumption Agreement to be executed as of the Effective Date.

“ASSIGNOR”:

REALAMERICA DEVELOPMENT, LLC, an Indiana limited liability company


By: 

Ronda Shrewsbury Weybright, President

“ASSIGNEES”:

THE LASALLE APARTMENTS, LLC, an Indiana limited liability company


By: Executive Investments, LLC, its Member

By: 

Ronda Shrewsbury Weybright, President

REALAMERICA CONSTRUCTION, LLC, an Indiana limited liability company

By: REALAMERICA DEVELOPMENT, LLC, its Member

By: 

Ronda Shrewsbury Weybright, President

REALAMERICA FUNDING CORPORATION, an Indiana corporation

By: 

Ronda Shrewsbury Weybright, President

EXHIBIT B

Quit Claim Deed

RETURN TO:
SOUTH BEND REDEVELOPMENT
COMMISSION
1400 S. COUNTY-CITY BUILDING
227 W. JEFFERSON BLVD.
SOUTH BEND, IN 46601

AUDITOR'S RECORD
TRANSFER NO. _____
TAXING UNIT _____
DATE _____
KEY NO. _____

QUIT CLAIM 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 QUIT CLAIMS to The LaSalle Apartments, LLC, an Indiana limited liability company, having its principal place of business at 10711 America Way, Suite 200, Fishers, Indiana 46038 (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 real estate in St. Joseph County, Indiana, described in **Exhibit A**, attached hereto and made a part hereof (the "Property").

The undersigned persons executing this Quit Claim Deed (the "Deed") represent and certify that each is competent and fully empowered to execute and deliver this Deed on behalf of the Grantor; that the Grantor has full legal capacity to convey the Property; and that all necessary action necessary to complete this conveyance has been duly taken.

The Grantor hereby conveys the Property to the Grantee, as the assignee of certain rights and obligations of RealAmerica Development, LLC under the Development Agreement between the Grantor and RealAmerica Development, LLC dated November 24, 2014 (the "Development Agreement"). Capitalized terms not otherwise defined in this Deed shall have the meanings set forth in the Development Agreement. In the event any of the terms, conditions, obligations, or restrictions herein conflict with those contained in the Development Agreement, the terms, conditions, obligations, and restrictions of the Development Agreement, when read together as a whole, shall prevail.

The Grantor hereby conveys the Property to the Grantee subject to the covenants, conditions, restrictions, and provisions stated in the Development Agreement and the following:

1. Applicable building codes and zoning ordinances.
2. Any and all other covenants, restrictions, easements, and reservations of record.

This Deed is subject to the condition that Grantee must reach Substantial Completion of the Project within thirty-six (36) months of the date of this Deed. If the Grantee fails to meet Substantial Completion of the Project within thirty-six (36) months of the date of this Deed, thereafter, unless construction work of a material nature has resumed and is continuing without interruption for prompt Substantial Completion, the Grantor may re-enter and take possession of the Property and terminate and cause title to the Property to be surrendered by the Grantee and re-vested in the Grantor, provided that any such re-vesting (or conveyance to the Grantor) shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, the lien of any mortgage on the Property for the purpose of securing any financing obtained by the Grantee to complete the Project and shall not apply to individual parts of the Property (or in the case of parts sold or lease, the part so conveyed), if any, on which the construction thereon has been completed in accordance with the Development Agreement.

GRANTOR

**CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT**

Signature

Printed Name and Title

South Bend Redevelopment Commission

ATTEST:

Signature

Printed Name and Title

South Bend Redevelopment Commission

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared _____ and _____, known to me to be the _____ and _____ respectively of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Quit Claim Deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the _____ day of _____, 2015.

My Commission Expires:

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. Benjamin J. Dougherty.

This instrument was prepared by Benjamin J. Dougherty, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

A part of the West half of the Northwest Quarter of Section 12, T. 37 N., R. 2 E. Also known as Lot #1 in the recorded plan of the Original Plat of the Town, Now City of South Bend Portage Township, City of South Bend, St. Joseph County, Indiana. [Generally referred to as Parcel Key No. 018-1002-0040]

EXHIBIT C

Temporary Construction Easement Agreement

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this “Agreement”) is made effective as of the ____ day of _____, 2015 (the “Effective Date”), by and between SOUTH BEND REDEVELOPMENT COMMISSION, governing body of the South Bend Department of Redevelopment (“Grantor”), and THE LASALLE APARTMENTS, LLC, an Indiana limited liability company (“Grantee,” and together with Grantor are sometimes referred to herein together as the “Parties”).

RECITALS:

WHEREAS, Grantor entered into that certain Development Agreement dated November 24, 2014 (the “Development Agreement”), with RealAmerica Development, LLC, an Indiana limited liability company (“RealAmerica Development”), as developer, in connection with the development of a mixed-use residential and retail rental project commonly referred to as The LaSalle Apartments (the “Project”) to be located upon that certain real estate situated in St. Joseph County, Indiana, and described on Exhibit A attached hereto and made a part hereof (the “LaSalle Property”);

WHEREAS, pursuant to that certain Assignment and Assumption Agreement dated as of _____, 2015, executed by and among RealAmerica Development, Grantee and certain other entities, RealAmerica Development assigned, and Grantee assumed, certain of RealAmerica Development’s rights, interests, duties, liabilities and obligations under the Development Agreement with respect to development of the Project;

WHEREAS, Grantee is the owner of the LaSalle Property;

WHEREAS, Grantor is the owner of that certain real estate located in St. Joseph County, Indiana, and described on Exhibit B attached hereto and made a part hereof (the “Support Parcel”);

WHEREAS, Section 5.3(a) of the Development Agreement provides that, in connection with development of the Project, Grantor shall provide all reasonable access to and use of the Support Parcel for construction staging, storage and related activities; and

WHEREAS, pursuant to said Section 5.3(a) of the Development Agreement, Grantor desires to grant, and Grantee desires to obtain, a temporary construction easement upon, over, through and across the Support Parcel upon the terms and conditions set forth in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises and agreements and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

Section 1. Easement. To facilitate Grantee's development of the Project, Grantor hereby grants unto Grantee an exclusive easement (the "Easement") to enter upon, over, and across the Support Parcel for the purposes of storing machinery, placing construction trailers, parking for construction workers, staging and storing materials (subject to Section 4 below) and equipment for construction and such other activities related to Grantee's development of the Project. This Agreement and the Easement granted herein shall be temporary and shall terminate upon the earlier to occur of: (a) completion of the development of the Project; (b) twenty (20) months after the Effective Date; (c) expiration or earlier termination of the Development Agreement; or (d) such earlier date as Grantor and Grantee may agree to in writing. In addition to the provisions of the foregoing sentence, this Agreement will terminate on the date that is forty-five (45) days after the Effective Date if Grantee has not commenced construction of the Project by such date. Grantee hereby covenants and agrees to place, at Grantee's sole expense, temporary chain-link fencing, at least six (6) feet in height, around the Support Parcel or the portions thereof utilized by Grantee as may be reasonably requested by Grantor in order to reduce the risk of public endangerment resulting from the activities being performed by or on behalf of Grantee thereon in connection with development of the Project.

Section 2. Nature of Easement. The Easement granted herein, and its associated benefits, covenants and obligations, shall (i) inure to the benefit of Grantee and Grantee's contractors, affiliates and agents acting on Grantee's behalf in connection with development of the Project, (ii) run with the land for the benefit of the LaSalle Property and (iii) be binding upon Grantor and every person or entity now or hereafter having any fee, leasehold, or other interest in all or any part of the Support Parcel.

Section 3. Maintenance. Grantee, at Grantee's sole expense, will maintain the Support Parcel in good condition and repair throughout the term of this Agreement and, upon the termination of this Agreement, will repair or replace any elements of the Support Parcel necessary to restore the Support Parcel to the same condition as existed on the Effective Date.

Section 4. Compliance with Law; Release. Grantee shall comply with all applicable rules, regulations, ordinances and laws in connection with the exercise of its rights hereunder. Grantor hereby releases any and all claims from whatsoever cause, incidental to the exercise of any rights herein granted, except for damage to Grantor caused by the intentional or negligent act or omission of Grantee, its agents, employees, or licensees. Notwithstanding anything to the contrary in this Agreement, Grantee hereby agrees that any hazardous materials stored on the Support Parcel shall be stored in compliance with applicable law and (i) such materials will be subject to inspection by Grantor upon reasonably advance written request and will be removed if they are not properly contained and stored in accordance with applicable laws, (b) Grantee will be responsible for cleaning up any spills, leakages, or releases of any such hazardous materials to the extent required by applicable law, and (c) Grantee will indemnify the Grantor for any liability arising as a result of Grantee's storage of any such hazardous materials on the Support Parcel.

Section 5. Use by Grantor. Grantor reserves the right to use and enjoy the Support Parcel for all purposes not inconsistent with the permitted uses thereof by Grantee, its successors and assigns; provided, that, Grantor shall not construct or place or permit to be constructed or placed, any structure or obstruction on the Support Parcel that will unreasonably prevent or interfere with Grantee's use of the Support Parcel for the purposes permitted herein.

Section 6. Severability. The invalidity or unenforceability of any covenant, condition, term or provision in this Agreement shall not affect the validity and enforceability of any other covenant, condition, term or provision of this Agreement.

