



# **SOUTH BEND ECONOMIC DEVELOPMENT COMMISSION**

227 West Jefferson Boulevard, South Bend, Indiana

## **AGENDA**

**Scheduled Meeting, February 12, 2024, at 8:00 am**

**BPW Conference Room 13<sup>th</sup> Floor or via:**

<http://tinyurl.com/EDCCOSB2024>

- 1. ROLL CALL**
- 2. ELECTION OF OFFICERS**
- 3. APPROVAL OF MINUTES**
- 4. NEW BUSINESS: REALAMERICA/LEGACY25 PROJECT**
  - A. PRESENTATION OF REALAMERICA PROJECT**
  - B. APPROVAL OF PROJECT REPORT**
  - C. PUBLIC HEARING REGARDING LOAN**
  - D. PRESENTATION OF FORM OF LOAN AGREEMENT AND FORM OF ORDINANCE**
  - E. APPROVAL OF RESOLUTION NO. 2024-1 MAKING FINDINGS RELATING TO THE FINANCING OF CERTAIN LOCAL PUBLIC IMPROVEMENTS TO SERVE ECONOMIC DEVELOPMENT FACILITIES, APPROVING SUCH FINANCING AND FORM OF LOAN AGREEMENT RELATED THERETO**
- 5. ADJOURNMENT**



# CITY OF SOUTH BEND

## ECONOMIC DEVELOPMENT COMMISSION

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### SOUTH BEND ECONOMIC DEVELOPMENT COMMISSION

December 11, 2023, at 11:00 am  
BPW Conference Room, 13<sup>th</sup> Floor  
<https://tinyurl.com/EDC12112023>

The South Bend Economic Development Commission was called to order at 11:06 am

#### 1. **Roll Call**

Members Present: Renata Matousova, Secretary  
Luis Zapata, Commissioner  
Rafael Morton, Vice-President

Members Absent: Cecilia Lopez Monterrosa, President  
Karen White, Commissioner

Staff: Danielle Campbell Weiss, Assistant City Attorney  
Mary Brazinsky, Board Secretary

Others Present: Caleb Bauer, Executive Director, DCI  
Erik Glavich, Director, Growth & Opportunity, DCI  
Lisa Lee, Note Attorney, Ice Miller  
Debra Passmore, Ice Miller

#### 2. **Election of Officers**

Upon a motion by Commissioner Luis Zapata and seconded by Secretary, Renata Matousova the Commission approved keeping the current state of officers for 2023; motion carried unanimously, on December 11, 2023.

#### 3. **Approval of Minutes**

Upon a motion by Secretary Renata Matousova and seconded by Commissioner Luis Zapata the Commission approved the meeting minutes of November 9, 2022; motion carried unanimously, on December 11, 2023.

#### 4. **New Business**

##### A. **Presentation of Monreaux Project**

Consideration was given to a request by Delta Ventures Ltd., an Indiana Nonprofit Corporation ("Borrower") and Monreaux LLC, which is under common control, for the issuance and funding of the City's Taxable Economic Development Revenue Note, Series 2023 (Monreaux Project) ("Series 2023 Note") for funding the construction of site work

and infrastructure improvements ("Local Public Improvements") needed to serve the redevelopment and development of: (i) a four-story building containing at least sixty-five thousand (65,000) square feet which will include the incorporation of the historic masonry features preserved by the hereinafter defined Redevelopment Commission; and (ii) a minimum of sixty (60) total apartment units of which no fewer than twenty-three (23) apartment units will be exclusively available for tenants at fifty percent (50%) or lower of the area median income ("AMI") and no fewer than an additional twenty-three (23) apartment units will be exclusively available for tenants at eighty percent (80%) or lower of AMI (collectively, "Development") on certain real estate acquired by the Borrower, in or physically connected to the River West Development Area and the River West Development Area Allocation Area No. 1 (collectively, "Area"). A discussion was had as to the proposals of the Borrower for the issuance and funding of the Series 2023 Note to finance the Local Public Improvements needed to serve the Development to be located generally at 505, 507, 511 and 513 S. Michigan Street, South Bend, Indiana.

Mr. Erik Glavich Presented an overview of the Monreaux Project. A group is leading this project called The Monreaux, LLC through the leadership of Deveraux Peters who is a developer based in Chicago. Mr. Glavich explained that Mr. Peters has been working with the city since 2022. The project is located at the corners of Monroe and Michigan, formerly the Fat Daddies site. Last year the project received low-income housing tax credit award (LIHTC) through the state of Indiana. A rendering of the site at 505 S Michigan Street was shown. This is currently a vacant lot. The project is a minimum of \$16M. The building will be a 4-story building (65,000 square feet). It will incorporate historic masonry preserved from HPC. There will be a minimum of sixty apartments. Twenty-three units for tenants at 50% AMI or lower and an additional twenty-three units for tenants at 80% or lower.

The Redevelopment Commission has approved \$2.3M in funding towards this project. The property will be transferred into the LLC and the project will be left for the developer to start construction. Mr. Glavich walked through the timeline of this project with a groundbreaking Spring 2024. Next step is presentation to Common Council with the ordinance. The following Thursday staff will ask for final approval of the loan agreement.

The commitments within the loan are equivalent to what is in the development agreement. Completion of the project with forty-six dedicated units made available to low to moderate housing incomes. The developer has committed to eight full time jobs. This is in line with the tax abatement received for completion within thirty-six months.

The forgivable loan is due to the tight deadlines from the state to complete within two years.

Commissioner Zapata asked what the process is to ensure that the apartments meet the requirements for residents.

Caleb Bauer stated that IHEDA will monitor the lease pricing as the rental pricing of the units and because of the award of the low-income tax credits. The developer will be bound for fifteen years to maintain those income qualified units.

Secretary Matousova confirmed that rent will be subsidized based on the income level of the resident.

Mr. Bauer stated yes, it is a fair market rent based on HUD guidelines for the specific AMI threshold.

Commissioner Morton asked how a new property like this compares to other properties throughout South Bend such as South Bend Heritage or the housing authority. How does the word get out to people in need? He is always concerned about how these properties are marketed.

Mr. Bauer states that it is similar to heritage or authority projects. The developer will be responsible for marketing to residents of appropriate incomes. Residents would be required to verify income. There is a waiting list for housing choice vouchers at the housing authority.

Commissioner Zapata asked if the developer could sell the property after development.

Mr. Bauer stated they cannot sell the property for at least fifteen years.

Secretary Matousova asked if the private funds had been secured.

Mr. Bauer stated yes, through the form of sale of credits and separate financing. Funds are available up front after closing. They would have to provide reports showing where funds went to.

Secretary Matousova asked if there were penalties if they fail to meet the minimum fifteen-year requirements.

Mr. Bauer stated there would be penalties from the state of Indiana through IHEDA if they failed to meet requirements and the tax credits would be clawed back.

Commissioner Zapata asked if this developer has other projects in the city of south bend.

Mr. Bauer stated this is the first project in South Bend, but she is interested in doing more in South Bend. She has done other projects in Chicago.

Commissioner Morton asked what fair market rent would be for one of those units.

Mr. Bauer stated a single-family household 80% AMI rent is approximately \$1,000 per month for metropolitan area. This is the high range of AMI.

Commissioner Morton stated he feels these are high for low-income housing.

Mr. Bauer states 50% rent limit is \$723 efficiency/\$775 1-bedroom/\$930 2-bedrom. At 65% rent limit \$920 efficiency/\$988 one bedroom. Those are caps and they can be subsidized. They could utilize a housing choice voucher. HUD sets these.

Commissioner Morton stated he still feels this rate is high.

**B. Project Report of Monreaux**

Mr. Erik Glavich presented a proposed report of the City entitled "Project Report of the South Bend Economic Development Commission Concerning the Issuance and Funding of the Taxable Economic Development Revenue Note, Series 2023 (Monreaux Project) for the Proposed Local Public Improvements to Serve Economic Development Facilities for Delta Ventures Ltd.," as attached hereto.

After consideration of the proposed report, upon a motion by Secretary Renata Matousova and seconded by Commissioner Luis Zapata, the motion carried unanimously, the Commission approved the presentation of the Monreaux Project on December 11, 2023.

**5. Public Hearing on Monreaux Project**

The Commission was presented with the proof of publication of a notice published on December 1, 2023 by the South Bend Tribune of a public hearing for this date before the Commission, regarding the loan to fund the Local Public Improvements to serve the Development for the Borrower. The public was invited to comment thereon as to the public purpose of the loan and financing and as to any adverse competitive effect that it might have. No comment was offered by members of the public to show an adverse competitive effect.

After all comments were heard and considered, the President closed the public hearing. The substantially final form of the Loan Agreement and the proposed form of ordinance (all such documents collectively to be considered the Financing Documents referred to in the Indiana Code, Title 36, Article 7, Chapters 11.9 and -12) were then presented to the Commission.

**6. Resolution No. 2023-1 Making Findings Relating to the financing of certain local public improvements to service Economic Development facilities, approving such financing and form of loan agreement related thereto.**

Mr. Erik Glavich Presented Resolution No. 2023-1 to the Economic Development Commission. This resolution would approve the loan documents. The obligation of the developer were previously discussed and upon completion of the obligations, the loan would be forgiven. This resolution also provides a recommendation to the Common Council for their ordinance to proceed with the financing of the loan.

Upon a motion by Secretary Renata Matousova and seconded by Vice-President Morton, the motion carried unanimously, the resolution was adopted.

**7. Adjournment**

There being no further business to come before the meeting, the meeting was adjourned at 11:36 a.m.

PROJECT REPORT OF THE SOUTH BEND ECONOMIC DEVELOPMENT COMMISSION CONCERNING THE ISSUANCE AND FUNDING OF THE TAXABLE ECONOMIC DEVELOPMENT REVENUE NOTE, SERIES 2024 (REALAMERICA PROJECT) FOR THE PROPOSED LOCAL PUBLIC IMPROVEMENTS TO SERVE ECONOMIC DEVELOPMENT FACILITIES FOR LEGACY25, INC.

