



Department of
Community Investment

Memorandum

April 15, 2015

TO: South Bend Redevelopment Commission
FROM: David Relos, Economic Resources *DR*
SUBJECT: Resolution No. 3288: Parking Lease with La Salle Apartments LLC

On November 24, 2014, the Commission and Real America entered in to a Development Agreement for the redevelopment of the Hotel La Salle. La Salle Apartments LLC is a wholly owned subsidiary of the owner of Real America.

On March 26, 2015, the Commission approved Resolution No. 3282, approving various agreements referenced within the Development Agreement, one of which was the Parking Lease (Lease). This Lease was to be signed and become effective upon substantial completion of the project, and encompasses the parking lot between the La Salle and Morris and the Water Works parking lot fronting Main St.

To allow La Salle Apartments LLC to include this parking area in their title commitment at closing, it is necessary to revise the Lease to have it signed now. The effective date will remain the same, i.e. upon substantial completion of the project.

Staff requests approval of Resolution No. 3288.



RESOLUTION NO. 3288

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
REGARDING PARKING LEASE FOR 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 March 24, 2015 (the “Assignment Agreement”); and

WHEREAS, on March 26, 2015, the Commission adopted Resolution No. 3282 approving 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’s assignee under the Assignment Agreement, The LaSalle Apartments, LLC; and

WHEREAS, to facilitate the Developer’s ability to obtain necessary financing for the project, the Commission and the Developer desire to approve certain modifications of the form of lease attached to Resolution No. 3282 and to enter into said lease as of the date of Closing; and

WHEREAS, a revised form of lease (the “Revised Parking Lease,” attached hereto as **Exhibit A**) and a memorandum of the same for recordation purposes (the “Memorandum of Parking Lease,” attached hereto as **Exhibit B**) have been prepared for the Commission’s approval and immediate execution; and

WHEREAS, the Commission desires (a) to approve and execute the Revised Parking Lease and the Memorandum of Parking Lease and (b) to authorize certain Redevelopment staff members to take the necessary actions to deliver the Revised Parking Lease and the Memorandum of Parking Lease to the Developer at Closing.

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

1. The Commission approves the Revised Parking Lease attached hereto as Exhibit A.
2. The Commission approves the Memorandum of Parking Lease attached hereto as Exhibit B.
3. The Commission authorizes the following staff members to take any actions necessary to deliver the Revised Parking Lease and the Memorandum of Parking Lease to Developer at Closing: Brock Zeeb or David Relos.
4. This Resolution shall be in full force and effect upon its adoption.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on April 15, 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

Revised Parking Lease

PARKING LEASE

THIS PARKING LEASE (this "Lease") is made this ___ day of April, 2015 (the "Effective 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, 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 upon Substantial Completion of the Project in accordance with the terms and conditions of the Development Agreement (the "Commencement Date") and will terminate twenty (20) years from the date thereof and shall thereafter automatically renew for seven (7) successive periods of ten (10) years 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, (c) in accordance with the terms of Section 25 of this Lease or (d) by Lessor, in the event Lessee fails to reach Substantial Completion of the Project (as defined in the Development Agreement) within thirty-six (36) months following the Effective Date of this Lease or such other time as agreed in writing by the parties. 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 to 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 Effective 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]

EXHIBIT B

Memorandum of Parking Lease

MEMORANDUM OF PARKING LEASE

This Memorandum of Parking Lease (this “Memorandum”) is dated as of April ___, 2015, 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”). Lessor and Lessee are each referred to herein as a “party” and collectively as the “parties”.

WITNESSETH

WHEREAS, as of the date hereof, Lessor and Lessee entered into a Parking Lease (the “Lease”) for certain real estate situated in the City of South Bend, County of St. Joseph and State of Indiana, as more particularly set forth in the Lease and described on Exhibit A attached hereto and made a part hereof as if fully rewritten herein (the “Parking Area”); and

WHEREAS, the parties are desirous of placing their interests therein as a matter of record.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and the parties intending to be legally bound thereby, the parties hereto hereby agree as follows:

1. The Lease was executed to be effective on April ___, 2015, and the initial term of the Lease shall commence upon Lessee’s substantial completion of a mixed-use apartment project with retail or other commercial use on the ground floor to be known as “The LaSalle Apartments” on certain real property north and adjacent to the Parking Area in accordance with the terms and conditions of a certain Development Agreement between Lessor and RealAmerica Development LLC, an affiliate of Lessee, dated November 24, 2014, as heretofore partially assigned to Lessee, and shall end on the day immediately preceding the twentieth (20th) anniversary thereof and shall thereafter automatically renew for seven (7) successive periods of ten (10) year each.

2. This Memorandum may be executed in any number of counterparts, each of which counterpart, when so executed and delivered, shall be an original, but all such counterparts when taken together shall constitute but one and the same Memorandum.

3. The recitals set forth above are true and correct and are hereby incorporated herein by reference.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the day and year first above written.

“LESSOR”:

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

By: _____

Printed: _____

Title: _____

and

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 Lessor in the foregoing Memorandum of Parking Lease, and who, in such capacity, acknowledged the execution of the same as Lessor’s free and voluntary act and deed.

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

_____, Notary Public
Residing in _____ County, IN

My Commission Expires: _____

“LESSEE”:

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, to me known to be the President of the
Executive Investments, LLC, an Indiana limited liability company, being the sole
member of Lessee in the above Memorandum of Parking Lease, and acknowledged the
execution of the same as the Lessee’s free and voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of April, 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"

LEGAL DESCRIPTION

A part of the West half of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, also known as Lots #2, #3 and #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 Nos. 018-1002-0041, 018-1002-0042 and 018-1008-0304]