Section 7. Governing Law; Dispute Resolution. The conditions, terms and provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Indiana. Any legal proceeding in relation to a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, and the parties hereby waive any right to trial by jury in any such legal proceeding.

Section 8. Section Headings. The Section headings are included only for convenience, and shall not be construed to modify or affect the covenants, terms or provisions of any Section.

Section 9. Attorney Fees. In the event that it shall be necessary for either party to retain an attorney to enforce the obligations of the other party hereunder, the prevailing party shall be entitled to recover from the other party all reasonable attorneys' and paralegal fees and expenses incurred in connection therewith.

Section 10. Last Deed of Record. The most recent deed of record relative to the Support Parcel is recorded as Instrument No. 0414076 in the Office of the Recorder of St. Joseph County, Indiana.

Section 11. Authority. The undersigned person executing this Agreement on behalf of Grantor represents and certifies that he or she has full capacity to convey the Easement and other rights herein, and all necessary action for the making of such Easement has been taken and done. The undersigned person executing this Agreement on behalf of Grantee represents and certifies that she has been fully empowered to execute and deliver this Agreement, and that all necessary action for the execution of this Agreement has been taken and done.

Section 12. Insurance. Grantee will maintain insurance, in the kinds and amounts stated in Exhibit E to the Development Agreement, in connection with its use of the Support Parcel under this Agreement and will name Grantor as an additional insured under all such insurance policies.

[Signature Page Follows.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

“GRANTOR”:

SOUTH BEND REDEVELOPMENT COMMISSION, governing body of the South Bend Department of Redevelopment of the City of South Bend, Indiana

By: _____

Printed: _____

Title: _____

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

Before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, known by me to be the _____ and _____, respectively, of Grantor in the foregoing Temporary Construction Easement Agreement, and who, in such capacity, acknowledged the execution of the same as Grantor’s free and voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of _____, 2015.

_____, Notary Public
Residing in _____ County, IN

My Commission Expires: _____

“GRANTEE”:

THE LASALLE APARTMENTS, LLC, an Indiana limited liability company

By: Executive Investments, LLC, its Member

By: _____
Ronda Shrewsbury Weybright, President

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for said State, personally appeared Ronda Shrewsbury Weybright, known by me to be the President of the Executive Investments, LLC, an Indiana limited liability company, being the sole member of Grantee in the foregoing Temporary Construction Easement Agreement, and who, in such capacity, acknowledged the execution of the same as Grantee’s free and voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of _____, 2015.

_____, Notary Public
Residing in _____ County, IN

My Commission Expires: _____

This instrument was prepared by Kenneth B. Chigges, Esq., Kuhl & Grant LLP, 707 E. North Street, Suite 800, Indianapolis, Indiana 46202.

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. - - Kenneth B. Chigges, Esq.

EXHIBIT A

LASALLE PROPERTY

A part of the West half of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, also known as Lot #1 in the recorded plan of the Original Plat of the Town (now City) of South Bend Portage Township, City of South Bend, St. Joseph County, Indiana. [Parcel Key No. 018-1002-0040]

EXHIBIT B

SUPPORT PARCEL

A part of the West half of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, also known as Lots #2 and #3 in the recorded plan of the Original Plat of the Town (now City) of South Bend Portage Township, City of South Bend, St. Joseph County, Indiana. [Parcel Key Nos. 018-1002-0041 and 018-1002-0042]

EXHIBIT D

Construction Management Agreement

CONSTRUCTION MANAGEMENT AGREEMENT

THIS CONSTRUCTION MANAGEMENT AGREEMENT (this “Agreement”) is made and entered into on _____, 2015, by and between the South Bend Redevelopment Commission (“Redevelopment Commission”), the South Bend Board of Public Works (“Board of Works”) (collectively, “City”), RealAmerica Development, LLC, an Indiana limited liability company (“Developer”), RealAmerica Construction, LLC, an Indiana limited liability company (“Manager”), The LaSalle Apartments, LLC, an Indiana limited liability company (“Owner”), and RealAmerica Funding Corporation, an Indiana corporation (“Funding”).

RECITALS

WHEREAS, Redevelopment Commission and Developer have entered into a Development Agreement, dated November 24, 2014 (the “Development Agreement”), relating to the development of a mixed-use project to be located in South Bend, Indiana, and commonly referred to as The LaSalle (the “Project”);

WHEREAS, each of Manager, Funding and Owner are an affiliate of Developer (as such term is used in Section 10.12 of the Development Agreement);

WHEREAS, without relieving itself of any of its obligations to Redevelopment Commission under the Development Agreement, Developer has assigned certain of its rights, interests, duties, liabilities and obligations under the Development Agreement to Owner, Manager and Funding pursuant to the Assignment and Assumption Agreement dated as of _____, 2015, and Owner, Manager and Funding have each assumed the respectively assigned rights, interests, duties, liabilities and obligations of Developer thereunder;

WHEREAS, pursuant to the terms of the Development Agreement, Owner has acquired, or shall acquire, fee simple title to the Project;

WHEREAS, as the owner of fee simple title to the Project, Owner shall benefit from the completion of the Local Public Improvements to be paid for with the Funding Amount proceeds (as such terms are defined in the Development Agreement); and

WHEREAS, in order to expedite the process and assist Developer and Owner in completing the project on time, Redevelopment Commission and Board of Works have agreed to appoint Manager as Redevelopment Commission’s construction manager and agent for the purpose of managing the design, construction, and equipping of the Local Public Improvements (as defined in the Development Agreement).

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties, covenants, and responsibilities, Redevelopment Commission, Board of Works, Developer, Manager, Funding and Owner agree as follows:

ARTICLE I. AUTHORITY TO EXECUTE AGREEMENT

Each party represents and warrants to the other parties that:

- 1.1. The party is duly formed, organized or incorporated, as applicable, and is validly existing under the laws of Indiana.
- 1.2. The party has the power, authority, and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery, and performance whereof, have been duly authorized by all necessary action.
- 1.3. This Agreement has been duly entered into and delivered and constitutes a legal, valid, and binding obligation of the party, enforceable in accordance with its terms.

ARTICLE II. DEFINITIONS

- 2.1. Capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Development Agreement. In addition to terms defined elsewhere in this Agreement, the following terms, for the purpose of this Agreement, shall have the meanings set forth below:

“Construction Management Services” means the preparation of plans and specifications for the Local Public Improvements, the preparation of all necessary bid documents and legal advertisements, the scheduling of and participation in any pre-bid meetings, the reviewing of bids and making of recommendations with regard to the award of bids, the supervision and monitoring of the construction of the Local Public Improvements, including establishing the timing, sequence, and phasing of construction of the Local Public Improvements, the inspection of construction by the General Contractors, the coordination of, progress payment review with respect to, and approval of contracts for the General Contractors, and the recommendation and administration of change orders in the manner described by this Agreement, which responsibilities shall include overseeing the delivery of the Local Public Improvements in substantial accordance with the plans and specifications as contemplated by the Development Agreement.

“General Contractors” means the contractors, including but not limited to their respective sub-contractors, vendors and suppliers, who shall construct and complete the Local Public Improvements.

ARTICLE III. INTENT AND INTERPRETATION

- 3.1. The “Agreement,” as referred to herein, shall mean this Construction Management Agreement executed by Redevelopment Commission, Board of Works, Developer, Manager, Funding and Owner and shall include any written supplemental agreement or modification entered into between Redevelopment Commission, Board of Works, Developer, Manager, Funding and Owner, in writing, after the date of this Agreement.
- 3.2. This Agreement shall include, and incorporate by reference, any applicable provision, covenant or condition required by law or by regulation of any state or federal regulatory or funding agency to be included herein.

ARTICLE IV. CONSTRUCTION MANAGEMENT

- 4.1. City hereby designates Manager as City's construction manager for the purpose of granting to Manager, to the fullest extent permitted by law, the responsibility and authority to act as the agent for and on behalf of City to provide the Construction Management Services and granting unto Manager the sole and exclusive responsibility and authority to manage the design, construction, and equipping by the General Contractors of the Local Public Improvements in accordance with the terms set forth herein.
- 4.2. As compensation for Manager's services under this Agreement, Manager shall be entitled to a construction management fee in an amount equal to One Hundred Seventy One Thousand Dollars (\$171,000.00).
- 4.3. City and Manager acknowledge and agree that the Local Public Improvements will be designed and constructed in a manner consistent with applicable laws, including but not limited to any applicable competitive bidding requirements. Manager, in consultation with its design and other professionals, will prepare bid packages for the solicitation of bids from independent contractors to construct the Local Public Improvements. The bid packages shall include plans and specifications as contemplated by the Development Agreement. Construction of the Local Public Improvements can either be bid as one package or as several packages, as determined by Manager consistent with applicable law. All bid packages shall be in a form consistent with other bid packages and legal advertisements used by Board of Works, with such modifications as Manager may request, subject to approval by Board of Works, which approval shall not be unreasonably withheld, conditioned or delayed. Manager shall be responsible for scheduling and participating in pre-bid meetings with potential bidders and responding to any questions submitted by bidders with regard to the bid packages, and issuing any addenda to bid packages.
- 4.4. Manager, with City's cooperation, shall be responsible for scheduling the publication of legal advertisements and receipt of bids at regularly scheduled meetings of Board of Works. All bids shall be received and opened publicly, pursuant to applicable law. City shall deliver copies of all bid proposals to Manager at or promptly after the public opening. Manager and City shall review the proposals and make recommendations with the intent to award contracts in accordance with applicable laws to the lowest responsible and responsive bidder at a public meeting, provided such bid has been submitted in accordance with all applicable laws and meets the requirements of the bidding documents. City, in consultation with Manager, shall have the right to reject any and all bids not in compliance with applicable law and City's requirements.
- 4.5. Manager shall prepare the form of any construction contract(s) to be entered into in connection with construction of the Local Public Improvements; provided, that such construction contract(s) shall include all provisions required by applicable law and other standard provisions included in construction contracts used by Board of Works and which construction contracts shall be subject to review and approval by Board of Works.
- 4.6. Notwithstanding anything contained in this Article IV, it is agreed that all procedures followed in connection with the solicitation of bids, the awarding of contracts and all

related activities must conform to all requirements of applicable law. All provisions of this Article IV are conditioned upon the procedures described herein being consistent with applicable laws, and shall be followed only if consistent therewith.