The South Bend Economic Development Commission proposes to recommend to the Common Council of the City of South Bend, Indiana, that it issue and fund its Taxable Economic Development Revenue Note, Series 2024 ("Series 2024 Note") and loan the proceeds of the Series 2024 Note to Legacy25, Inc., an Indiana Nonprofit Corporation ("Borrower") and RealAmerica Development, LLC ("RealAmerica"), which is under common control, to finance the construction of site work and infrastructure improvements ("Local Public Improvements") needed to serve the redevelopment and development of: (i) a new residential apartment building containing at least seventy thousand (70,000) square feet, which shall include a minimum of sixty (60) total apartment units, of which all sixty (60) apartment units will be exclusively available for tenants at eighty percent (80%) or lower of the area median income; (ii) a second new residential apartment building containing at least fifty thousand (50,000) square feet, which shall include a minimum of forty-five (45) total market-rate apartment units; and (iii) a third new residential apartment building containing at least fifty thousand (50,000) square feet, which shall include a minimum of forty-five (45) total market-rate apartment units (collectively, "Development") on certain real estate acquired by the Borrower and RealAmerica, at an investment of approximately \$21,500,000 for construction of the Local Public Improvements and the Development and to create approximately two (2) new full-time job opportunities with a total estimated annual payroll of One Hundred Thousand Dollars (\$100,000), thus strengthening the economic well-being of the hereinafter defined Area and encouraging additional growth by contributing to the revitalization of and adding vibrancy to the neighborhood; each in or physically connected to the River West Development Area and the River West Development Area Allocation Area No. 1 (collectively, "Area"). The Local Public Improvements and Development are located generally at 504 and 520 S. Lafayette Blvd., 511, 515 and 517 S. Main Street and the northwest corner of S. Main St. and W. South St., South Bend, Indiana. Funds to be provided for the construction of a portion of the Local Public Improvements needed for the Development shall be from the issuance and funding of the Series 2024 Note, the proceeds of which will be loaned to the Borrower in an amount estimated not to exceed Three Million Eight Hundred Thousand (\$3,800,000) without further approvals, including costs of issuance of the Series 2024 Note.

No other public facilities to be paid for by the government will be made necessary on account of the proposed Local Public Improvement and Development.

The estimated investment in the Development is \$21,500,000. It is also estimated that upon completion of the Local Public Improvements and the Development, the operation will create approximately two (2) new full-time job opportunities with a total estimated annual payroll of One Hundred Thousand Dollars (\$100,000).

Adopted this 12<sup>th</sup> day of February, 2024.

SOUTH BEND ECONOMIC DEVELOPMENT  
COMMISSION

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President

Attest:

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Secretary

## Govt Public Notices

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### SOUTH BEND ECONOMIC DEVELOPMENT COMMISSION NOTICE OF PUBLIC HEARING

The City of South Bend (City) Economic Development Commission (Commission) will hold a public hearing at 8:00 a.m. on February 12, 2024, at the County/City Building, 13th Floor, 227 West Jefferson Blvd, South Bend, Indiana or via:

<https://tinyurl.com/EDCCOSB2024>, regarding the funding of a forgivable loan to Legacy25, Inc., an Indiana Nonprofit Corporation and RealAmerica Development, LLC, common entities desiring to share the rights and obligations under the development agreement (collectively, Developer), in the amount not to exceed \$3,800,000 (Loan) to be evidenced by the Developer's promissory note (Series 2024 Note) to finance the construction of site work and infrastructure improvements (Local Public Improvements) needed to serve the redevelopment and development of: (i) a new residential apartment building containing at least seventy thousand (70,000) square feet, which shall include a minimum of sixty (60) total apartment units, of which all sixty (60) apartment units will be exclusively available for tenants at eighty percent (80%) or lower of the area median income; (ii) a second new residential apartment building containing at least fifty thousand (50,000) square feet, which shall include a minimum of forty-five (45) total market-rate apartment units; and (iii) a third new residential apartment building containing at least fifty thousand (50,000) square feet, which shall include a minimum of forty-five (45) total market-rate apartment units, on certain real estate acquired by the Developer located generally at 504 and 520 S. Lafayette Blvd., 511, 515 and 517 S. Main Street and the northwest corner of S. Main St. and W. South St., South Bend, Indiana, in or physically connected to the River West Development Area Allocation Area No. 1 and to consider whether making the Loan will have an adverse competitive effect on any similar facilities already constructed or operating in the City.

The Loan will be made by the City pursuant to IC 36-7-11.9, -12 and -14, and an ordinance adopted by the Common Council (Loan Ordinance). The Loan will be evidenced by the Series 2024 Note executed by the Developer and as otherwise provided in the Loan Agreement, dated February 1, 2024, between the City and the Developer, and the Loan Ordinance.

The public hearing on the Local Public Improvements is being held pursuant to IC 36-7-12-24. The public is invited to attend and comment on any of the matters herein noted. Written comments may also be submitted to the Secretary of the Commission until 4:00



by providing written comments at the hearing.

Dated: January 28, 2024

SOUTH BEND ECONOMIC DEVELOPMENT COMMISSION

hspaxlp

LOAN AGREEMENT

BETWEEN

LEGACY25, INC.

AND

CITY OF SOUTH BEND, INDIANA

Dated as of February 1, 2024

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. DEFINITIONS AND EXHIBITS .....	2
Section 1.1. Terms Defined.....	2
Section 1.2. Rules of Interpretation.....	5
Section 1.3. Exhibits .....	5
ARTICLE II. REPRESENTATIONS; LOAN OF TIF REVENUES .....	6
Section 2.1. Representations by City .....	6
Section 2.2. Representations by Borrower.....	6
Section 2.3. Series 2024 Note .....	7
ARTICLE III. PARTICULAR COVENANTS OF THE BORROWER.....	8
Section 3.1. Forgiveness of Payment of Loan .....	8
Section 3.2. RESERVED .....	8
Section 3.3. Continuing Existence and Qualification .....	8
Section 3.4. Assignment, Sale or Other Disposition of Project .....	8
Section 3.5. Indemnity .....	8
Section 3.6. Issuance of Substitute Notes .....	8
Section 3.7. Payment of Expenses of Loan.....	9
Section 3.8. Reserved.....	9
Section 3.9. Other Amounts Payable by the Redevelopment Commission.....	9
Section 3.10. Completion of Project .....	9
Section 3.11. Sale, Substitution, or Lease of the Development; Assignment of Loan Agreement.....	9
ARTICLE IV. EVENTS OF DEFAULT AND REMEDIES THEREFOR.....	11
Section 4.1. Events of Default.....	11
Section 4.2. Remedies Cumulative .....	12
Section 4.3. Delay or Omission Not a Waiver.....	12
Section 4.4. Waiver of Extension, Appraisalment or Stay Laws .....	12
Section 4.5. Remedies Subject to Provisions of Law.....	12
Section 4.6. Rights of the City .....	12
Section 4.7. Waiver of Events of Default .....	13
Section 4.8. Limitation of Liability.....	13
Section 4.9. Force Majeure .....	13
ARTICLE V. IMMUNITY.....	14
Section 5.1. Immunity.....	14
ARTICLE VI. SUPPLEMENTS AND AMENDMENTS TO THIS LOAN AGREEMENT..	15
Section 6.1. Supplements and Amendments to this Loan Agreement.....	15
ARTICLE VII. DEFEASANCE.....	16
Section 7.1. Defeasance .....	16

ARTICLE VIII. MISCELLANEOUS PROVISIONS.....	17
Section 8.1. Termination by Borrower.....	17
Section 8.2. Dispute Resolution.....	17
Section 8.3. Confidentiality .....	17
Section 8.4. Information Security .....	17
Section 8.5. Loan Agreement for Benefit of Parties Hereto .....	17
Section 8.6. Severability .....	17
Section 8.7. Limitation on Interest.....	18
Section 8.8. Addresses for Notice and Demands .....	18
Section 8.9. Successors and Assigns.....	19
Section 8.10. Counterparts .....	19
Section 8.11. Governing Law.....	19
Section 8.12. Third-Party Beneficiary .....	19

## LOAN AGREEMENT

This is a LOAN AGREEMENT dated as of February 1, 2024 ("Loan Agreement") between LEGACY25, INC., an Indiana Nonprofit Corporation duly organized and existing and authorized to do business under the laws of the State of Indiana ("Legacy25" or "Borrower") and RealAmerica Development, LLC, an Indiana Limited Liability Company (collectively, with "Legacy25", "Developer"), and the CITY OF SOUTH BEND, INDIANA ("City"), a municipal corporation duly organized and validly existing under the laws of the State of Indiana.

### PRELIMINARY STATEMENT

WHEREAS, Indiana Code, Title 36, Article 7, Chapters 11.9 and 12, as supplemented and amended (collectively, "Act"), has been enacted by the General Assembly of Indiana.

WHEREAS, the Act provides that a municipal corporation may, pursuant to the Act, make direct loans to users or developers for the cost of acquisition, construction, or installation of economic development projects, including the construction of site work and infrastructure improvements ("Local Public Improvements") needed to serve the redevelopment and development of three (3) new residential apartment buildings, consisting of: (i) a new residential apartment building containing at least seventy thousand (70,000) square feet, which shall include a minimum of sixty (60) total apartment units, of which all sixty (60) apartment units will be exclusively available for tenants at eighty percent (80%) or lower of the area median income; (ii) a second new residential apartment building containing at least fifty thousand (50,000) square feet, which shall include a minimum of forty-five (45) total market-rate apartment units; and (iii) a third new residential apartment building containing at least fifty thousand (50,000) square feet, which shall include a minimum of forty-five (45) total market-rate apartment units on certain real estate acquired by the Developer as set forth on Exhibit B attached hereto, together with all necessary appurtenances, related improvements and equipment, with an overall investment of approximately \$21,500,000 ("Development"), with such loan to be secured by the pledge of secured or unsecured debt obligations of the Borrower to enhance revitalization efforts, increase the level of diversification of the tax base, promote economic development and job opportunities, and enhance the City's efforts to create a vibrant and active residential and business community; and

WHEREAS, the South Bend Redevelopment Commission ("Commission") has established the River West Development Area ("Area") and the River West Development Allocation Area No. 1 ("Allocation Area") and adopted an economic development plan, as amended (collectively, as amended, "Plan") for the Area pursuant to a declaratory resolution, as amended to date, and as confirmed by a confirmatory resolution, as amended to date (collectively, "Area Resolution").

The Plan contained specific recommendations for economic development in the Area, and the Area Resolution established the Allocation Area in accordance with IC 36-7-14-39 for the purpose of capturing the TIF Revenues (as hereinafter defined).

The City, upon finding that the Local Public Improvements needed to serve the Development (hereinafter, collectively, "Project") and the proposed financing of the construction thereof will create additional employment opportunities in the City; will benefit the health, safety, morals, and general welfare of the citizens of the City and the State of Indiana; will enhance

revitalization efforts; will increase the level and diversity of the tax base; will enhance efforts to create a vibrant and active residential and business community; and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing.

In order to induce the Borrower to complete the Project, the City intends to issue and fund the forgivable Taxable Economic Development Revenue Note, Series 2024 ("Series 2024 Note") in an amount not to exceed \$3,800,000.00 pursuant to the provisions of this Loan Agreement, and loan the proceeds of the Series 2024 Note, on a forgivable basis, to the Borrower to finance a portion of the cost of the Project in or physically connected to the Area.

This Loan Agreement provides for the payment of the Series 2024 Note by the Borrower and further provides for the Borrower's repayment obligation to be evidenced by the Series 2024 Note, substantially in the form attached hereto as Exhibit A.

Subject to the further provisions of this Loan Agreement, the loan will be payable solely out of the payments to be made by the Borrower (if any) on the Series 2024 Note.

In consideration of the premises, the forgivable loan, the acceptance of the Series 2024 Note by the City, and of other good and valuable consideration, the receipt whereof is hereby acknowledged, the Borrower has executed and delivered this Loan Agreement.

This Loan Agreement is executed upon the express condition that if the Borrower shall pay or cause to be paid all indebtedness hereunder (unless the 2024 Note is forgiven pursuant to Section 3.1 hereof) and shall keep, perform and observe all and singular the covenants and promises expressed in the Series 2024 Note, and this Loan Agreement to be kept, performed and observed by the Borrower, then the Series 2024 Note shall be forgiven by the holder of the Series 2024 Note.

The Borrower and the City hereby covenant and agree as follows:

## ARTICLE I.

### DEFINITIONS AND EXHIBITS

Section 1.1. Terms Defined. As used in this Loan Agreement, the following terms shall have the following meanings unless the context clearly otherwise requires:

"Act" means, collectively, Indiana Code 36-7-11.9 and -12, and any successor provisions of the Indiana Code or successor codes.

"Affidavit of Completion" means a written certificate of the Borrower stating that the Project has been completed in accordance with the terms of the Development Agreement and the Project is ready for use.

"Allocation Area" means the River West Development Area Allocation Area No. 1.

"Area" means the River West Development Area.

"Authorized Representative" means any officer of the Borrower or any other person certified by an officer of the Borrower to be the Borrower's Authorized Representative and with respect to the City means the Executive Director of the Department of Community Investment or any other person certified by the Mayor.

"Authorizing Resolution" means Resolution No. 3587 adopted by the South Bend Redevelopment Commission on January 11, 2024, authorizing the use of TIF Revenues on hand or to be on hand to fund the Series 2024 Note.

"Bond Counsel" means a nationally recognized firm of municipal bond attorneys acceptable to the City and the Borrower.

"Borrower" means Legacy25, Inc., an Indiana nonprofit corporation duly organized and existing and authorized to do business under the laws of the State of Indiana, or any successors and/or assigns thereto permitted under Section 3.3 hereof.

"Business Day" means any day other than a Saturday, Sunday or holiday, on which commercial banks in the City are open for conducting substantially all of their banking activities.

"City" means South Bend, Indiana, or any successor thereto or assign thereof.

"Commission" means the South Bend Economic Development Commission.

"Counsel" means an attorney duly admitted to practice law before the highest court of any state, and, without limitation, may include legal counsel for either the City or the Borrower.

"Developer" means Legacy25, Inc. and RealAmerica Development, LLC, common entities desiring to share the rights and obligations under the Development Agreement.

"Development" shall have the meaning set forth in the Project definition below.

"Development Agreement" means the agreement dated January 11, 2024 by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission and RealAmerica Development, LLC, an Indiana Limited Liability Company, with offices at 8250 Dean Road, Indianapolis, Indiana 46240, and Legacy25, Inc., an Indiana Nonprofit Corporation with offices at 8250 Dean Road, Indianapolis, Indiana 46240.

"Guaranty Agreement" means the agreement of RealAmerica Development, LLC to guarantee the payment of the Series 2024 Note, to the extent the Series 2024 Note is not forgiven pursuant to the Loan Agreement, in the form set forth on Exhibit C attached hereto.

"Loan" means the loan by the City to the Borrower.

"Mandatory Project Completion Date" means within thirty-six (36) months of the closing date, which closing date shall commence on February 29, 2024 or such earlier or later closing date as may be agreed to in writing by the parties.

"Note" or "Notes" means the Series 2024 Note, and any other note executed by the Borrower in connection with the Series 2024 Note, and any notes issued in exchange therefor pursuant (and subject) to Section 3.7 hereof.

"Note Counsel" means Ice Miller LLP or another a nationally recognized firm of municipal bond attorneys acceptable to the City and the Borrower.

"Project" means the construction of site work and infrastructure improvements needed to serve the redevelopment and development of: (i) a new residential apartment building containing at least seventy thousand (70,000) square feet, which shall include a minimum of sixty (60) total apartment units, of which all sixty (60) apartment units will be exclusively available for tenants at eighty percent (80%) or lower of the area median income; (ii) a second new residential apartment building containing at least fifty thousand (50,000) square feet, which shall include a minimum of forty-five (45) total market-rate apartment units; and (iii) a third new residential apartment building containing at least fifty thousand (50,000) square feet, which shall include a minimum of forty-five (45) total market-rate apartment units on certain real estate acquired by the Developer with an overall investment of approximately \$21,500,000, as set forth on Exhibit B attached hereto, together with all necessary appurtenances, related improvements and equipment ("Development"), all in or physically connected to the Area.

"Project Costs" with respect to the Project shall mean any and all costs permitted by the Act including, but not limited to:

(i) the "Note Issuance Costs," namely the reasonable third-party costs, fees and expenses incurred or to be incurred by the City in connection with the Loan, the reasonable fees of disbursements of the City's municipal advisor, application fees and expenses, publication costs, the filing and recording fees in connection with any necessary filings or recordings or to perfect the lien thereof, the out-of-pocket costs of the City, the reasonable fees and disbursements of Counsel to the City, the reasonable fees and expenses of Note Counsel, the costs of preparing or printing the Series 2024 Note and the documentation supporting the Loan, the costs of reproducing documents and any other costs of a similar nature reasonably incurred;

(ii) design costs and other expenses directly related to the construction and equipping of the Project;

(iii) the cost of insurance of all kinds that may be required or necessary in connection with the construction or equipping of the Project;

(iv) all costs and expenses which Borrower shall be required to pay, under the terms of any contract or contracts (including the architectural and engineering, development, and legal services with respect thereto), for the construction of the Project; and

(v) any sums required to reimburse the Borrower for advances made subsequent to the date the Series 2024 Note is funded for any of the above items or for any other costs previously incurred and for work done by Borrower which are properly chargeable to the Project.



"Redevelopment Commission" means the South Bend Redevelopment Commission.

"Series 2024 Note" means the Series 2024 Note of the Borrower in the aggregate maturity amount of \$3,800,000 in substantially the form attached hereto as Exhibit A which will be issued and delivered by the Borrower to the City to evidence the Loan in the amount due by the Borrower and any Note issued in exchange for the Series 2024 Note pursuant to Section 3.7 hereof.

"State" means the State of Indiana.

"TIF Revenues" means property tax proceeds on hand or to be on hand in the allocation fund for the Allocation Area from the assessed valuation of real property in the Allocation Area in excess of the assessed valuation described in IC 36-7-14-39(b)(1) as reduced by the credit provided for in IC 36-7-14-39.5 as such statutory provisions exist on the date of the issuance of the Series 2024 Note.

"Written Request" means a request in writing from an authorized representative of the party making the request.

Section 1.2. Rules of Interpretation. For all purposes of this Loan Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) "This Loan Agreement" means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Loan Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) The terms defined elsewhere in this Loan Agreement shall have the meanings therein prescribed for them.

Section 1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Loan Agreement.

- Exhibit A. Form of Series 2024 Note
- Exhibit B. Description of Real Estate Acquired
- Exhibit C. Form of Guaranty Agreement

(End of Article I)

## ARTICLE II.

### REPRESENTATIONS; LOAN OF TIF REVENUES

Section 2.1. Representations by City. The City represents and warrants that:

(a) The City is a municipal corporation duly organized and validly existing under the laws of the State. Under the provisions of the Act, the City has been authorized by action of its governing body to enter into the transactions contemplated by this Loan Agreement and to carry out its obligations hereunder.

(b) The City agrees to make the Loan for the purpose of financing a portion of the construction of the Project for the benefit of the Borrower, to benefit the health, safety, morals and general welfare of the citizens of the City, increase economic well-being of the State, promote job opportunities and attract major new businesses.

Section 2.2. Representations by Borrower. Borrower represents and warrants that:

(a) The Borrower is an Indiana Nonprofit Corporation duly organized under the laws of the State of Indiana, validly exists and authorized to do business under the laws of the State of Indiana, is not in violation of any provision of its Articles of Incorporation, has not received notice and has no reasonable grounds to believe that it is in violation of any laws in any manner material to its ability to perform its obligations under this Loan Agreement and the Series 2024 Note, has the power to enter into and to perform its obligations under this Loan Agreement and the Series 2024 Note, and has duly authorized the execution and delivery of this Loan Agreement and the Series 2024 Note by appropriate corporate action.

(b) The Borrower anticipates creating at least 2 full-time job opportunities, with a total estimated annual payroll of One Hundred Thousand Dollars (\$100,000.00). The Borrower and its affiliates shall cause a total investment of up to approximately \$21,500,000.00 in real and depreciable personal property (exclusive of land costs).

(c) All of the proceeds from the Series 2024 Note (including any income earned on the investment of such proceeds) provided to the Borrower will be used solely for Project Costs.

(d) The Borrower intends to develop, construct and operate or cause the Development to be developed, constructed and operated as an economic development facility under the Act until the expiration or earlier termination of this Loan Agreement as provided herein, unless the Borrower has sold or otherwise transferred the Development to a Surviving Corporation (as hereinafter defined) in accordance with Section 3.3 or assigned this Loan Agreement in accordance with Section 3.11 of this Loan Agreement.