- 4.7. Manager hereby is granted and shall have, as agent for and on behalf of City, total and exclusive responsibility and authority to perform the Construction Management Services and to manage and supervise the design, construction, and equipping of the Local Public Improvements, except for the award of contracts by Board of Works, at the direction of Manager. Manager acknowledges that the Local Public Improvements will be constructed in substantial accordance with the plans and specifications as contemplated by the Development Agreement. Manager shall schedule, coordinate, and monitor the work of the design professionals, engineers, consultants, General Contractors relating to the Local Public Improvements, including but not limited to establishing the timing, sequence, and phasing of construction of the Local Public Improvements.
- 4.8. In accordance with applicable law, Manager shall have discretion and authority to initiate the implementation of change orders. Manager shall be responsible for preparing and processing any such change orders for review and approval by Board of Works.
- 4.9. Manager hereby agrees to provide notice to local contractors of all request for bids, of pre-bid meetings and of related meetings and information with respect to the Local Public Improvements so as to use commercially reasonable efforts to employ qualified local contractors and other related local labor during construction of the Local Public Improvements. Manager agrees to provide the details of the Local Public Improvements to the business agents of all skilled trade unions prior to contracting for the completion of the Local Public Improvements.
- 4.10. In awarding contracts for the purchase of work, labor, services, supplies, equipment, materials, or any combination of the foregoing, including, but not limited to, public works contracts awarded under public bidding laws or other contracts in which public bids are not required by law, Manager agrees to exercise reasonable good faith efforts to obtain participation by those contractors certified by the State of Indiana as a Minority Business Enterprise or a Women's Business Enterprise.

ARTICLE V. PAYMENT TO GENERAL CONTRACTORS

- 5.1. Redevelopment Commission will provide the Funding Amount in order to timely pay for the Local Public Improvements.

As City's construction manager, Manager agrees to review invoices presented for payment by General Contractors. Such invoices shall be made through AIA Application and Certificate for Payment, where applicable and consistent with industry guidelines. Manager will forward approved invoices to Board of Works at the following address:

South Bend Board of Public Works
227 W. Jefferson Boulevard
Suite 1300 N.
South Bend, IN 46601
Attention: Toy Villa

- 5.2. No payment request or statement made pursuant to this Article shall exceed the estimated amount in value of the work and services performed by a General Contractor without the prior approval of both Owner and City (such approvals not to be unreasonably withheld, conditioned or delayed). Payment requests or statements made pursuant to this Article V not exceeding the estimated amount in value of the work and services performed by a General Contractor shall be promptly approved by City after City is able to reasonably verify that the factual information contained in the request or statement submitted is correct and that the work or services for which payment is sought has been substantially completed. City shall make commercially-reasonable efforts to verify the same within 15 days after such payment request or statement is delivered by Funding.
- 5.3. Payment instructions made by Funding on behalf of General Contractors shall be made on an as-needed or as-billed basis. A written payment instruction shall be accompanied by a signed letter of transmittal from Funding and include all customary lien waivers, which includes but is not limited to lien waivers from the General Contractors, and other customary documentation. Such payments will be made directly from Redevelopment Commission to the General Contractor within 30 days after City approves the same in accordance with Section 5.2 above (and no such payment shall be made without Funding's written instruction).
- 5.4. If Owner or Funding has paid any General Contractor for work and services performed by such General Contractor prior to Funding submitting a payment request to City for approval pursuant to Section 5.2 above, Funding shall be entitled to submit a payment request for such work or services and require that, upon such payment request being approved in accordance with this Article V, such payment be made by Redevelopment Commission directly to and in the name of Funding rather than to such General Contractor. The sum of all payments by Redevelopment Commission to either a General Contractor or, alternatively, directly to Funding are subject to, and may not exceed, the Funding Amount (as defined in the Development Agreement).
- 5.5. Notwithstanding anything to the contrary in this Agreement, payments of the Funding Amount to be made by Redevelopment Commission to Funding to fund the construction and/or completion of the Local Public Improvements pursuant to the terms of this Agreement shall be deemed to have been made to Funding for the sole purpose of providing such payments to Owner.

ARTICLE VI. SUCCESSORS AND ASSIGNS

- 6.1. City, Developer, Manager, Funding and Owner each binds itself and its successors and assigns to the other parties of this Agreement and to the successors and assigns of such

other parties, in respect to the promises, representations, acknowledgements, covenants, and responsibilities contained in this Agreement.

- 6.2. Except as otherwise provided herein or in connection with a permitted assignment of the Development Agreement, none of Developer, Manager, Funding or Owner may assign, sublet or transfer its interest in this Agreement without the written consent of City.
- 6.3. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of Redevelopment Commission, Board of Works, Developer, Manager, Funding or Owner.

ARTICLE VII. NOTICES

- 7.1. When written notice is required by this Agreement, it shall be sufficiently given, in the absence of a specific provision to the contrary, if sent by overnight delivery, United States first-class mail, or hand delivery, in each case to the party to be in receipt thereof, at the addresses below and shall be deemed delivered (i) upon deposit with an overnight courier, (ii) upon deposit with the United States Post Office, or (iii) upon hand delivery, as applicable:

City: South Bend Redevelopment Commission
227 W. Jefferson Boulevard, Suite 1400 S.
South Bend, IN 46601
Attention: David Relos, Director

with a copy to: South Bend Legal Department
227 W. Jefferson Boulevard, Suite 1200 S.
South Bend, IN 46601
Attention: Cristal Brisco, Corporation Counsel

Developer, Manager, Funding or
Owner: c/o RealAmerica Development, LLC
10711 America Way, Suite 200
Fishers, IN 46038
Attn: Jeff Ryan

with a copy to: Kuhl & Grant LLP
707 E. North Street, Suite 800
Indianapolis, IN 46202
Attention: Gareth W. Kuhl

ARTICLE VIII. CHOICE OF FORUM

- 8.1. The parties agree that any litigation associated with or arising from this Agreement shall be commenced in a court of competent jurisdiction in St. Joseph County, Indiana (“St. Joseph County”).

ARTICLE IX. APPLICABLE LAWS

- 9.1. Each party agrees to comply with all federal, state, and local laws, rules and regulations as are in effect from time to time and applicable to that party in performing work pursuant to this Agreement. This Agreement shall be governed by the laws of the State of Indiana.

ARTICLE X. AMENDMENTS

- 10.1. This Agreement may be amended only by written instrument and signed by Redevelopment Commission, Board of Works, Developer, Manager, Funding and Owner.

ARTICLE XI. SEVERABILITY

- 11.1. In the event any provision of this Agreement is determined by a court of competent jurisdiction or by the laws of the State of Indiana to be null and void, such provision shall be stricken and all other provisions which can be given effect independently of the stricken provision shall remain in full force and effect.

ARTICLE XII. INDEPENDENT CONTRACTOR STATUS

- 12.1. Each of Developer, Manager, Funding, and Owner expressly understands and agrees that it is an independent contractor and that it is not an employee of City, and City is not to provide worker's compensation, health, or accident insurance coverage or indemnification agreement of any kind which would cover Manager or its employees, if any, in and under the terms of this Agreement.

ARTICLE XIII. WAIVER

- 13.1. City's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of City's rights or remedies. Manager's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of Manager's rights or remedies.

ARTICLE XIV. TERM OF AGREEMENT

- 14.1. This Agreement shall become effective upon execution hereof and shall expire on the date on which Board of Works certifies the Local Public Improvements have been substantially completed and all General Contractors have been paid by Redevelopment Commission.

ARTICLE XV. DEFAULT

- 15.1. Developer, Manager, Funding or Owner, as applicable, shall have committed an Event of Default if it fails to perform any material term, covenant, condition, or agreement contained in this Agreement for more than 30 days after written notice thereof from City, or within such other period of time as is reasonably necessary to cure such failure, but only if such applicable party has, within said 30 day period, provided City with assurances that it will cure the failure as soon as is reasonably possible and it so commences and completes such cure.

- 15.2. City has committed an Event of Default if City fails to perform any material term, covenant, condition or agreement contained in this Agreement for more than 30 days after written notice thereof from Developer, Manager, Funding or Owner, or within such other period of time as is reasonably necessary to cure such failure, but only if City has, within said 30 day period, provided the notifying party with assurances that City will cure the failure as soon as is reasonably possible and City so commences and completes such cure.
- 15.3. Upon the happening of an Event of Default, the non-defaulting party may, at its option and with prior notice, institute any action, suit or other proceeding at law, in equity (including any action to compel specific performance) or otherwise which it shall deem necessary or proper for the protection of its interests under this Agreement.