(e) Neither the execution and delivery of this Loan Agreement, the consummation of the transactions contemplated hereby including execution and delivery of the Series 2024 Note nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement, will contravene the Borrower's Articles of Incorporation or any law or any governmental rule, regulation or order presently binding on the Borrower or conflicts with or results in a breach of the terms, conditions or provisions of any agreement or instrument to which Borrower is now a party

or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any liens, charges, or encumbrances whatsoever upon any of the property or assets of Borrower under the terms of any instrument or agreement.

(f) The execution, delivery and performance by the Borrower of this Loan Agreement and the Series 2024 Note do not require the consent or approval of the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or other governmental authority or agency, not previously obtained or performed.

(g) Assuming the due authorization, execution and delivery thereof by the other parties thereto, this Loan Agreement and the Series 2024 Note have been duly executed and delivered by the Borrower and constitute the legal, valid and binding agreements of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general.

(h) There are no actions, suits or proceedings pending, or, to the knowledge of the Borrower, threatened, before any court, administrative agency or arbitrator which, individually or in the aggregate, might result in any material adverse change in the financial condition of the Borrower or might impair the ability of the Borrower to perform its obligations under this Loan Agreement or the Series 2024 Note.

(i) No event has occurred and is continuing which with the lapse of time or the giving of notice would constitute an event of default under this Loan Agreement or the Series 2024 Note.

(j) Upon the Mandatory Project Completion Date, as further set forth in Section 6.1 of the Development Agreement and as evidenced by written Certificates of Completion, to be delivered to the Controller, the Series 2024 Note will be forgiven.

Section 2.3. Series 2024 Note. Concurrently with the execution and delivery hereof, the City is authorizing the Loan to the Borrower and will fund the Loan following the execution of the Development Agreement. The Loan is being evidenced by the execution and delivery by the Borrower of the Series 2024 Note substantially in the form attached hereto as Exhibit A.

(End of Article II)

## ARTICLE III.

### PARTICULAR COVENANTS OF THE BORROWER

Section 3.1. Forgiveness of Payment of Loan. To the extent the applicable representation and condition in Section 2.2(j) is met, payment on the Series 2024 Note shall be forgiven immediately and the Series 2024 Note shall be considered paid and of no further force or effect. If the representation in Section 2.2(j) is not met, the Loan shall remain in effect and be payable upon the maturity date set forth in each Section 2024 Note.

Section 3.2. RESERVED.

Section 3.3. Continuing Existence and Qualification. The Borrower covenants that so long as any Series 2024 Note is outstanding, it: (a) will maintain in good standing its corporate existence and qualification to do business in the State; and (b) will not (1) dissolve or otherwise dispose of all or substantially all of its assets, and (2) consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided that the Borrower may, without violating its agreement contained in this Section, consolidate with or merge into another corporation or other entity, or permit one or more other corporations or other entities to consolidate with or merge into it, or sell or otherwise transfer to another corporation or entity all or substantially all of its assets as an entirety and thereafter dissolve, provided the surviving, resulting or transferee entity (such corporation being hereinafter called the "Surviving Corporation") (if other than the Borrower) expressly accepts, agrees and assumes in writing to pay and perform all of the obligations of the Borrower herein and be bound by all of the agreements of the Borrower contained in this Loan Agreement to the same extent as if the Surviving Corporation had originally executed this Loan Agreement, and the Surviving Corporation is an Indiana corporation or is a foreign corporation or partnership, trust or other person or entity organized under the laws of one of the states of the United States and is qualified to do business in the State of Indiana as a foreign corporation or partnership, trust or other person or entity.

Section 3.4. Assignment, Sale or Other Disposition of Project. Until the Loan is repaid (or deemed forgiven) in full, any sale, lease or other disposition of the Development or any portion thereof is subject to the conditions of Section 3.11 hereof.

Section 3.5. Indemnity. The Borrower will pay, protect, defend, indemnify and save the City, the Commission and the Redevelopment Commission harmless from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses of the City), causes of actions, suits, claims, demands and judgments of any nature arising from or relating to the Project, provided, that the liability of Borrower under this Section 3.5 shall be limited to the amount of the Loan actually received by Borrower as of the date of the alleged breach of the terms of this Loan Agreement. If any proceeding is instituted for which indemnity may be sought under this Section 3.5, the party that may seek such indemnity shall notify the Borrower and the City in writing in a timely manner to allow the Borrower to defend any action or claim in such proceeding.

Section 3.6. Issuance of Substitute Notes. Upon the surrender of any Note, the Borrower will execute and deliver to the holder thereof a new Note dated the date of the Note being surrendered but with appropriate notations thereon to reflect payments of principal already paid

on such Note; provided, however, that there shall never be outstanding at any one time more than one Note.

Section 3.7. Payment of Expenses of Loan. The Note Issuance Costs (as defined under "Project Costs" in Article I hereof) will be paid by the Borrower on the date the Loan is funded.

Section 3.8. Reserved.

Section 3.9. Other Amounts Payable by the Redevelopment Commission. The Redevelopment Commission covenants and agrees to pay the following:

(a) All reasonable out-of-pocket costs incurred by the City incident to the payment of the Series 2024 Note as the same become due and payable.

(b) An amount sufficient to reimburse the City and Commission for all expenses reasonably incurred by the City under this Loan Agreement and in connection with the performance of its obligations under this Loan Agreement.

(c) All reasonable expenses incurred in connection with the enforcement of any rights under this Loan Agreement by the City.

Section 3.10. Completion of Project. The Borrower agrees that it will use reasonable efforts to cause to be made, executed, acknowledged and delivered any contracts, orders, receipts, writings and instructions with any other persons, firms, corporations or partnerships and in general do all things which may be requisite or proper, all for constructing and completing the Project, to the extent permitted by law, by the Mandatory Project Completion Date.

If the moneys comprising the Loan should not be sufficient to pay in full the costs of the construction of the Project, the Borrower agrees, for the benefit of the City and to fulfill the purposes of the Act, to use commercially reasonable efforts to cause the completion of the construction of the Project and to pay or cause to be paid that portion of the costs therefor as may be in excess of the moneys available therefor. The City does not make any warranty, either express or implied, that the moneys will be available for payment of the costs of the construction of the Project, will be sufficient to pay all the costs which will be incurred in that connection. The Borrower shall not be entitled to any reimbursement therefor from the City, nor shall it be entitled to any diminution in or abatement or postponement of the amounts payable hereunder or under the Series 2024 Note.

Section 3.11. Sale, Substitution, or Lease of the Development; Assignment of Loan Agreement. The Borrower, subject to the written consent of the City (which consent shall not be unreasonably withheld), may sell, lease or transfer or otherwise dispose of the Project or any portion thereof only if the sale, lease or transfer or other disposition shall not relieve the Borrower from liability from all payments due under this Loan Agreement and the performance of all of the other obligations of this Loan Agreement, except as permitted by Section 3.4 hereof, unless the transferee accepts, agrees and assumes in writing to pay and perform all of the obligations of the Borrower herein and be bound by all of the agreements of the Borrower contained in this Loan Agreement to the same extent as if the transferee had originally executed this Loan Agreement.

(End of Article III)

## ARTICLE IV.

### EVENTS OF DEFAULT AND REMEDIES THEREFOR

Section 4.1. Events of Default. (a) The occurrence and continuance of any of the following events shall constitute an "event of default" hereunder:

(i) Failure of the Borrower to achieve and maintain the covenant set forth in Section 2.2(j) hereof, as further set forth in Section 6.1 of the Development Agreement; and

(ii) Failure of the Borrower to observe and perform any other covenant, condition or provision of this Agreement for a period of ninety (90) days after written notice, specifying such failure and requesting that it be remedied, given to the Borrower by the City, unless (i) the nature of the default is such that it cannot be remedied within the ninety (90) day period, (ii) the Borrower institutes corrective action within the ninety (90) day period and (iii) the Borrower diligently pursues such action until the default is remedied.

(b) Subject to the further provisions of this Article IV, during the occurrence and continuance of any event of default hereunder, the City or Borrower, as the case may be, shall have the rights and remedies hereinafter set forth in addition to any other remedies herein or by law provided:

(i) Acceleration. Solely if an event of default under Section 5.1(a)(i) of this Loan Agreement has occurred and is continuing, the City shall, by written notice to the Borrower, declare the principal of the Series 2024 Note due and payable, and upon any such declaration, the principal of the Series 2024 Note shall become and be immediately due and payable. The Borrower hereby acknowledges its obligation to repay upon default of Section 2.2(i) as set forth herein. This representation constitutes an agreement between the City and the Borrower that enhances or otherwise further secures the Series 2024 Note pursuant to IC 36-7-25-6 and shall be treated in the same manner as property taxes for real property owned by the Borrower or its affiliates, successors and assigns by merger or acquisition, for purposes of IC 6-1.1-22-13.

(ii) Right to Bring Suit, Etc. The City, with or without entry, personally or by attorney, may proceed to protect and enforce its rights by a suit or suits in equity or at law, whether for damages or for the specific performance of any covenant or agreement contained in the Series 2024 Note or this Loan Agreement, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, as the City shall deem most effectual to protect and enforce any of its rights or duties hereunder; provided, however that all reasonable costs incurred by the City under this Article shall be paid to the City by the Borrower on demand.

In the event of default by the City, the Borrower may proceed to protect and enforce its rights by a suit for the specific performance or any covenant or agreement contained in this Loan Agreement.

(iii) Waiver of Events of Default. If after any event of default occurs and prior to the City or Borrower exercising any of the remedies provided in this Loan Agreement, the Borrower or City, as the case may be, will have completely cured such default or the City or Borrower has waived such default, then in every case such default will be waived, rescinded and annulled by the City or Borrower by written notice given to the Borrower or City. No such waiver, annulment or rescission will affect any subsequent default or impair any right or remedy consequent thereon.

Section 4.2. Remedies Cumulative. No remedy herein conferred upon or reserved to the City or Borrower is intended to be exclusive of any other remedy or remedies provided herein. The remedies set forth in this Section are the sole and exclusive remedies of the City against Borrower under this Loan Agreement.

Section 4.3. Delay or Omission Not a Waiver. No delay or omission of the City or Borrower to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver of any such event of default or an acquiescence therein.

Section 4.4. Waiver of Extension, Appraisement or Stay Laws. To the extent permitted by law, neither the Borrower nor the City will during the continuance of any event of default hereunder insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Loan Agreement; and the Borrower and City hereby expressly waive all benefits or advantage of any such law or laws and covenants not to hinder, delay or impede the execution of any power herein granted to the City or Borrower, respectively, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

Section 4.5. Remedies Subject to Provisions of Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Loan Agreement invalid or unenforceable under the provisions of any applicable law.

Section 4.6. Rights of the City. If there shall be pending proceedings for the bankruptcy or for the reorganization of the Borrower under the United States Bankruptcy Code or any other applicable law, or in case a receiver, trustee, or custodian shall have been appointed for the property of the Borrower, or in the case of any other similar judicial proceedings relative to the Borrower, or to the creditors or property of the Borrower, the City shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to the Loan Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the City allowed in such judicial proceedings relative to the Borrower, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby



authorized to make such payments to the City, and to pay to the City any amount due it for compensation and expenses, including reasonable counsel fees and expenses incurred by it to the date of such distribution.

Section 4.7. Waiver of Events of Default. If after any event of default shall have occurred under this Loan Agreement and prior to the City or Borrower exercising any of the remedies provided in this Article, the Borrower or City, as the case may be, shall have completely cured such default, such default may be waived at the discretion of the City or Borrower and, if so waived, shall be rescinded and annulled by the City or Borrower by written notice given to the Borrower or City, respectively.

Section 4.8. Limitation of Liability. The City agrees and acknowledges that Borrower's representations, warranties, covenants, agreements and performance obligations under this Loan Agreement are limited to and apply exclusively to the operations of Developer at the Project site and any determination as to whether Borrower is in default of this Loan Agreement will be limited to Developer's operations at the Project site.

Section 4.9. Force Majeure. A party will not be deemed to be in default or otherwise in violation of any term of this Loan Agreement to the extent such party's action, inaction or omission is the result of Force Majeure Event (as defined below). The City and Borrower agree to use commercially reasonable efforts to promptly resolve any Force Majeure Event that adversely and materially impacts their performance under this Loan Agreement. A force majeure event pauses a party's performance obligation for the duration of the event but does not excuse it. "Force Majeure Event" means any event or occurrence that is not within the control of such party or its affiliates and prevents a party from performing its obligations under this Loan Agreement, including without limitation, any act of God; pandemic; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of either party); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the party hereto, over the Project or over a party's operations.

(End of Article IV)

ARTICLE V.

IMMUNITY

Section 5.1. Immunity. No covenant or agreement contained in this Loan Agreement shall be deemed to be a covenant or agreement of any member of the City, the Commission or the Redevelopment Commission or of any officer or employee of the City, the Commission, the Redevelopment Commission or their legislative and fiscal bodies in his or her individual capacity, and neither the members of the City, the Commission, the Redevelopment Commission nor any officer or employee of the City executing the Loan Agreement shall be liable personally on the Loan or be subject to any personal liability or accountability by reason of the Loan.

(End of Article V)

ARTICLE VI.

SUPPLEMENTS AND AMENDMENTS TO THIS LOAN AGREEMENT

Section 6.1. Supplements and Amendments to this Loan Agreement. The Borrower and the City may from time to time enter into such supplements and amendments to this Loan Agreement as to them may seem necessary or desirable to effectuate the purposes or intent hereof.

(End of Article VI)

ARTICLE VII.

DEFEASANCE

Section 7.1. Defeasance. If the Loan is funded and repayment of the Series 2024 Note is forgiven pursuant to the terms of this Loan Agreement, then and in that case, all property, rights and interest hereby conveyed or assigned or pledged shall revert to the Borrower, and the estate, right, title and interest of the City therein shall thereupon cease, terminate and become void; and this Loan Agreement, and the covenants of the Borrower contained herein, shall be discharged and the City in such case on demand of the Borrower and at its cost and expense, shall execute and deliver to the Borrower a proper instrument or proper instruments acknowledging the satisfaction and termination of this Loan Agreement, and shall convey, assign and transfer or cause to be conveyed, assigned or transferred, and shall deliver or cause to be delivered, to the Borrower, all property, including money, then held by the City together with the Series 2024 Note marked paid or cancelled.

(End of Article VII)

## ARTICLE VIII.

### MISCELLANEOUS PROVISIONS

Section 8.1. Termination by Borrower. Borrower has the right to terminate this Loan Agreement for any reason or no reason by delivering notice to the City at least 5 business days prior to the desired termination date.

Section 8.2. Dispute Resolution. The Borrower and the City ("Parties") shall use their best efforts to resolve quickly and informally any disputes that could impede performance of the Parties' obligations under this Loan Agreement. If the Parties are not able to resolve a dispute through such informal efforts, the dispute shall be resolved by mediation in accordance with the Indiana Rules of Dispute Resolution. Such mediation shall be a condition precedent to a Party commencing litigation against the other Party. This Agreement shall be governed and construed in accordance with the laws of the State of Indiana, without giving effect to its conflict of law rules. Any litigation commenced by a Party related to or arising out of this Agreement must be filed in the state courts of St. Joseph County, Indiana. The Parties further consent to the personal jurisdiction by said courts over it and hereby expressly waive, in the case of any such action, any defenses thereto based on jurisdictions, venue or forum non conveniens.

Section 8.3. Confidentiality. Borrower acknowledges that portions of this Loan Agreement and the materials, communications, data and information related to this Loan Agreement may constitute public records subject to disclosure under the State's public records laws and agrees that the City may disclose such portions of this Loan Agreement and the materials, communications, data and information related to this Loan Agreement as required by law, provided that the City gives Borrower prior written notice sufficient (in no event less than 7 calendar days) to allow Borrower to review any request for public record and make a recommendation to the City concerning its response to any request for public records related to this Loan Agreement.

Section 8.4. Information Security. The City agrees to use reasonable physical and technical measures to maintain the security of all electronic and tangible records relating to this Loan Agreement.

Section 8.5. Loan Agreement for Benefit of Parties Hereto. Nothing in this Loan Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto, their successors and assigns and the holder of the Series 2024 Note, any right, remedy or claim under or by reason of this Loan Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Loan Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns and the holder of the Series 2024 Note.

Section 8.6. Severability. If any one or more of the provisions contained in this Loan Agreement or in the Series 2024 Note shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein, shall not in any way be affected or impaired thereby.

Section 8.7. Limitation on Interest. No provisions of this Loan Agreement or of the Series 2024 Note shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein or in the Series 2024 Note provided for, or shall be adjudicated to be so provided for herein or in the Series 2024 Note, neither the Borrower nor its successors or assigns shall be obligated to pay such interest in excess of the amount permitted by law, and the right to demand the payment of any such excess shall be and hereby is waived, and this provision shall control any provisions of this Loan Agreement and the Note inconsistent with this provision.

Section 8.8. Addresses for Notice and Demands. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, with proper address as indicated below. The City and the Borrower may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Loan Agreement. Until otherwise provided by the respective parties, all notices, demands certificates and communications to each of them shall be addressed as follows:

To the City: City of South Bend, Indiana  
227 W. Jefferson Blvd, Suite 1400  
South Bend, IN 46601  
Attention: Executive Director of Community Investment

With a copy to: City of South Bend, Indiana  
1200S County-City Building  
227 W. Jefferson Blvd  
South Bend, IN 46601  
Attention: South Bend Legal Department

To the Redevelopment Commission: South Bend Redevelopment Commission  
1400S County-City Building  
227 W. Jefferson Blvd, Suite 1400  
South Bend, IN 46601  
Attention: Executive Director  
South Bend Dept. of Community Investment

To the Borrower: Legacy25, Inc.  
8250 Dean Road  
Indianapolis, IN 46240  
Attention: Ronda Shrewsbury

With copy to: RealAmerica Development, LLC  
8250 Dean Road  
Indianapolis, IN  
Attn: Ronda Shrewsbury

Mr. Gareth Kuhl  
429 N. Pennsylvania Street, Suite 210  
Indianapolis, IN 46204

Section 8.9. Successors and Assigns. Whenever in this Loan Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included and all the covenants, promises and agreements in this Loan Agreement contained by or on behalf of the Borrower, or by or on behalf of the City, shall bind and inure to the benefit of the respective successors and assigns, whether so expressed or not.

Section 8.10. Counterparts. This Loan Agreement is being executed in any number of counterparts, each of which is an original and all of which are identical. Each counterpart of this Loan Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument.

Section 8.11. Governing Law. It is the intention of the parties hereto that this Loan Agreement and the rights and obligations of the parties hereunder and the Series 2024 Note and the rights and obligations of the parties thereunder, shall be governed by and construed and enforced in accordance with, the laws of the State of Indiana.

Section 8.12. Third-Party Beneficiary. The parties hereto acknowledge and agree that the terms of this Loan Agreement may be enforced by the Redevelopment Commission. The Redevelopment Commission shall be deemed to be a third-party beneficiary of this Loan Agreement. Except as provided in the foregoing sentence and as specifically set forth herein, nothing in this Loan Agreement is intended to confer any rights or remedies under or by reason of this Loan Agreement on any person or entity other than the parties hereto and their successors and permitted assigns.

(End of Article VIII)

IN WITNESS WHEREOF, the City has caused this Loan Agreement to be executed in its name by its authorized officers and has caused its corporate seal to be hereunto affixed, and the Borrower has caused this Loan Agreement to be executed in their names, all as of the date first above written.

LEGACY25, INC.,  
an Indiana nonprofit corporation

By: \_\_\_\_\_

Printed: Ronda Shrewsbury

Title: President

REALAMERICA DEVELOPMENT, LLC  
an Indiana limited liability company

By: \_\_\_\_\_

Printed: Ronda Shrewsbury

Title: President and Owner



CITY OF SOUTH BEND, INDIANA

By: \_\_\_\_\_  
James Mueller, Mayor

By: \_\_\_\_\_  
Kyle Willis, City Controller

ATTEST:

By: \_\_\_\_\_  
Bianca Tirado, City Clerk

ACKNOWLEDGED BY THE SOUTH BEND  
REDEVELOPMENT COMMISSION, as Third-  
Party Beneficiary

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

Attest:

By: \_\_\_\_\_  
Vivian Sallie, Secretary

This instrument prepared by Lisa A. Lee, Ice Miller LLP, One American Square, Suite 2900,  
Indianapolis, Indiana 46282.