ARTICLE XVI. MISCELLANEOUS

- 16.1. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. In addition, executed counterparts of this Agreement transmitted via facsimile transmission or electronic mail shall be deemed effective as an original signature.
- 16.2. The recitals set forth above, including each and every statement contained therein, is incorporated herein and made a part of this Agreement as though fully set forth herein.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as follows:

REALAMERICA DEVELOPMENT, LLC

By: _____
Ronda Shrewsbury Weybright, President

Date: _____

REALAMERICA CONSTRUCTION, LLC

By: RealAmerica Development, LLC,
Member

By: _____
Ronda Shrewsbury Weybright, President

Date: _____

THE LASALLE APARTMENTS, LLC

By: Executive Investments, LLC, Member

By: _____
Ronda Shrewsbury Weybright, President

Date: _____

SOUTH BEND REDEVELOPMENT
COMMISSION

By: _____

Printed: _____

Title: _____

Date: _____

REALAMERICA FUNDING CORPORATION

By: _____
Ronda Shrewsbury Weybright, President

Date: _____

ATTEST:

By: _____

Printed: _____

Title: _____

Date: _____

SOUTH BEND BOARD OF
PUBLIC WORKS

Gary Gilot, President

Kathryn Roos, Member

David Relos, Member

Patrick Henthorn, Member

Brian Pawlowski, Member

ATTEST:

Linda Martin, Clerk

EXHIBIT E

Option And Right Of First Refusal Agreement

OPTION AND RIGHT OF FIRST REFUSAL AGREEMENT

THIS OPTION AND RIGHT OF FIRST REFUSAL AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____, 2015 (the "Effective Date"), by and between South Bend Redevelopment Commission, governing body of the Department of Redevelopment of the City of South Bend, Indiana ("Commission"), and The LaSalle Apartments, LLC, an Indiana limited liability company ("Developer").

RECITALS

WHEREAS, Commission is the owner of that certain real estate situated in South Bend, Indiana and described on **Exhibit A** attached hereto and made a part hereof (the "Option Parcel");

WHEREAS, Commission is also the owner of that certain real estate situated in South Bend, Indiana and described on **Exhibit B** attached hereto and made a part hereof (the "Parking Parcel" and together with the Option Parcel, the "Premises");

WHEREAS, Developer has acquired from Commission that certain real estate situated in South Bend, Indiana, described on **Exhibit C** attached hereto and made a part hereof (the "Project Property"), upon which Developer intends to develop a mixed-use apartment project with retail or other commercial use on the ground floor to be known as "The LaSalle Apartments," or the "Project" under the Development Agreement between Lessor and RealAmerica Development LLC, an affiliate of Developer, dated November 24, 2014 (the "2014 Development Agreement");

WHEREAS, in order to generate tax increment finance revenues ("TIF Revenues"), Commission desires to convey the Option Parcel to Developer or a third-party willing to construct a new building (the "New Building") thereon;

WHEREAS, subject to Commission's determination that the TIF Revenues to be generated from the Project Property and the Option Parcel will be sufficient to finance the cost of construction, Commission intends to construct a four (4) deck parking structure on a portion of the Premises (the "Parking Garage") to support parking for multiple uses including, without limitation, by users of The LaSalle Apartments and by users of the New Building; and

WHEREAS, Developer desires to obtain from Commission and Commission desires to grant to Developer an option to purchase the Option Parcel and a right of first refusal to construct the New Building thereon in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the payment of One Dollar (\$1.00), and of the mutual covenants and promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Option to Purchase. Subject to the limitations contained in this Agreement, Commission hereby grants to Developer a one-time right and option to purchase any portion of the Option Parcel situated east of the Parking Garage as approximately depicted in Exhibit B to the 2014 Development Agreement and identified therein as the "Public Plaza" (the "Optioned

Portion”), provided that Developer will use such land for construction of the New Building (the “Option”).

2. Option Term. Developer's right to exercise the Option shall commence on the Effective Date and shall continue until 11:59 p.m. on the tenth (10th) anniversary thereof, unless earlier terminated pursuant to terms set forth in this Agreement (the “Option Term”). If Developer does not exercise the Option prior to the expiration of the Option Term, this Agreement shall terminate and neither party shall thereafter have further liability to the other arising out of this Agreement except for those provisions of this Agreement which expressly survive termination.

3. Exercise of Option. The Option shall be exercised if and when Developer provides Commission with written notice, given in accordance with Paragraph 8 of this Agreement, of Developer's intent to construct the New Building on the Optioned Portion (the “Option Notice”). Notwithstanding Developer’s exercise of the Option, Commission’s obligation to sell the Optioned Portion to Developer is conditioned upon Commission determining, in its sole but reasonable discretion, that the TIF Revenues being received or expected to be generated by development upon the Project Property and the Option Parcel are sufficient to support the financing and construction of the Parking Garage over a reasonable period of time. After receiving Developer’s Option Notice, Commission will deliver to Developer its determination of the sufficiency of TIF Revenues (the date of which delivery is referred to as the “Determination Date”). After the Determination Date, if the Commission’s determination is favorable, Commission and Developer shall negotiate in good faith to enter into a development agreement providing for the sale of the Optioned Portion to Developer and the construction of the Parking Garage by Commission (the “Option Development Agreement”). The closing of the Option (the “Closing”) shall occur within ninety (90) days after the Determination Date, or such longer period as may be mutually agreed to between the parties. Developer shall be responsible for paying its own costs and expenses related to the Option Parcel and the Closing including, without limitation, (i) closing costs, and (ii) costs of obtaining title insurance, a survey or any other reports, studies or investigations.

4. Option Purchase Price and Payment. If Developer exercises the Option to purchase the Optioned Portion, the purchase price for such purchase shall be One and 00/100 Dollars (\$1.00) (the “Purchase Price”). Developer shall pay to Commission at Closing the Purchase Price by wire transfer to an account of Commission designated at least three (3) business days prior to Closing, or otherwise by immediately available funds.

5. Right of First Refusal. If, during the Option Period and prior to Developer’s exercise of the Option, Commission receives a bona-fide third-party’s proposal to construct the New Building, as determined in the Commission’s sole but reasonable discretion and set forth in a written resolution of the Commission (a “Third-Party Proposal”) that the Commission determines will generate TIF Revenues that are, when coupled with any new TIF Revenues from the Project Property, sufficient to support the financing and construction of the Parking Garage, Commission shall provide written notice of such Third-Party Proposal (the “ROFR Notice”) to Developer, given in accordance with Paragraph 8 of this Agreement. Developer shall have a period of forty-five (45) days from the date the ROFR Notice is deemed to be given under Paragraph 8 of this Agreement in which to make an alternative proposal for construction of the New Building (the “Alternate Proposal”). If Developer fails to submit the Alternate Proposal within the time allowed, the Option Period shall terminate and Commission may proceed to otherwise provide for the

development of the Option Parcel, so long as any such development includes construction of the Parking Garage on the Option Parcel, subject to the parking rights of Developer stated in Section 6.4 of the 2014 Development Agreement. In the event Developer submits the Alternative Proposal within the time allowed, Commission will review the Alternate Proposal in its regular course of business. If after review of the Alternate Proposal, Commission determines, in its sole but reasonable discretion, that the TIF Revenues being received or expected to be generated by development on the Project Property and the Option Parcel are sufficient to support the financing and construction of the Parking Garage over a reasonable period of time, Commission shall reject the Third-Party Proposal. Thereafter, Commission and Developer shall negotiate in good faith an Option Development Agreement. In the event Developer and Commission do not enter into an Option Development Agreement within ninety (90) days after the Determination Date, the Option Period shall terminate and Commission may proceed to otherwise provide for the development of the Option Parcel, provided such development includes construction of the Parking Garage on the Option Parcel, subject to the parking rights of Developer stated in Section 6.4 of the 2014 Development Agreement.

6. Representations and Warranties. As a material inducement to Developer for entering into this Agreement, Commission represents and warrants to Developer as follows, which representations and warranties shall be true and correct as of the Effective Date and, if Developer elects to exercise the Option, as of the date of the Closing:

- (a) Commission owns good, marketable and indefeasible fee simple title to the Option Parcel, subject only to the lien of current, non-delinquent real estate taxes and easements and other encumbrances of record.
- (b) Commission has full right, power and authority to grant the Option and other rights to Developer set forth herein and, if Developer elects to exercise the Option and to consummate the Closing, to sell, transfer, convey and assign the Optioned Portion to Developer for construction of the New Building.

7. Brokers. Commission and Developer represent and warrant to each other that they have dealt with no broker, finder or other person with respect to this Agreement or the transactions contemplated hereby and, insofar as they know, no broker, finder or other person is entitled to any commission or finder's fee in connection herewith. Commission and Developer each agree to indemnify and hold harmless one another from and against any loss, liability, damage or claim incurred by reason of any brokerage commission or finder's fee alleged to be payable to anyone because of any act, omission or statement of the indemnifying party. Such indemnity obligations shall be deemed to include, without limitation, the payment of reasonable attorneys' fees and court costs incurred in defending any such claim, and shall survive the Closing under this Agreement or the termination of this Agreement.