EXHIBIT A

FORM OF LEGACY25, INC.  
TAXABLE ECONOMIC DEVELOPMENT REVENUE NOTE  
SERIES 2024 NOTE

Issue Date: February \_\_, 2024  
Original Principal: \$3,800,000  
Maturity Date: \_\_\_\_\_, 203\_\_  
Interest Rate: \_\_\_\_%

FOR VALUE RECEIVED, the undersigned, Legacy25, Inc. ("Borrower"), a nonprofit corporation incorporated and existing under the laws of the State of Indiana and authorized to do business under the laws of the State of Indiana, hereby promises to pay to the order of the City of South Bend, Indiana ("City"), in immediately available funds, the interest and principal due under the Loan Agreement, dated as of February 1, 2024, between the City and Borrower ("Loan Agreement"), upon maturity, to the extent all or a portion of the principal and interest payable under this Series 2024 Note is not forgiven pursuant to the Loan Agreement, at such place as the City may direct, in immediately available funds based upon the outstanding principal amount drawn on this Note, which shall not to exceed \$3,800,000. Pursuant to the Guaranty Agreement, RealAmerica Development, LLC promises to pay the interest and principal due under the Loan Agreement, upon maturity, to the extent all or a portion of the principal and interest payable under this Series 2024 Note is not forgiven pursuant to the Loan Agreement

In certain events and in the manner set forth in the Loan Agreement, payments due under this Series 2024 Note are entitled to forgiveness.

This Series 2024 Note is issued pursuant to the Loan Agreement, and is entitled to the benefits, and is subject to the conditions thereof. The Borrower's obligations under this Series 2024 Note are subject in all respects to the further provisions of the Loan Agreement.

This Note is the Note referred to in the Loan Agreement and is subject to, and is executed in accordance with, all of the terms, conditions and provisions thereof, including those respecting prepayments.

In any case where the date of payment hereunder shall not be on a Business Day (as defined in the Loan Agreement), then such payment shall be made on the next succeeding Business Day with the same force and effect as if made on the date of payment hereunder.

All terms used in this Note which are defined in the Loan Agreement shall have the meanings assigned to them in the Loan Agreement.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed and attested by its duly authorized officers or representatives.

Dated the Issue Date set forth above.

LEGACY25, INC., an Indiana nonprofit corporation

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT B

DESCRIPTION OF REAL ESTATE ACQUIRED

**Tax ID No.** 018-3015-056301

**Parcel Key No.** 71-08-12-305-001.000-026

**Legal Description:** Lots 55 56 & 57 & W 1/2 Vac Alley E & Adj & N 1/2 Vac Alley S & Adj To Lot 57 Martins Addn

**Commonly known as:** 504 S. Lafayette Blvd., South Bend, Indiana 46601

**Tax ID No.** 018-3015-0578

**Parcel Key No.** 71-08-12-305-005.000-026

**Legal Description:** S 1/2 Lot 44 & 3 Ft N Side Lot 45 E 1/2 Vac Alley W & Adj Martins Add

**Commonly known as:** 511 S. Main St., South Bend, Indiana 46601

**Tax ID No.** 018-3015-0579

**Parcel Key No.** 71-08-12-305-006.000-026

**Legal Description:** 32 Ft N Side Lot 45 & E 1/2 Vac Alley W & Adj Martins Add

**Commonly known as:** 515 S. Main St., South Bend, Indiana 46601

**Tax ID No.** 018-3015-0580

**Parcel Key No.** 71-08-12-305-007.000-026

**Legal Description:** 31 Ft Sside Lot 45 & N 1/2 Vac Alley So. & Adj & E 1/2 Vac Alley W & Adj Martins Add

**Commonly known as:** 517 S. Main St., South Bend, Indiana 46601

**Tax ID No.** 018-3015-0563

**Parcel Key No.** 71-08-12-305-008.000-026

**Legal Description:** S 1/2 Lot 44 & 3 Ft N Side Lot 45 E 1/2 Vac Alley W & Adj Martins Add

**Commonly known as:** 520 S. Lafayette Blvd., South Bend, Indiana 46601

**Tax ID No.** 018-3015-0581

**Parcel Key No.** 71-08-12-305-009.000-026

**Legal Description:** Lot 46 47 48 1/2 Vac All No. & Adj & E 1/2 Vac Alley W & Adj Martins Addition

**Commonly known as:** Northwest corner of S. Main St. and W. South St., South Bend, Indiana 46601

EXHIBIT C  
FORM OF GUARANTY AGREEMENT

GUARANTY AGREEMENT  
(RealAmerica Development, LLC)

In consideration of the issuance of the City of South Bend, Indiana's ("Issuer") Taxable Economic Development Revenue Note, Series 2024 (RealAmerica Project), in the aggregate principal amount not to exceed \$3,800,000 ("Series 2024 Note"), as evidence of a loan to Legacy25, Inc., an Indiana Nonprofit Corporation ("Borrower"), as authorized by an ordinance of the Issuer adopted on February 12, 2024 to fund the construction of site work and infrastructure improvements ("Local Public Improvements") needed to serve the redevelopment and development of: (i) a new residential apartment building containing at least seventy thousand (70,000) square feet, which shall include a minimum of sixty (60) total apartment units, of which all sixty (60) apartment units will be exclusively available for tenants at eighty percent (80%) or lower of the area median income; (ii) a second new residential apartment building containing at least fifty thousand (50,000) square feet, which shall include a minimum of forty-five (45) total market-rate apartment units; and (iii) a third new residential apartment building containing at least fifty thousand (50,000) square feet, which shall include a minimum of forty-five (45) total market-rate apartment units on certain real estate (collectively, "Development" and hereinafter collectively with the Local Public Improvements, the "Project") to induce the Borrower and RealAmerica Development, LLC ("Guarantor") to construct the Development, all in or physically connected to the River West Development Area and the River West Development Area Allocation Area No. 1 as established by the Commission, the Issuer intends to issue and fund its forgivable Series 2024 Note, pursuant to a Loan Agreement, dated as of February 1, 2024, between the Issuer and the Borrower ("Loan Agreement"), and loan the proceeds of the Series 2024 Note, on a forgivable basis, to the Borrower to finance a portion of the costs of the Project.

The Loan Agreement provides for the payment of the Series 2024 Note by the Borrower and further provides for the Borrower's repayment obligation to be evidenced by the Series 2024 Note and, subject to provisions of the Loan Agreement, the loan will be payable solely out of the payments to be made by the Borrower (if any) on the Series 2024 Note.

The Guarantor is willing to enter into this Agreement to guarantee the payment of the Series 2024 Note, to the extent the Series 2024 Note is not forgiven pursuant to the Loan Agreement ("Indebtedness").

In addition to the obligation of the Guarantor to pay and perform when due the Indebtedness, if not forgiven pursuant to the Loan Agreement, upon the written demand of the Issuer, after the occurrence of any of the following events, the Guarantor shall immediately pay in full and satisfy the Indebtedness or portion thereof remaining unpaid or unsatisfied at such time, whether or not such Indebtedness may then be due and payable, together with the costs and expenses (including without implied limitation reasonable attorneys' fees) incurred by the Issuer in connection with the collection or enforcement of this Guaranty, without relief from valuation and appraisal laws:

- (a) The dissolution, liquidation, or termination of the business of the Borrower;
- (b) The assignment by the Borrower for the benefit of its creditors;
- (c) The appointment of a receiver or a trustee for the Borrower or any of its assets;
- (d) The filing of an involuntary petition to adjudicate the Borrower as bankrupt and the failure of the Borrower to obtain a dismissal of such petition within sixty (60) days; or
- (e) The filing by the Borrower of a voluntary petition to adjudicate the Borrower as bankrupt or for reorganization.

The obligations of the Guarantor under this Guaranty Agreement ("Agreement") shall be absolute and unconditional under any and all circumstances (including, but without limitation, any event, occurrence or circumstance, whether or not within the contemplation of the parties hereto and whether or not affecting the purposes of or any consideration to the Guarantor in entering into this Agreement) and shall remain in full force and effect until the Indebtedness has been paid in full. The obligations of the Guarantor shall not be affected, modified or impaired upon the happening from time to time of any event, including but without limitation any of the following, whether or not with notice to, or the consent of, the Guarantor:

(a) The waiver, surrender, compromise, alteration, settlement, discharge, release or termination of any or all of the obligations, covenants or agreements of the Borrower except for the payment and performance of the Indebtedness in full, to the extent not forgiven;

(b) The failure to give notice to the Borrower or the Guarantor of the occurrence of an event of default under the terms and provisions of this Agreement or any documents executed in connection with the Indebtedness;

(c) The extension of time for payment of any obligation or any amount due under this Agreement, if not forgiven, or of the time for performance of any other obligation, covenant or agreement under or arising out of this Agreement or any documents executed in connection with the Indebtedness;

(d) The rescission, waiver, modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in this Agreement or the Loan Agreement or any other act or thing or omission or delay to do any other act or thing which may in any manner or to any extent vary the risk of the Guarantor or would otherwise operate as a discharge of the Guarantor as a matter of law;

(e) The taking, suffering or omitting to take any of the actions referred to in this Agreement or any documents executed in connection with the Indebtedness;

(f) The failure, omission, delay or lack of diligence on the part of Borrower, as the owner of the Series 2024 Notes, to enforce, assert or exercise any right, power or remedy conferred on the Borrower under this Agreement or any documents executed in connection with the Indebtedness;

(g) The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, reorganization, arrangement, composition with creditors or readjustment of, or any similar proceedings affecting the Borrower or the allegation or contest of the validity of this Agreement or any documents executed in connection with the Indebtedness;

(h) The release or discharge of the Borrower from the performance or observance of any obligation, covenant or agreement contained in any documents executed in connection with the Indebtedness;

(i) Any event or action that would result in the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Agreement;

(j) The default or failure of the Guarantor fully to perform its obligations set forth in this Agreement;

(k) The invalidity, illegality or unenforceability of any documents executed in connection with the Indebtedness or any part thereof; or

(l) Any other cause similar or dissimilar to any of the foregoing.

The Guarantor acknowledges that the Guarantor has had an opportunity to review the Indebtedness, all other documentation evidencing the Indebtedness; and all other documentation and information which the Guarantor feels is necessary or appropriate in order to execute and deliver this Agreement to the Issuer and the Borrower. The Guarantor warrants and represents to the Issuer and the Borrower that the Guarantor has knowledge of the Borrower's financial condition and affairs and of all other circumstances which bear upon the risk assumed by the Guarantor under this Agreement. The Guarantor agrees to continue to keep informed thereof while this Agreement is in force and further agrees that the Borrower does not have and will not have any obligation to investigate the financial condition or affairs of the Borrower for the benefit of the Guarantor or to advise the Guarantor of any fact respecting, or any change in, the financial condition or affairs of the Borrower or any other circumstance which may bear upon the Guarantor's risk hereunder which comes to the knowledge of the Borrower at any time, whether or not the Borrower knows, believes or has reason to know or to believe that any such fact or change is unknown to the Guarantor or might or does materially increase the risk of the Guarantor hereunder.

This Agreement shall be binding upon the Guarantor and its respective successors, assigns and legal representatives and shall inure to the benefit of the Borrower and its successors, assigns and legal representatives. Notice of the acceptance of this Agreement is hereby waived by the Guarantor. The Guarantor shall have no right of contribution with respect to any other guarantor unless and until the Indebtedness has been paid in full or forgiven pursuant to the Loan Agreement. The Guarantor shall not pursue collection of any indebtedness of the Borrower to the Guarantor or exercise any right or remedy with respect to any security therefore unless and until the Indebtedness has been paid in full.

The Guarantor agrees that the Guarantor shall not cause or permit any substantial amount of the Guarantor's property, business or assets to be sold, terminated, assigned, conveyed, pledged or otherwise transferred or encumbered without fair and adequate consideration. The Guarantor also agrees to submit annual financial statements within 90 days of its fiscal year-end and to provide the Guarantor's federal income tax return within 2 weeks of filing.

If any demand is made at any time upon the Borrower for the repayment or recovery of any amount or amounts received by the Borrower in payment or on account of the Indebtedness, to the extent not forgiven pursuant to the Loan Agreement, and the Borrower repays all or any part of such amount or amounts by reason of any judgment, decree or order of any court or administrative body or by reason of any settlement or compromise of any such demand, the Guarantor will be and remain liable hereunder for the amount or amounts so repaid or recovered to the same extent as if such amount or amounts had never been received originally by the Borrower.

The Guarantor agrees that all actions or proceedings arising directly, indirectly or otherwise in connection with, out of, related to or from this Agreement shall be litigated, at the Borrower's sole discretion or election, in a court having situs within the State of Indiana where the Project is located. The Guarantor hereby consents and submits to the jurisdiction of any local, state or federal court located within Indiana.

The Guarantor agrees that this Guaranty shall be assignable to successor holders in the event of the sale of the Series 2024 Note.

This Agreement is executed and shall be construed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

REALAMERICA DEVELOPMENT, LLC

\_\_\_\_\_  
Ronda Shrewsbury, Managing Member



ORDINANCE NO.

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA AUTHORIZING THE CITY OF SOUTH BEND, INDIANA TO FUND ITS TAXABLE ECONOMIC DEVELOPMENT REVENUE NOTE, SERIES 2024 (REALAMERICA PROJECT) AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

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STATEMENT OF PURPOSE AND INTENT

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This ordinance authorizes the funding of the City of South Bend, Indiana ("City") Taxable Economic Development Revenue Note, Series 2024 (RealAmerica Project) ("Series 2024 Note") in an amount not to exceed Three Million Eight Hundred Thousand Dollars (\$3,800,000.00) ("Loan") and further approves and authorizes other actions in respect thereto.

Indiana Code 36-7-11.9 and 12 (collectively, "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose and pursuant to the Act, the City is authorized to make loans for the purpose of financing, reimbursing or refinancing all or a portion of the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the City. Legacy25, Inc., an Indiana Nonprofit Corporation ("Legacy25" or "Borrower") and RealAmerica Development, LLC, common entities desiring to share the rights and obligations under the development agreement, have proposed the development, construction and equipping of: (i) a new residential apartment building containing at least seventy thousand (70,000) square feet, which shall include a minimum of sixty (60) total apartment units, of which all sixty (60) apartment units will be exclusively available for tenants at eighty percent (80%) or lower of the area median income; (ii)

a second new residential apartment building containing at least fifty thousand (50,000) square feet, which shall include a minimum of forty-five (45) total market-rate apartment units; and (iii) a third new residential apartment building containing at least fifty thousand (50,000) square feet, which shall include a minimum of forty-five (45) total market-rate apartment units on certain real estate acquired by the Developer with an investment of approximately \$21,500,000 (collectively, "Development"), and to induce the Developer to construct the Development, the Commission has determined to fund a loan to the Borrower, as evidenced by the Series 2024 Note, to fund the construction of site work and infrastructure improvements needed to serve the Development ("Local Public Improvements"), all in or physically connected to the River West Development Area and the River West Development Area Allocation Area No. 1 as established by the South Bend Redevelopment Commission ("Redevelopment Commission").

The South Bend Economic Development Commission ("Commission") has rendered its Project Report regarding the issuance and funding of the Series 2024 Note from the City to the Borrower to finance a portion of the Local Public Improvements and the Project Report has been or will be submitted to the South Bend Area Plan Commission. The Commission conducted a public hearing and adopted a resolution and Project Report, which resolution and Project Report have been transmitted hereto, finding that the financing of a portion of the Local Public Improvements complies with the purposes and provisions of the Act and that such financing will be of benefit to the health and welfare of the City, its residents, and its visitors. The Commission has approved and recommended the adoption of this form of ordinance by this Common Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Common Council the forgivable loan agreement between the City and the Borrower (including the form of the Series 2024 Note), dated as of the first day of the

month the Series 2024 Note is issued ("Loan Agreement"). The Redevelopment Commission has pledged TIF Revenues (as defined in the Loan Agreement), junior and subordinate to any outstanding bonds payable from TIF Revenues and any bonds issued in the future on a parity with any outstanding bonds on hand to the funding of the Series 2024 Note pursuant to and in accordance with the Loan Agreement.

The form of the Series 2024 Note, the Loan Agreement and a form of this proposed ordinance have been submitted to the Commission for its approval, which are incorporated by reference in the Commission's resolution following the Commission's public hearing, which resolution has been transmitted to the Common Council. Based upon the resolution adopted by the Commission pertaining to the Local Public Improvements, the Common Council hereby finds and determines that the funding approved by the Commission for the Local Public Improvements will be of benefit to the health and general welfare of the citizens of the City, complies with the provisions of the Act and the amount necessary to fund a portion of the costs of the Local Public Improvements will require making the Loan and delivering the Series 2024 Note.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, THAT:

Section 1. It is hereby found, determined, ratified and confirmed that the financing and reimbursement of the Local Public Improvements, the making of the Loan to the Borrower to be evidenced by the Borrower's Series 2024 Note complies with the purposes and provisions of the Act and: (i) will result in the diversification of the tax base, the creation of job opportunities and the construction of housing and affordable housing within the jurisdiction of the City, (ii) will serve a public purpose, and will be of benefit to the health and general welfare of the City, (iii) complies with the purposes and provisions of the Act and it is in the public interest that the City

take such lawful actions as determined to be necessary or desirable to encourage the diversification of the tax base, the creation of job opportunities, and the construction of housing and affordable housing within the jurisdiction of the City, and (iv) will not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the City.

Section 2. The substantially final form of the Loan Agreement shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk. In accordance with the provisions of IC 36-1-5-4, two (2) copies of the Loan Agreement are on file in the office of the Clerk for public inspection.

Section 3. The costs of the Local Public Improvements will be funded to the Borrower from the Loan upon closing of the Loan. The City shall fund the Loan from TIF Revenues on hand, junior and subordinate to any outstanding bonds payable from TIF Revenues and any bonds issued in the future on a parity with any outstanding bonds, pledged by the Redevelopment Commission to the Borrower in the maximum amount not to exceed Three Million Eight Hundred Thousand Dollars (\$3,800,000), payable upon closing of the Loan. To the extent the representations in Section 2.2 of the Loan Agreement are met, payments on the series of the Loan shall be forgiven. If certain representations in Section 2.2 are not met, the Loan shall not be forgiven. The Series 2024 Note shall accrue interest at a rate not in excess of five percent (5.0%) per annum. The Series 2024 Note shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City. The Series 2024 Note shall not be subject to optional redemption prior to maturity.

Section 4. The Mayor, Controller and the Clerk are authorized and directed to execute the Loan Agreement, and such other documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transactions

contemplated by the Loan Agreement and this ordinance, and their execution is hereby confirmed on behalf of the City. The Mayor, Controller and Clerk are authorized to arrange for the delivery of such Series 2024 Note to the Borrower, payment for which will be made in the manner set forth in the Loan Agreement. The Mayor, Controller and Clerk may, by their execution of the Loan Agreement and any other documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in the Loan Agreement and any other documents without further approval of this Common Council or the Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

Section 5. The provisions of this ordinance and the Loan Agreement shall constitute a contract binding between the City and the Borrower.

Section 6. The Mayor, Controller or Clerk, or any other officer having responsibility with respect to the making of the Loan, evidenced by the Series 2024 Note, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the City, to deliver a certificate for inclusion in the transcript of proceedings for the Series 2024 Note, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the Loan as of the funding date thereof.

Section 7. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this ordinance, the Loan Agreement or under any judgment obtained against the City, including without limitation the Commission or Redevelopment Commission, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Loan Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the City, including without limitation the Commission or Redevelopment

Commission, either directly or through the City, or otherwise, for the payment for or to the City of any sum that may remain due and unpaid by the City upon any of such Series 2024 Note. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part or otherwise for, directly or indirectly, the payment for or to the City or any receiver thereof, or for or to any owner or holder of any sum that may remain due and unpaid upon the Series 2024 Note hereby secured shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Loan Agreement and the issuance and funding of the Series 2024 Note.

Section 8. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance.

Section 9. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, hereby repealed.