8. Notices. All notices, requests, demands, consents and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly and properly given on the date of service if delivered personally, or, if mailed, on the second business day after such notice is deposited in a receptacle of the United States Postal Service, registered or certified mail, first class postage prepaid, return receipt requested, or on the first

business day following deposit with a nationally recognized overnight courier service (e.g., FedEx), postage prepaid, in any event addressed appropriately as follows:

- Commission: South Bend Redevelopment Commission
227 W. Jefferson Boulevard, Suite 1400 S.
South Bend, IN 46601
Attn: Chris Fielding

- with a copy to: South Bend Department of Law
227 W. Jefferson Boulevard, Suite 1200 S.
South Bend, IN 46601
Attn: Corporation Counsel

- Developer: The LaSalle Apartments, LLC
10711 America Way, Suite 200
Fishers, IN 46038
Attn: Ronda Shrewsbury Weybright, President

- with a copy to: Kuhl & Grant LLP
707 E. North Street, Suite 800
Indianapolis, IN 46202
Attn: Gareth W. Kuhl

Either party may change its address for purposes of this Paragraph by giving the other party written notice of the new address in the manner set forth above.

9. Assignment; Entirety of Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. This writing embodies the entire agreement between the parties hereto with respect to the subject matter hereof and there are no representations, promises, understandings or agreements, oral or written, between the parties which are not set forth herein. Developer may assign all or any of its rights under this Agreement upon written notice to Commission, which will contain Developer's certification that the assignee is an affiliate of Developer sharing common ownership with Developer.

10. Counterparts. This Agreement may be executed by the parties to this Agreement in separate and/or multiple counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document.

11. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana.

12. Attorneys' Fees. In the event of any controversy, claim, or dispute between Developer and Commission arising out of or related to this Agreement or the breach thereof, each party shall bear its own costs and expenses in connection with such controversy, claim, or dispute, including all attorneys' fees.

13. Time is of the Essence. Time is expressly declared to be of the essence for this Agreement.

14. Interpretation. The terms and conditions of this Agreement represent the results of bargaining and negotiations among the parties, each of which has been represented by counsel of its own selection, and neither of which has acted under duress or compulsion, whether legal, economic, or otherwise, and represent the results of a combined draftsmanship effort. The terms and conditions hereof shall be interpreted and construed in accordance with their usual and customary meanings, unless a specific definition has been given, and the parties hereby expressly waive and disclaim any rule of law or procedure requiring otherwise, specifically including but not limited to any rule of law to the effect that ambiguous or conflicting terms or conditions shall be interpreted or construed against the party whose counsel prepared this Agreement or any earlier draft hereof. Paragraph headings are for convenience only and shall not affect the interpretation of this Agreement. Except as otherwise expressly provided in this Agreement, any reference to "days" shall mean calendar days.

15. No Agency. Nothing in this Agreement will be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint ventures or of any other association between the parties.

16. Modifications. Any modification of this Agreement or additional obligation assumed by either party hereto in connection with this Agreement shall be binding only if evidenced in a writing signed by each party or their authorized representative(s).

17. Authority to Execute. Each person executing this Agreement on behalf of Commission or Developer represents and warrants that:

- (a) he or she has been authorized to execute and deliver this Agreement by the entity for which he or she is signing; and
- (b) this Agreement is valid and binding upon such entity, enforceable in accordance with its terms.

18. Merger. All prior representations, undertakings, and/or agreements by or between Commission and Developer with respect to the subject matter of this Agreement have been merged into and expressed in this Agreement. To the extent such prior representations, undertakings and/or agreements by and between Commission and Developer with respect to the same have not been merged into or expressed in this Agreement, they are hereby cancelled.

19. Partial Invalidity of Agreement. The invalidity or unenforceability of any particular term or condition of this Agreement shall have no effect upon any other term or condition and this Agreement shall be construed in all respects as if such invalid or unenforceable term or condition had not been contained herein.

20. Memorandum of Agreement. Upon Developer's request, Commission and Developer shall execute and record a memorandum of this Agreement in the Office of the Recorder of St. Joseph County, Indiana, in form and substance reasonably acceptable to Commission and

Developer (the "Memorandum"). Developer shall bear the cost and expense of recording the Memorandum.

[Signature Page Follows.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the Effective Date.

“COMMISSION”:

SOUTH BEND REDEVELOPMENT
COMMISSION, governing body of the Department
of Redevelopment of the City of South Bend, Indiana

By: _____

Printed: _____

Title: _____

ATTEST:

By: _____

Printed: _____

Title: _____

“DEVELOPER”:

THE LASALLE APARTMENTS, LLC, an Indiana
limited liability company

By: Executive Investments, LLC, its Member

By: _____
Ronda Shrewsbury Weybright, President

EXHIBIT A

OPTION PARCEL

A part of the West half of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, also known as Lots #2 and #3 in the recorded plan of the Original Plat of the Town (now City) of South Bend Portage Township, City of South Bend, St. Joseph County, Indiana. [Parcel Key Nos. 018-1002-0041 and 018-1002-0042]

EXHIBIT B

PARKING PARCEL

A part of the West half of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, also known as Lot #10 in the recorded plan of the Original Plat of the Town (now City) of South Bend Portage Township, City of South Bend, St. Joseph County, Indiana. [Parcel Key No. 018-1008-0304]

EXHIBIT C

PROJECT PROPERTY

A part of the West half of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, also known as Lot #1 in the recorded plan of the Original Plat of the Town (now City) of South Bend Portage Township, City of South Bend, St. Joseph County, Indiana. [Parcel Key No. 018-1002-0040]

EXHIBIT F

Form of Parking Lease

PARKING LEASE

THIS PARKING LEASE (this "Lease") is made this ___ day of _____, 201__ (the "Commencement Date"), by and between the South Bend Redevelopment Commission, governing body of the Department of Redevelopment of the City of South Bend, Indiana ("Lessor"), and The LaSalle Apartments, LLC, an Indiana limited liability company ("Lessee" collectively with Lessor may be referred to as the "Parties," each being a "Party").

RECITALS

WHEREAS, Lessor is the owner of that certain real estate situated in South Bend, Indiana and described on Exhibit A attached hereto and made a part hereof (the "Support Parcel");

WHEREAS, Lessor is also the owner of that certain real estate situated in South Bend, Indiana and described on Exhibit B attached hereto and made a part hereof (the "Parking Parcel" and together with the Support Parcel, the "Premises");

WHEREAS, Lessee has previously acquired from Lessor that certain real estate situated in South Bend, Indiana, described on Exhibit C attached hereto and made a part hereof (the "Project Property"), upon which Lessee has developed a mixed-use apartment project with retail or other commercial use on the ground floor known as "The LaSalle Apartments," or the "Project" under the Development Agreement between Lessor and RealAmerica Development LLC, an affiliate of Lessee, dated November 24, 2014 (the "Development Agreement");

WHEREAS, the Project has reached Substantial Completion in accordance with the terms and conditions of the Development Agreement;

WHEREAS, in connection with Lessee's acquisition of the Project Property from Lessor, Lessor granted a certain option, right of first refusal and other rights to Lessee with respect to the Premises as set forth in that certain Option and Right of First Refusal Agreement executed by and between Lessor and Lessee, dated as of _____, 2015 (the "Option Agreement"), which Option Agreement is evidenced by that certain Memorandum of Option and Right of First Refusal Agreement dated as of _____, 2015, and recorded _____, 2015, as Instrument No. _____, in the Office of the Recorder of St. Joseph County, Indiana; and

WHEREAS, Lessee requires parking for the residents of the Project Property and access to certain rights-of-way adjacent to the Premises and Lessor desires to lease the Premises to Lessee for the purpose of providing such parking, access and other uses in accordance with the terms and conditions set forth in this Lease.

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual agreements contained herein, One Dollar (\$1.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

AGREEMENT

Section 1. Lease and Use.

Section 1.1 Lessor hereby leases to Lessee, Lessee's successors, assigns, licensees and invitees, or any of the agents or representatives of Lessee, the Premises. Lessee shall only use the Premises for purposes of parking properly licensed passenger motor vehicles, including motorcycles, parking of bicycles, the placement of one or more trash dumpsters and/or utility service boxes or other utility equipment (including, without limitation, an electrical transformer) to serve the Project Property, and the common passage of persons and vehicles across said Premises in order to provide access between the Project Property and the rights-of-way commonly known as Main Street and Michigan Street in South Bend, Indiana.

Section 1.2 All of Lessee's, or any Leasehold Mortgagee's, rights under this Lease, including its rights to use and possess the Premises, are conditioned on the use of the Project Property (excluding the square footage of the ground floor of the multi-story building on the Project Property) primarily for residential purposes.

Section 1.3 Notwithstanding anything to the contrary in this Lease, in the event that the rentable square footage of the multi-story building on the Project Property (exclusive of the square footage of the ground floor of said multi-story building) is less than fifty percent (50%) resident-occupied for any consecutive period of two (2) years or more, except to the extent due to casualties or non-discretionary repairs to the building that prohibit such occupancy, Lessee hereby agrees that, upon request of Lessor, Lessee shall sublease back to Lessor a number of parking spaces on the Premises corresponding to the percentage of the rentable square footage of the building that is unoccupied until such time that Lessee delivers reasonable evidence to Lessor that the rentable square footage within the residential portion of the multi-story building is no longer less than fifty percent (50%) resident-occupied. Upon such sublease, Lessor shall be obligated to reimburse Lessee for a pro-rata share of any maintenance and repair costs and/or expenses incurred by Lessee with respect to the parking areas and parking-related facilities upon the Premises promptly after Lessee delivers to Lessor an invoice and reasonable supporting evidence of the same. Lessor's reimbursement obligation will be strictly limited to expenses of regular maintenance and repairs that are incurred by Lessee during the term of the sublease by Lessee to Lessor. Lessor's reimbursement obligation extends only to maintenance and repairs of parking areas and parking-related facilities existing as of the commencement of the sublease by Lessee to Lessor, and Lessor will not be required to reimburse Lessee for maintenance or repairs of structures or facilities built upon the Premises during the term of the sublease by Lessee to Lessor. Lessor's pro-rata share of such maintenance and repair costs and/or expenses will be calculated by multiplying the total amount of such costs and/or expenses by a fraction having a numerator equal to the number of parking spaces subleased to Lessor and a denominator equal to the total number of parking spaces upon the Premises. Lessor will have no obligation to pay any taxes levied upon the Premises with respect to the term of the sublease by Lessee to Lessor or any other time.

Section 2. Term. The initial term of this Lease will commence on the date of this Lease and will terminate twenty (20) years from the date hereof and shall thereafter automatically renew for seven (7) successive periods of ten (10) year each, subject to any rights of termination herein (the initial term and any renewal terms being referred to hereinafter as the "Term").

Section 3. Rent. During the Term of this Lease, Lessee will pay to Lessor One Dollar (\$1.00) per year as rent for the Premises. Such annual rent shall be due on the Commencement Date and on or before each anniversary thereof during the Term. Lessee may pre-pay the rent for the entire Term at any time.

Section 4. Maintenance, Repairs, Improvements. Lessee shall, at Lessee's cost and expense, keep the Premises and any improvements thereon in a clean, neat and safe condition and, pursuant to such requirement, shall have the right to replace, repair, add security fencing and/or lighting, sealcoat and stripe the Premises and to add covered parking improvements on the Support Parcel (e.g. garages or carports) as determined necessary or appropriate by Lessee and subject to Lessor's written approval (which approval shall not be unreasonably withheld, conditioned or delayed). To the extent any permits, variances or rezonings are necessary to allow Lessee to accomplish any of the work described in the foregoing sentence, Lessor shall cooperate with Lessee in all such applications and/or proceedings to secure the same including, without limitation, filing any applications or instituting proceedings therefor or joining with Lessee therein. Upon expiration or termination of this Lease, Lessee will restore the Premises to the condition that existed on the Commencement Date, including, if Lessor so instructs, the removal of any structures, fixtures or improvements from the Premises provided, however, Lessee shall have no obligation to remove any structures, fixtures or improvements approved by Lessor in accordance with this Section 4 unless Lessor conditions such approval upon Lessee agreeing to such removal upon expiration or earlier termination of this Lease.

Section 5. Eminent Domain

Section 5.1. Termination of Lease. Lessor and Lessee agree that, in the event of a Taking (as defined below) such that Lessee reasonably determines that the Premises cannot continue to be operated, at reasonable cost, for its then-current use, then this Lease shall, at Lessee's sole option, terminate as of the Taking Date (as defined below). "Taking" as defined herein, means a taking during the Term hereof of all or any part of the Premises, or any interest therein or right accruing thereto, as a result of the exercise by any governmental unit of the government of the United States of America or of the State of Indiana (but excluding Lessor and the City of South Bend, Indiana) of the right of condemnation or eminent domain affecting the Premises or any part thereof. A conveyance to a governmental authority or unit in lieu or in anticipation of any such right of condemnation or eminent domain shall also be considered a Taking hereunder. Any Taking shall be deemed to have occurred upon the date (the "Taking Date") that is the earlier to occur of (a) the date on which the property, right or interest so taken must be surrendered to the condemning authority, or (b) the date title vested in a condemning authority or other party pursuant to any Taking.

Section 5.2. Continuation of Lease and Presumption of Restoration. Lessor and Lessee agree that, in the event of a Taking that does not result in the termination of this Lease pursuant to Section 5.1 above, this Lease shall continue in effect as to the remainder of the Premises, and the Net Condemnation Award (as defined below) will be disbursed in accordance with applicable laws and regulations and, to the extent permitted by the foregoing, in accordance with Sections 5.3 and 5.5 below, as applicable. The Net Condemnation Award shall be used so as to make the Premises as nearly as reasonably

possible to the condition existing prior to the Taking, to the reasonable satisfaction of the Lessee, subject to applicable requirements of any Leasehold Mortgages (as defined below). During the Term a decision as to whether or not to restore or rebuild shall be made in the sole judgment of Lessee, subject to any applicable requirements of any Leasehold Mortgages. "Net Condemnation Award" as defined herein, means the net amounts owed or paid to the Parties or to which either of the Parties may be or become entitled by reason of any Taking or pursuant to any agreement with any condemning authority which has been made in settlement of any proceeding relating to a Taking, less any reasonable costs and expenses incurred by the Parties in collecting such award or payment. "Leasehold Mortgage" as defined herein, means any mortgage, security agreement or collateral assignment encumbering Lessee's interest created hereunder. "Leasehold Mortgagee" as defined herein, means the holder, mortgagee, grantee or secured party under any Leasehold Mortgage.

Section 5.3. Temporary Taking. If there shall be a temporary Taking with respect to all or any part of the Premises or of Lessee's interest in this Lease, then the Term shall not be reduced and Lessee shall continue to pay in full all rents and other charges required herein, without reduction or abatement thereof at the times herein specified; provided, however, that Lessee shall not be required to perform such obligations that Lessee is prevented from performing by reason of such temporary Taking and that the portion of the Net Condemnation Award based upon the value of lost parking spaces upon the Premises as a result of from such temporary Taking shall be assigned to Lessee.

Section 5.4. Joinder. If a Leasehold Mortgage or Leasehold Mortgages exist, the Leasehold Mortgagees, to the extent permitted by law, shall be made a party to any Taking proceeding.

Section 5.5 Right to Net Condemnation Award. Notwithstanding anything to the contrary hereunder, if, prior to any Taking, Lessee has duly notified Lessor of Lessee's intent to exercise its rights to acquire the Premises or any portion thereof pursuant to the Option Agreement, then a proportionate share of the Net Condemnation Award resulting from such Taking, computed as a function of Lessee's proportional ownership of the Premises that will result from Lessee's acquisition under the Option Agreement (by square footage or other equitable measure taking into account any improvements, structure or fixtures installed by Lessee thereon, if any), shall belong to Lessee unless Lessee ultimately elects not to acquire the Premises, in which case, such Net Condemnation Award shall be allocated pursuant to Section 5.2 or Section 5.3 above.

Section 6. Nature and Assignment of this Lease. If Lessor shall sell or assign its entire interest or estate in the Premises, it shall have no further liability for the performance thereafter of the obligations of Lessor hereunder other than those that accrued while it owned the Premises, provided, however, this Lease shall remain in full force and effect and binding upon the new owner of the Premises.

Section 7. Indemnification. Lessee agrees to indemnify, defend, and hold Lessor harmless from and against any and all liability, loss, claims, damages, penalties, fines, costs and expenses, including, without limitation, reasonable attorneys' fees, and for any and all injury to

persons or damage to property, that arise from or out of a breach of its covenants and obligations hereunder and/or its negligence or willful acts or omissions, except to the extent caused by the negligent or willful acts or omissions of Lessor or its licensees, suppliers, agents, customers or invitees. Lessor agrees to indemnify, defend, and hold Lessee harmless from and against any and all liability, loss, claims, damages, penalties, fines, costs and expenses, including, without limitation, reasonable attorneys' fees, and for any and all injury to persons or damage to property, that arise from or out of the presence of any hazardous material present on the Premises, unless introduced or released by Lessee or its agents, tenants or invitees, and that arise from or out of a breach of its covenants and obligations hereunder and/or its negligence or willful acts or omissions.

Section 8. Use by Lessor. Lessor shall not construct or place or permit to be constructed or placed, any structure or obstruction on the Premises that will damage or disturb the improvements or unreasonably prevent or interfere with Lessee's use of the Premises for the purposes permitted herein, provided, however that Lessor may undertake any and all development activities contemplated in the Option Agreement.

Section 9. Insurance. Lessee agrees to maintain insurance of the kinds and amounts set forth in Exhibit E to the Development Agreement, insuring against any and all claims for bodily injury, death or property damage occurring on, in or about the Premises as a result of the activities contemplated by this Lease and will name Lessor as an additional insured under all such insurance policies.

Section 10. Real Estate Taxes. Lessee shall be responsible for the payment of all real property taxes and assessments, of any nature whatsoever (the "Taxes"), which are levied against the Premises for all periods during the Term of this Lease.

Section 11. Default. If Lessor defaults in or otherwise fails to perform any of its obligations set forth in this Lease, and fails to cure any such default or failure within thirty (30) business days after receipt of written notice from Lessee (except in the case of an emergency which shall be cured as soon as reasonably practicable), then Lessee, as its sole remedies, may, at its option, cure such default at its expense and collect from Lessor the reasonable costs incurred in curing such default including reasonable attorney's fees, terminate the Lease, or pursue any applicable injunctive or equitable remedies. If Lessee defaults in or otherwise fails to perform any of its obligations set forth in this Lease, and fails to cure any such default or failure within thirty (30) business days after receipt of written notice from Lessor (except in the case of an emergency which shall be cured as soon as reasonably practicable), then Lessor, as its sole remedies, may cure such default at its expense and collect from Lessee the reasonable costs incurred in curing such default or may pursue any applicable injunctive or equitable remedies. Any reimbursement for curing a default of the other party shall be due and payable thirty (30) days after the written demand of the curing party, which demand shall include paid invoices or other evidence of payment or expense. Notwithstanding the foregoing, if the default is of such a nature that it cannot reasonably be cured within thirty (30) days, then, so long as the defaulting party commences the cure within said thirty (30) day period, and thereafter diligently pursues the cure to completion, the cure period shall be extended for such periods as may be reasonable under the circumstances, not to exceed ninety (90) days. No interest will accrue on any such expenses. Any default of Lessee which Lessee does not cure within the time periods set forth above shall be referred to herein as an "Event of Default".

Section 12. Severability. The invalidity or unenforceability of any covenant, condition, term or provision in this Lease shall not affect the validity and enforceability of any other covenant, condition, term or provision.

Section 13. Notices. Any notices or other communication given under this Lease shall be in writing and shall be deemed to have been duly and properly given on the date of service if delivered via hand delivery, or on the first business day following deposit with a nationally recognized overnight courier service (e.g., FedEx), postage prepaid, in any event addressed appropriately as follows:

Lessor: South Bend Redevelopment Commission
227 W. Jefferson Boulevard
South Bend, IN 46601
Attn: _____

Lessee: The LaSalle Apartments, LLC
10711 America Way, Suite 200
Fishers, IN 46038
Attn: Ronda Shrewsbury Weybright, President

with copies to: Kuhl & Grant LLP
707 E. North Street, Suite 800
Indianapolis, IN 46202
Attn: Gareth W. Kuhl

and

Leasehold Mortgagee: _____

Attn: _____

and

Counsel for Leasehold
Mortgagee: _____

Attn: _____

Any Party or Leasehold Mortgagee may change its address for purposes of this Paragraph by giving the other parties written notice of the new address in the manner set forth above.

Section 14. Governing Law. The conditions, terms and provisions of this Lease shall be governed by and construed in accordance with the laws of the State of Indiana.

Section 15. Construction. The Section headings are included only for convenience, and shall not be construed to modify or affect the covenants, terms or provisions of any Section. All negotiations, considerations, representations, and understandings between the Parties are incorporated herein, and may be modified or altered only by agreement in writing signed by both Parties.

Section 16. Attorney Fees. In the event that it shall be necessary for either Party to retain an attorney to enforce the obligations of the other Party hereunder, each Party shall bear its own costs and expenses incurred in connection therewith, including all attorneys' fees.

Section 17. Assignment or Sublet. Lessee may not assign, transfer, or encumber this Lease in whole or in part without the prior written consent of the Lessor, provided, however, Lessee may, without Lessor's consent, assign this Lease to any party that purchases the Project Property and Lessee may encumber all of its right, title and interest in the Premises subject to the terms of Section 18 hereof. In the event of any assignment of this Lease by a Lessee to a party that purchases the Project Property, the assigning Lessee shall have no further liability for the performance thereafter of the obligations of Lessee hereunder other than those that accrued while it leased and occupied the Premises. Notwithstanding the foregoing in this Section 17, Lessee shall have the right to sublease the Premises or any portion thereof to tenants or occupants of the Project Property without the consent of Lessor.

Section 18. Permitted Mortgages.

Section 18.1. Right to Encumber. Lessee shall have the right during the Term to encumber, through a Leasehold Mortgage, all of Lessee's right, title and interest in the Premises subject to the provisions of this Lease.

Section 18.2. Notice to Leasehold Mortgagee. During any period in which a Leasehold Mortgage is in place, Lessor shall give any such Leasehold Mortgagee of which Lessor has received notice from Lessee a duplicate copy of all notices of default and other notices that Lessor may give to or serve in writing upon Lessee pursuant to the terms of this Lease. No notice by Lessor to Lessee under this Lease shall be effective unless and until a copy of such notice has been provided to each Leasehold Mortgagee of which Lessor has received notice from Lessee. Lessor is deemed to have notice of the Leasehold Mortgagee set forth in Section 13 above.

Section 18.3. Right of Leasehold Mortgagee to Cure. Any Leasehold Mortgagee, at its option at any time within thirty (30) days following the later of (i) the expiration of the right of Lessee to cure any default under this Lease or (ii) such Leasehold Mortgagee's receipt of notice of such default, may pay any amount or do any act or thing required of Lessee by the terms of this Lease. All payments made and all acts performed by a Leasehold Mortgagee during such time shall be effective to prevent a termination of the rights of Lessee hereunder to the same extent as if they had been timely performed by Lessee. Notwithstanding anything in this Lease to the contrary, in the event of Lessee's bankruptcy or similar defaults which by their very nature are incapable of cure by any person other than Lessee, Lessor agrees not to terminate the Lease so long as any Leasehold

Mortgagee continues to pay all rent and perform all other obligations of Lessee which are capable of being performed by a Leasehold Mortgagee.

Section 18.4. Right to New Lease. Notwithstanding anything to the contrary contained herein, no termination of this Lease resulting from an Event of Default shall become effective until each Leasehold Mortgagee providing notice to Lessor in accordance with Section 18.2 above (in order of lien priority) shall have had the option, exercisable by giving Lessor written notice not more than thirty (30) days after Lessor has given such Leasehold Mortgagee notice that Lessee has failed to cure an Event of Default by Lessee hereunder within any applicable cure period as provided herein, and Lessor has elected to terminate this Lease, to elect to receive from Lessor a new lease to such Leasehold Mortgagee (or its successor in interest) (or to its nominee) covering the Premises for the then unexpired balance of the Term, and otherwise on the same terms and conditions as set forth in this Lease. Simultaneously with the termination of this Lease by reason of an Event of Default as described in this Section 18.4, Lessor agrees to execute such new lease having an effective date as of the date of the termination of this Lease with such Leasehold Mortgagee (or its successor in interest or its nominee), if such Leasehold Mortgagee:

- (a) shall cure immediately any monetary Event of Default by Lessee hereunder;
- (b) shall undertake immediately to remedy any non-monetary Event of Default by Lessee hereunder, excluding those which by their very nature are incapable of cure by any person other than Lessee, and thereafter proceed with reasonable diligence to cure such Event of Default within a reasonable period of time; provided, however, that such period shall not extend for more than one hundred twenty (120) days after the date of such agreement, unless within said one hundred twenty (120) day period Leasehold Mortgagee commences to eliminate the cause of such default and proceeds therewith diligently and with reasonable dispatch; and
- (c) shall agree to perform thereafter all covenants and conditions contained in this Lease to be observed and performed by Lessee.

In the event more than one (1) Leasehold Mortgagee elects in accordance with the terms hereof to receive from Lessor a new lease covering the Premises, then Lessor agrees that it will enter into such new lease with the Leasehold Mortgagee which holds the most senior Leasehold Mortgage having the highest lien priority. The terms of this Section 18.4 shall survive the termination of this Lease.

Section 18.5. Estoppel Certificates. Lessor and Lessee agree that at any time and from time to time upon not less than fifteen (15) days prior written notice by the other Party, or upon request from any Leasehold Mortgagee or a permitted assignee or other interested party, Lessor or Lessee will execute, acknowledge and deliver to the other Party or to such Leasehold Mortgagee a statement in writing certifying (a) that this Lease is unmodified and in full force and effect; (b) the date through which the rent has been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against Lessor or Lessee, as applicable, other than those, if any,

so specified under the provisions of this Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Lessor, Lessee or any Leasehold Mortgagee, as the case may be, in this Lease or by any prospective Leasehold Mortgagee or assignee of any Leasehold Mortgage.

Section 18.6. Mortgage of Lessor's Estate. Lessor agrees not to encumber or convey any interest in Lessor's Estate (as defined below) with any deed to secure debt, mortgage, or other instrument in the nature thereof as security for any debt which is not expressly subordinate to Lessee's Estate under this Lease and to any Leasehold Mortgage, without the written consent of Lessee and all Leasehold Mortgagees providing notice to Lessor in accordance with Section 18.2 above. Lessor agrees not to permit any liens arising from work contracted for by Lessor to be filed against the Premises without causing the same to be removed or bonded over within five (5) days of such filing. Lessor agrees not to encumber Lessor's Estate with any covenant, easement or restrictions except as may be required by applicable laws or in accordance with the development(s) contemplated in the Option Agreement; provided, however, (i) the Lessor shall provide the holder of the Leasehold Mortgages with thirty (30) days prior written notice of any such covenant, easement or restriction, and (ii) the holder of the Leasehold Mortgages shall have provided written consent to any such covenant, easement or restriction that materially or adversely affects the interest in the Lessee's Estate of the holder of any Leasehold Mortgage. "Lessor's Estate" for purposes hereof shall mean Lessor's estate in the Premises.

Section 18.7. RESERVED.

Section 18.8. Transfer by Leasehold Mortgagee. For purposes of this Lease, the making of a leasehold mortgage to a Leasehold Mortgagee shall not be deemed to constitute a Transfer (as herein after defined) of this Lease or Lessee's interest created hereby, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of Lessee's interests under this Lease so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Lessee to be performed hereunder, but a Leasehold Mortgagee may become the holder of Lessee's leasehold estate and succeed to Lessee's interest in this Lease by foreclosure of its Leasehold Mortgage or as a result of the assignment of this Lease in lieu of foreclosure, and any purchaser at any sale of Lessee's interest under this Lease in any proceeding for the foreclosure of any mortgage or the assignee or transferee of Lessee's interest in this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any mortgage shall be deemed to be an assignee or transferee approved by Lessor and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Lessee to be performed hereunder, but only for so long as such purchaser or assignee is the owner of Lessee's interest in this Lease.

Section 18.9. Sale of Premises. In the event of any sale or conveyance of the Premises by Lessor during the Term hereof, any such sale or conveyance of all or any part of the Premises shall be subject to this Lease and all of the provisions hereof.

Section 18.10. No Personal Liability. No Leasehold Mortgagee, any successor or assignee thereof, shall have any personal liability under this Lease for its interest in the

Lease so long as it does not become the Lessee or assume this Lease, in which event such Leasehold Mortgagee, successor or assignee thereof, would become liable solely for acts or omissions arising after becoming the Lessee or assuming the Lease.

Section 19. Counterparts. This Lease may be signed in counterparts, each of which will be deemed an original, but all of which when taken together will constitute one and the same instrument.

Section 20. Title. Lessor hereby covenants that it is the sole owner in fee simple of the Premises, is lawfully seized thereof and has a good right to lease it under the terms and conditions contained herein; that the Premises are free from any and all liens and encumbrances, except for the Option Agreement, real estate taxes and assessments not yet due and payable, and any other matters of record; and that Lessor guarantees the quiet possession thereof by Lessee, its successors and assigns and will warrant and defend Lessee's rights hereunder against all claims. Lessor represents that the execution and delivery of this Lease and performance by the Parties of their obligations pursuant to this Lease will not violate any agreement, instrument, order, judgment, decree, permit, approval, license, law, regulation or ordinance to which Lessor is a party or by which Lessor or its assets or the Premises is bound or which otherwise affect the Premises. Lessor shall indemnify, defend and hold Lessee and its successors and assigns harmless from and against any and all claims, damages, liabilities, losses, costs and expenses, including, without limitation, reasonable attorneys' fees and any consequential damages, arising from a breach of the representations, warranties, guarantees or covenants of Lessor contained in this Section 20.

Section 21. RESERVED.

Section 22. Amendment. No amendments, modifications or revisions shall be made to this Lease except in a written instrument signed by both Lessor and Lessee.

Section 23. Recitals. The recitals set forth above and the exhibits attached hereto are hereby incorporated herein.

Section 24. Miscellaneous.

Section 24.1. Limitation of Liability. Anything herein to the contrary notwithstanding, there shall be absolutely no personal liability on any person, firm, or entity who constitute the Lessor or Lessee with respect to any of the terms, covenants, conditions and provisions of this Lease, and Lessee and Lessor shall look solely to the interest of Lessor or Lessee, their successors and assigns, as applicable, for the satisfaction of each and every remedy of Lessee or Lessor in the event of default by Lessor or Lessee hereunder; such exculpation of personal liability is absolute and without any exception whatsoever.

Section 24.2. No Waiver. No waiver of any default of any obligation by any Party will be implied from the failure of the other Party to take any action with respect to a default.

Section 24.3. No Agency. Nothing in this Lease will be deemed or construed by either Party or by any third person to create the relationship of principal and agent or of

limited or general partners or of joint ventures or of any other association between the Parties.

Section 24.4. Termination. This Lease may be terminated (a) by mutual agreement of the Parties, (b) by Lessor, during any period in which the Project Property is not used and occupied primarily for residential purposes, in violation of the terms and conditions of Section 1.2 of this Lease, or (c) in accordance with the terms of Section 25 of this Lease. All of the Parties' rights and obligations under this Lease will cease upon termination of this Lease, except for those rights and obligations that survive termination by operation of the express terms of this Agreement.

Section 24.5 Right of Inspection. Lessor shall have the right to enter upon the Premises at any reasonable time to inspect the Premises.

Section 24.6 Venue. In the event any litigation arises out of or is based upon this Lease or the relationship between the Parties created by it, jurisdiction for such litigation shall lie solely with the courts of St. Joseph County, Indiana.

Section 24.7 Entire Agreement. This Lease shall constitute the entire agreement between the Parties. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding upon either Party except to the extent the same is incorporated into and set forth by this Lease.

Section 24.8 RESERVED.

Section 24.9 RESERVED.

Section 24.10 Third Party Rights. Nothing contained herein shall be deemed or construed by Lessor, Lessee, or by any third party to create between Lessor and Lessee any relationship other than the relationship of Lessor and Lessee.

Section 24.11 Partial Invalidity of Lease. The invalidity or unenforceability of any particular term or condition of this Lease shall have no effect upon any other term or condition and this Lease shall be construed in all respects as if such invalid or unenforceable term or condition had not been contained herein.

Section 24.12 Authority to Execute Lease. Each person executing this Lease on behalf of Lessor or Lessee represents and warrants that:

- (a) he or she has been authorized to execute and deliver this Lease by the entity for which he or she is signing; and
- (b) this Lease is valid and binding upon such entity, enforceable in accordance with its terms.

Section 24.13. Memorandum of Lease. The Parties hereto shall not record this Lease but each Party shall execute upon the request of the other a "Memorandum of Lease" suitable for recording.

Section 25. New Building and Parking Garage. In the event Lessor disposes of all or part of the Support Parcel under the terms of the Option Agreement, whether to Developer or a third party, this Lease shall be terminated in its entirety. The effective date of such termination will be determined by Lessor in consideration of any arrangements made and property acquired by Lessor for the construction of the Parking Garage (as such term is defined in the Option Agreement). Lessor will provide Lessee at least sixty (60) days' advance written notice of the termination of this Lease in accordance with this Section 25.

Section 26. Parking During Construction. In the event that Lessor constructs the Parking Garage in accordance with and subject to the terms of the Option Agreement, Lessor will provide Lessee with replacement parking spaces within two (2) blocks of the Project Property at all times after the termination of this Lease under Section 25 until the completion of the Parking Garage (the "Replacement Parking Spaces"). The total number of Replacement Parking Spaces, wherever individually located, will be equal to the total number of parking spaces on the Premises made unavailable to Lessee as a result of the construction of the Parking Garage. Upon completion of the Parking Garage, Lessor will provide Lessee with access to the Parking Garage and exclusive use of a number of parking spaces within the first three (3) levels of the Parking Garage equal to the number of parking spaces on the Premises leased by Lessee under this Lease immediately prior to the termination of this Lease under Section 25. Such provision of access and use shall be set forth in a written agreement upon a form reasonably acceptable to Lessee and shall not include any additional rent or other cost to Lessee (including, without limitation, any maintenance costs). In addition, the term of such agreement will not exceed the part of the Term of this Lease remaining at the time this Lease is terminated under Section 25. Lessor shall be responsible for the repair, replacement and maintenance of the Parking Garage and, upon completion of construction thereof, shall keep the same in clean, neat and safe condition and in good working and operational order. This Section 26 shall survive the expiration or earlier termination of this Lease.

Section 27. Continued Access and Use. In the event this Lease expires or is otherwise partially or wholly terminated in accordance with Section 24.4 of this Lease, upon Lessee's request, Lessor (i) shall grant easements in, on, under, over, across and upon the Premises for the benefit of the Project Property as reasonably necessary to provide continued use of the Premises for utility service boxes and other equipment then serving the Project Property and as reasonably necessary to allow placement and use of one or more trash dumpsters or similar receptacles sufficient to serve the Project Property and (ii) will consider providing access and/or utility easements over a portion of the Parking Parcel for purposes of ingress to and egress from the Project Property and the Support Parcel, as Lessor deems appropriate in its sole discretion. Nothing in this Lease will be deemed to require Lessor to grant such easement to Lessee. This Section 27 shall survive the expiration or earlier termination of this Lease.

[Signature Page Follows.]

IN WITNESS WHEREOF, the undersigned have executed this Lease to be effective as of the Commencement Date.

“LESSOR”:

SOUTH BEND REDEVELOPMENT
COMMISSION, governing body of the Department
of Redevelopment of the City of South Bend, Indiana

By: _____

Printed: _____

Title: _____

ATTEST:

By: _____

Printed: _____

Title: _____

“LESSEE”:

THE LASALLE APARTMENTS, LLC, an Indiana
limited liability company

By: Executive Investments, LLC, its Member

By: _____
Ronda Shrewsbury Weybright, President

EXHIBIT A

SUPPORT PARCEL

A part of the West half of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, also known as Lots #2 and #3 in the recorded plan of the Original Plat of the Town (now City) of South Bend Portage Township, City of South Bend, St. Joseph County, Indiana. [Parcel Key Nos. 018-1002-0041 and 018-1002-0042]

EXHIBIT B

PARKING PARCEL

A part of the West half of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, also known as Lot #10 in the recorded plan of the Original Plat of the Town (now City) of South Bend Portage Township, City of South Bend, St. Joseph County, Indiana. [Parcel Key No. 018-1008-0304]

EXHIBIT C

PROJECT PROPERTY

A part of the West half of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, also known as Lot #1 in the recorded plan of the Original Plat of the Town (now City) of South Bend Portage Township, City of South Bend, St. Joseph County, Indiana. [Parcel Key No. 018-1002-0040]