Section 10. It is hereby determined that all formal actions of the Common Council relating to the adoption of this ordinance were taken in one or more open meetings of the Common Council, that all deliberations of the Common Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including IC 5-14-1.5, as amended.

Section 11. The Mayor, Controller, and Clerk, and any other officer of the City are hereby authorized and directed, in the name and on behalf of the City, to execute and deliver such further documents and to take such further actions as such person(s) deem(s) necessary or desirable

to effect the purposes of this ordinance, and any such documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved.

Section 12. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

Passed and adopted by the South Bend Common Council this 12<sup>th</sup> day of February, 2024.

\_\_\_\_\_  
Sharon McBride, Council President  
South Bend Common Council

Attest:

\_\_\_\_\_  
Bianca Tirado, City Clerk  
Office of the City Clerk

Presented by me, the undersigned Clerk of the City of South Bend, to the Mayor of the City of South Bend, Indiana on the \_\_\_\_\_ day of February, 2024, at \_\_\_\_\_ o'clock \_\_\_\_ . m.

\_\_\_\_\_  
Bianca Tirado, City Clerk  
Office of the City Clerk

Approved and signed by me on the \_\_\_\_\_ day of February, 2024, at \_\_\_\_ o'clock \_\_\_\_ m

\_\_\_\_\_  
James Mueller, Mayor  
City of South Bend, Indiana

A RESOLUTION OF THE SOUTH BEND ECONOMIC DEVELOPMENT COMMISSION MAKING FINDINGS RELATING TO THE FINANCING OF CERTAIN LOCAL PUBLIC IMPROVEMENTS TO SERVE ECONOMIC DEVELOPMENT FACILITIES, APPROVING SUCH FINANCING AND FORM OF LOAN AGREEMENT RELATED THERETO

RESOLUTION NO. 2024-1

WHEREAS, relieving conditions of unemployment, underemployment and encouraging economic development of the community through the construction of housing and affordable housing in or near the City are essential to the health, safety and welfare of the City of South Bend, Indiana ("City" or "Issuer") and its citizens;

WHEREAS, the City is authorized by IC 36-7-11.9 and -12 (collectively, "Act") to make direct loans to users or developers for the financing of economic development facilities or improvements to serve economic development facilities, consisting of the construction of site work and infrastructure improvements ("Local Public Improvements") needed to serve the redevelopment and development of: (i) a new residential apartment building containing at least seventy thousand (70,000) square feet, which shall include a minimum of sixty (60) total apartment units, of which all sixty (60) apartment units will be exclusively available for tenants at eighty percent (80%) or lower of the area median income; (ii) a second new residential apartment building containing at least fifty thousand (50,000) square feet, which shall include a minimum of forty-five (45) total market-rate apartment units; and (iii) a third new residential apartment building containing at least fifty thousand (50,000) square feet, which shall include a minimum of forty-five (45) total market-rate apartment units (collectively, "Development") on certain real estate acquired by Legacy25, Inc. ("Borrower") and RealAmerica Development, LLC, at an overall investment of approximately \$21,500,000 for construction of the Development and Local Public Improvements needed to serve the Development and creation of at least two (2) full-time job opportunities with a total estimated annual payroll of One Hundred Thousand Dollars (\$100,000), thus strengthening the economic well-being of the Area and encouraging additional growth by contributing to the revitalization of housing and affordable housing to the neighborhood by the Borrower, in or physically connected to the River West Development Area and the River West Development Area Allocation Area No. 1 to be used for the financing of the Local Public Improvements to serve the Development;

WHEREAS, pursuant to the Act, the financing and inducement of economic development facilities constitutes a public purpose;

WHEREAS, the Borrower has requested the City issue and fund its Taxable Economic Development Revenue Note, Series 2024 (RealAmerica Project) ("Series 2024 Note") in an amount not to exceed Three Million Eight Hundred Thousand Dollars (\$3,800,000) ("Loan");

WHEREAS, the South Bend Economic Development Commission ("Commission") has studied the Local Public Improvements for the proposed financing of the Local Public



Improvements need to serve the Development and the effects on the health and general welfare of the City and its citizens;

WHEREAS, the completion of the Local Public Improvements to serve the Development will result in the diversification of industry, the creation of jobs and the provision of housing and affordable housing which also creates additional business opportunities in the City, and will be of public benefit to the health, safety and general welfare of the City and its citizens;

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to finance a portion of the Local Public Improvements to serve the Development by issuing the Series 2024 Note pursuant to the Loan Agreement;

WHEREAS, on January 11, 2024 the South Bend Redevelopment Commission adopted a resolution ("Pledge Resolution") pledging TIF Revenues on hand or to be on hand, junior and subordinate to any currently outstanding bonds payable from TIF Revenues and any bonds issued in the future on a parity with any currently outstanding bonds (as defined in the Pledge Resolution), to fund the Loan;

WHEREAS, the diversification of industry, the investment of approximately \$21,500,000, the creation of at least two (2) full-time job opportunities with a total estimated annual payroll of One Hundred Thousand Dollars (\$100,000) and the promotion of additional economic development opportunities to be achieved by the construction of the Local Public Improvements to serve the Development will be of public benefit to the health, safety and general welfare of the Issuer and its citizens;

WHEREAS, there has been submitted to the Commission for its approval a form of the loan agreement and the form of the proposed ordinance of the Common Council of the City ("Common Council") with respect to the Local Public Improvements and the Series 2024 Note;

WHEREAS, pursuant to Indiana Code 36-7-12-24, as amended, the Commission published notice of a public hearing ("Public Hearing") on the proposed issuance and funding of the Series 2024 Note to finance a portion of costs of financing the Local Public Improvements to serve the Development;

WHEREAS, on the date hereof the Commission held the Public Hearing on the Local Public Improvements; and

WHEREAS, no member of the Commission has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Series 2024 Note authorized herein, which pecuniary interest has not been fully disclosed to the Commission and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16;

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH BEND ECONOMIC DEVELOPMENT COMMISSION, THAT:

Section 1. The Commission has conducted a public hearing and considered any and all evidence and comments provided, and the Commission hereby finds, determines, ratifies and

confirms that the financing of the Local Public Improvements to serve the Development referred to in the hereinafter defined Loan Agreement; and the issuance and funding of the Series 2024 Note to pay a portion of the costs of the Local Public Improvements to serve the Development: (i) will result in the diversification of industry, the provision of housing and affordable housing which also creates additional business opportunities within the jurisdiction of the City; (ii) will serve a public purpose, and will be of benefit to the health and general welfare of the City; (iii) complies with the purposes and provisions of the Act and it is in the public interest that the City take such lawful action as determined to be necessary and desirable to encourage the diversification of industry, the provision of housing and affordable housing which also creates additional business opportunities, within the jurisdiction of the City; and (iv) will not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the City.

Section 2. The City shall fund the Loan to the Borrower in an amount not to exceed Three Million Eight Hundred Thousand Dollars (\$3,800,000), payable as set forth in Section 2.2 of the Loan Agreement. To the extent the representation in Section 2.2 of the Loan Agreement is met, payment on the Loan shall be forgiven as described therein. The Series 2024 Notes shall accrue interest at a rate not to exceed five percent (5.0%) per annum. The Series 2024 Note shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City. The Series 2024 Note shall not be subject to optional redemption prior to maturity.

Section 3. The Commission hereby approves the terms of the following documents in the form presented at this meeting: (i) a form of Loan Agreement between the City and the Borrower with respect to the Local Public Improvements (including the form of the Series 2024 Note), dated as of February 1, 2024 ("Loan Agreement"); (ii) the form of Ordinance to be presented to the Common Council ("Ordinance") authorizing the issuance and funding of the Series 2024 Note and providing for the terms thereof. The forms of Loan Agreement and Ordinance presented herewith are hereby approved, with any and all such changes as may be deemed necessary, desirable or appropriate by the Mayor, the Controller or any other officer of the City.

Section 4. The Commission hereby approves the report with respect to the Local Public Improvements presented at this meeting. The Secretary of the Commission shall submit such report to the executive director or chairperson of the South Bend Plan Commission.

Section 5. The Commission hereby finds and determines that the issuance of the Series 2024 Note in an amount not to exceed Three Million Eight Hundred Thousand Dollars (\$3,800,000) to the Borrower for the construction of a portion of the Local Public Improvements will each serve the public purposes referred to above, in accordance with the Act.

Section 6. The economic development facilities will consist of the Local Public Improvements to be located generally at 504 and 520 S. Lafayette Blvd., 511, 515 and 517 S. Main Street and the northwest corner of S. Main St. and W. South St., South Bend, Indiana, and served by the Local Public Improvements to serve the Development.

Section 7. It has considered whether the Local Public Improvements will have an adverse competitive effect on any similar facilities already under construction or in operation in the City, and now makes the following special findings of fact based upon the evidence presented:

(a) No member of the public or competitor presented any evidence of substantial probative value establishing that the Local Public Improvements to serve the Development would have any adverse competitive effect in any respect; and

(b) In the absence of any evidence of substantial probative value of any adverse competitive effect, the benefits to the public from the new jobs and payroll to be generated by the Local Public Improvements, demonstrate that the Local Public Improvements should be supported by the making of the Loan.

Section 8. Any officer of the Commission is hereby authorized and directed, in the name and on behalf of the Commission, to execute any and all other agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by him or her necessary or desirable in order to carry out and comply with the intent, conditions and purpose of this resolution (including the preambles hereto and the documents mentioned herein), the Local Public Improvements, the Development, the issuance and funding of the Series 2024 Note, and any such execution, performance, approval or doing of other things heretofore effected be, and hereby is, ratified and approved.

Section 9. The Secretary of the Commission shall transmit a copy of this resolution, together with two (2) copies of the forms of Loan Agreement and Ordinance approved by this resolution, to the Clerk for presentation to the Common Council with the recommendation that the Common Council adopt the proposed form of Ordinance approving the issuance and funding of the Series 2024 Note and the Loan Agreement in their substantially final forms as hereby recommended.

Section 10. The Secretary shall initial and then insert a copy of the forms of documents approved by this Resolution in the minute book of this Commission.

Adopted this 12<sup>th</sup> day of February, 2024.

SOUTH BEND ECONOMIC DEVELOPMENT  
COMMISSION

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary