



# CITY OF SOUTH BEND

## COMMUNITY INVESTMENT

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**Santiago Garces, Executive Director**

### Memorandum

July 8, 2021

TO: Redevelopment Commission

FROM: Andrew Netter, Department of Community Investment

SUBJECT: Approval of Purchase Agreement for 2401 W. Western Ave., South Bend, IN 46619

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The Department of Community Investment is asking for the Redevelopment Commission to approve the Real Estate Purchase Agreement for the sale of 2401 W. Western Ave., South Bend, IN 46619, commonly known as the former Polish National League building site.

The City wishes to sell the property to Panaderia Y Supermercado for \$1,000. As part of the sale of the property, Panaderia Y Supermercado has agreed to the following terms: building a grocery store of at least 10,000 square feet; building at least two additional commercial/office tenant spaces; commencing construction within 12 months; completing construction within 36 months; employing at least 25 employees; using design elements consistent with the City's 2014 West Side Main Streets Master Plan; and providing designs and plans consistent with the City's standards for review and acceptance at the discretion of the City's Planning Team.

## **REAL ESTATE PURCHASE AGREEMENT**

This Real Estate Purchase Agreement (this “Agreement”) is made on July 8, 2021 (the “Contract Date”), by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (“Seller”) and Panaderia y Supermercado San Miguel, Inc., an Indiana corporation with its registered office at 2712 W. Western Ave., South Bend, IN 46619 (“Buyer”) (each a “Party” and together the “Parties”).

### RECITALS

A. Seller exists and operates pursuant to the Redevelopment of Cities and Towns Act of 1953, as amended, being Ind. Code 36-7-14 (the “Act”).

B. In furtherance of its purposes under the Act, Seller owns certain real property located in South Bend, Indiana (the “City”), and more particularly described in attached **Exhibit A** (the “Property”).

C. Pursuant to the Act, Seller adopted its Resolution No. 3429 on March 8, 2018, whereby Seller established an offering price of Sixty-Three Thousand Dollars (\$63,000.00) for the Property.

D. Pursuant to the Act, on March 8, 2018, Seller authorized the publication, on March 16, 2018, and March 23, 2018, respectively, of a notice of its intent to sell the Property and its desire to receive bids for said Property on or before April 12, 2018, at 9:00A.M.

E. As of April 12, 2018, at 9:00A.M., Seller received no bids for the Property, and, therefore, having satisfied the conditions stated in Section 22 of the Act, Seller now desires to sell the Property to Buyer on the terms stated in this Agreement.

THEREFORE, in consideration of the mutual covenants and promises in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, Buyer and Seller agree as follows:

### **1. OFFER AND ACCEPTANCE**

A copy of this Agreement, signed by Buyer, constitutes Buyer’s offer to purchase the Property on the terms stated in this Agreement and shall be delivered to Seller, in care of the following representative (“Seller’s Representative”):

TO SELLER: Santiago Garces  
Executive Director  
Department of Community Investment  
City of South Bend  
1400 S. County-City Building  
227 W. Jefferson Blvd.  
South Bend, Indiana 46601

WITH COPY TO: South Bend Legal Department  
Attn: Corporation Counsel  
City of South Bend  
1200 S. County-City Building  
227 W. Jefferson Blvd.  
South Bend, Indiana 46601

This offer shall expire thirty (30) days after delivery unless accepted by Seller. To accept Buyer's offer, Seller shall return a copy of this Agreement, counter-signed by Seller in accordance with applicable laws, to the following ("Buyer's Representative"):

TO BUYER: Panaderia y Supermercado San Miguel, Inc.  
Attn. Ariana Y. Rodriguez Romero, President  
2712 W. Western Ave.  
South Bend, Indiana 46619

WITH COPY TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2. PURCHASE PRICE AND EARNEST MONEY DEPOSIT**

A. Purchase Price. The purchase price for the Property shall be One Thousand Dollars (\$1,000.00) (the "Purchase Price"), payable by Buyer to Seller in cash at the closing described in Section 10 below (the "Closing," the date of which is the "Closing Date").

B. Earnest Money Deposit. Within five (5) business days after the Contract Date, Buyer will deliver to Seller the sum of One Hundred Dollars (\$100.00), which Seller will hold as an earnest money deposit (the "Earnest Money Deposit"). Seller will be responsible for disposing of the Earnest Money Deposit in accordance with the terms of this Agreement. The Earnest Money Deposit shall be credited against the Purchase Price at the Closing or, if no Closing occurs, refunded or forfeited as provided below.

C. Termination During Due Diligence Period. If Buyer exercises its right to terminate this Agreement by written notice to Seller in accordance with Section 3 below, the Earnest Money

Deposit shall be refunded to Buyer. If Buyer fails to exercise its right to terminate this Agreement by written notice to Seller within the Due Diligence Period, then the Earnest Money Deposit shall become non-refundable.

D. Liquidated Damages. If Seller complies with its obligations hereunder and Buyer, not having terminated this Agreement during the Due Diligence Period in accordance with Section 3 below, fails to purchase the Property on or before the Closing Date, the Earnest Money Deposit shall be forfeited by Buyer and retained by Seller as liquidated damages in lieu of any other damages.

### **3. BUYER'S DUE DILIGENCE**

A. Investigation. Buyer and Seller have made and entered into this Agreement based on their mutual understanding that Buyer intends to develop the Property into a commercial project including a full-service grocery store and other commercial spaces (the "Buyer's Use"). Seller acknowledges that Buyer's determination whether Buyer's Use is feasible requires investigation into various matters (Buyer's "Due Diligence"). Therefore, Buyer's obligation to complete the purchase of the Property is conditioned upon the satisfactory completion, in Buyer's discretion, of Buyer's Due Diligence, including, without limitation, Buyer's examination, at Buyer's sole expense, of zoning and land use matters, environmental matters, real property title matters, and the like, as applicable.

B. Due Diligence Period. Buyer shall have a period of sixty (60) days following the Contract Date to complete its examination of the Property in accordance with this Section 3 (the "Due Diligence Period").

C. Authorizations During Due Diligence Period. During the Due Diligence Period, Seller authorizes Buyer, upon Buyer providing Seller with evidence that Buyer has general liability insurance reasonably acceptable to Seller, in the amount of at least One Million Dollars (\$1,000,000), naming Seller as an additional insured and covering the activities, acts, and omissions of Buyer and its representatives at the Property, to

(i) enter upon the Property or to cause agents to enter upon the Property for purposes of examination; provided, that Buyer may not take any action upon the Property which reduces the value thereof and Buyer may not conduct any invasive testing at the Property without Seller's express prior written consent; further provided, that if the transaction contemplated herein is not consummated, Buyer shall promptly restore the Property to its condition prior to entry, and agrees to defend, indemnify and hold Seller harmless, before and after the Closing Date whether or not a closing occurs and regardless of any cancellations or termination of this Agreement, from any liability to any third party, loss or expense incurred by Seller, including without limitation, reasonable attorney fees and costs arising from acts or omissions of Buyer or Buyer's agents or representatives; and

(ii) file any application with any federal, state, county, municipal or regional agency relating to the Property for the purpose of obtaining any approval necessary for Buyer's anticipated use of the Property. If Seller's written consent to or signature upon any such application is required by any such agency for consideration or acceptance of any such application,

Buyer may request from Seller such consent or signature, which Seller shall not unreasonably withhold. Notwithstanding the foregoing, any zoning commitments or other commitments that would further restrict the future use or development of the Property, beyond the restrictions in place as a result of the current zoning of the Property, shall be subject to Seller's prior review and written approval.

D. Environmental Site Assessment. Buyer may, at Buyer's sole expense, obtain a Phase I environmental site assessment of the Property pursuant to and limited by the authorizations stated in this Section 3.

E. Termination of Agreement. If at any time within the Due Diligence Period Buyer determines, in its sole discretion, not to proceed with the purchase of the Property, Buyer may terminate this Agreement by written notice to Seller's Representative, and Buyer shall be entitled to a full refund of the Earnest Money Deposit.

#### **4. SELLER'S DOCUMENTS; ENVIRONMENTAL SITE ASSESSMENT**

Upon Buyer's request, Seller will provide Buyer a copy of all known environmental inspection, engineering, title, and survey reports and documents in Seller's possession relating to the Property. In the event the Closing does not occur, Buyer will immediately return all such reports and documents to Seller's Representative with or without a written request by Seller.

#### **5. PRESERVATION OF TITLE**

After the Contract Date, Seller shall not take any action or allow any action to be taken by others to cause the Property to become subject to any interests, liens, restrictions, easements, covenants, reservations, or other matters affecting Seller's title (such matters are referred to as "Encumbrances"). Seller acknowledges that Buyer intends to obtain, at Buyer's sole expense, and to rely upon a commitment for title insurance on the Property (the "Title Commitment") and a survey of the Property (the "Survey") identifying all Encumbrances as of the Contract Date. The Property shall be conveyed to Buyer free of any Encumbrances other than Permitted Encumbrances (as defined in Section 7 below).

#### **6. TITLE COMMITMENT AND POLICY REQUIREMENTS**

Buyer shall obtain the Title Commitment for an owner's policy of title insurance issued by a title company selected by Buyer and reasonably acceptable to Seller (the "Title Company") within twenty (20) days after the Contract Date. The Title Commitment shall (i) agree to insure good, marketable, and indefeasible fee simple title to the Property (including public road access) in the name of the Buyer for the full amount of the Purchase Price upon delivery and recordation of a special warranty deed (the "Deed") from the Seller to the Buyer, and (ii) provide for issuance of a final ALTA owner's title insurance policy, with any endorsements requested by Buyer, subject to the Permitted Encumbrances. Regardless of whether this transaction closes, Buyer shall be responsible for all of the Title Company's title search charges and all costs of the Title Commitment and owner's policy.

#### **7. REVIEW OF TITLE COMMITMENT AND SURVEY**

Within twenty (20) days after Buyer's receipt of the Title Commitment, Buyer shall give Seller written notice of any objections to the Title Commitment. Within twenty (20) days after Buyer's receipt of the Survey, Buyer shall give Seller written notice of any objections to the Survey. Any exceptions identified in the Title Commitment or Survey to which written notice of objection is not given within such period shall be a "Permitted Encumbrance." If the Seller is unable or unwilling to correct the Buyer's title and survey objections within the Due Diligence Period, Buyer may terminate this Agreement by written notice to Seller prior to expiration of the Due Diligence Period, in which case the Earnest Money Deposit shall be refunded to Buyer. If Buyer fails to so terminate this Agreement, then such objections shall constitute "Permitted Encumbrances" as of the expiration of the Due Diligence Period, and Buyer shall acquire the Property without any effect being given to such title and survey objections.

## **8. DISPUTE RESOLUTION**

A. Forum. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution.

B. Waiver of Jury Trial. Both Parties hereby waive any right to trial by jury with respect to any action or proceeding relating to this Agreement.

## **9. NOTICES**

All notices required or allowed by this Agreement, before or after Closing, shall be delivered in person or by certified mail, return receipt requested, postage prepaid, addressed to Seller in care of Seller's Representative (with a copy to South Bend Legal Department, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, IN 46601, Attn: Corporation Counsel), or to Buyer in care of Buyer's Representative at their respective addresses stated in Section 1 above. Either Party may, by written notice, modify its address or representative for future notices.

## **10. CLOSING**

A. Timing of Closing. Unless this Agreement is earlier terminated, the Closing shall be held at the office of the Title Company, and the Closing Date shall be a mutually agreeable date not later than thirty (30) days after the end of the Due Diligence Period.

B. Closing Procedure.

(i) At Closing, Buyer shall deliver the Purchase Price to Seller, conditioned on Seller's delivery of the Deed, in the form attached hereto as **Exhibit B**, conveying the Property to Buyer, free and clear of all liens, encumbrances, title defects, and exceptions other than Permitted Encumbrances, and the Title Company's delivery of the marked-up copy of the Title Commitment (or pro forma policy) to Buyer in accordance with Section 6 above.

(ii) Possession of the Property shall be delivered to the Buyer at Closing, in the same condition as it existed on the Contract Date, ordinary wear and tear and casualty excepted.

C. Closing Costs. Buyer shall pay all of the Title Company's closing and/or document preparation fees and all recordation costs associated with the transaction contemplated in this Agreement.

## 11. BUYER'S POST-CLOSING DEVELOPMENT OBLIGATIONS

A. Property Improvements; Proof of Investment. Within Thirty-Six (36) months after the Closing Date, the Buyer will expend an amount not less than One Million Dollars (\$1,000,000.00) on improvements to the building and the site, as well as the cost of equipment, needed to redevelop the Property for the uses set forth herein("Property Improvements"). Promptly upon completing the Property Improvements, Buyer will submit to Seller satisfactory records, as determined in Seller's sole discretion, proving the above required expenditures and will permit Seller (or its designee) to inspect the Property to ensure that Buyer's Property Improvements were completed satisfactorily.

B. Post-Closing Buyer Commitments. The Buyer shall:

- (i) Commence construction of the project within 12 months of the Closing Date;
- (ii) Complete construction of the project within 36 months of the Closing Date;
- (iii) Develop a grocery store and associated uses related to the functioning of a grocery store containing at least 10,000 square feet;
- (iv) Develop at least two additional commercial and/or office tenant spaces as part of the project;
- (v) Employ a total of 25 employees at the Property;
- (v) Use design elements consistent with creating active urban storefronts in a manner supporting the City's 2014 West Side Main Streets Plan, which can be accessed here: <https://southbendin.gov/department/community-investment/planning-community-resources/plans-studies/>; and
- (vi) Provide the design, plans, and specifications for Property Improvements consistent with City standards for the review and acceptance by the City's Planning Department, at its sole discretion.

C. Certificate of Completion. Promptly after Buyer completes the Property Improvements and satisfactorily proves the same in accordance with the terms of Section 11.A. above, Seller will issue to Buyer a certificate acknowledging such completion and releasing Seller's reversionary interest in the Property (the "Certificate of Completion"). The Parties agree

to record the Certificate of Completion immediately upon issuance, and Buyer will pay the costs of recordation.

D. Remedies Upon Default. In the event Buyer fails to complete the Property Improvements, or satisfactorily to prove such performance, in accordance with Section 11.A above, then, in addition to pursuing any other remedies available at law or in equity, Seller shall have the right to:

- (i) re-enter and take possession of the Property and to terminate and revest in Seller the estate conveyed to Buyer at Closing and all of Buyer's rights and interests in the Property without offset or compensation for the value of any improvements made by Buyer; or, alternatively,
- (ii) recover from Buyer a cash payment in an amount equal to the Appraised Value of the Property, due and payable to Seller immediately upon demand by Buyer.

The Parties agree that Seller's conveyance of the Property to Buyer at Closing will be made on the condition subsequent set forth in the foregoing sentence and the terms of this Section 11 will be referenced in the deed. Further, the Parties agree that Seller's reversionary interest in the Property will be subordinate to the first-priority mortgage encumbering the Property, if any, arising out of Buyer's contemporaneous financing of the redevelopment of the Property, provided that Buyer notifies Seller in advance of the execution or recording of such first-priority mortgage.

## **12. SELLER'S POST-CLOSING OBLIGATIONS**

On and after the Closing Date, the Seller commits to the following:

- (A) Work with the Buyer to finalize plans, designs, and specifications for Property Improvements to the satisfaction of the City departments, consistent with City standards,
- (B) Assist the Buyer to identify and apply for grant funds offered through Urban Enterprise Association programs to assist with costs associated with eligible Property Improvement items based on the program guidelines, and
- (C) Help the Buyer identify and apply for City tax incentives potentially applicable to its project.

## **12. ACCEPTANCE OF PROPERTY AS-IS**

Buyer agrees to purchase the Property "as-is, where-is" and without any representations or warranties by Seller as to the condition of the Property or its fitness for any particular use or purpose. Seller offers no such representation or warranty as to condition or fitness, and nothing in this Agreement will be construed to constitute such a representation or warranty as to condition or fitness.

## **13. TAXES**



Buyer, and Buyer's successors and assigns, shall be liable for any and all real property taxes assessed and levied against the Property with respect to the year in which the Closing takes place and for all subsequent years. Seller shall have no liability for any real property taxes associated with the Property, and nothing in this Agreement shall be construed to require the proration or other apportionment of real property taxes resulting in Seller's liability therefor.

#### **14. REMEDIES**

Upon any default in or breach of this Agreement by either Party, the defaulting Party will proceed immediately to cure or remedy such default within thirty (30) days after receipt of written notice of such default or breach from the non-defaulting Party, or, if the nature of the default or breach is such that it cannot be cured within thirty (30) days, the defaulting Party will diligently pursue and prosecute to completion an appropriate cure within a reasonable time. In the event of a default or breach that remains uncured for longer than the period stated in the foregoing sentence, the non-defaulting Party may terminate this Agreement, commence legal proceedings, including an action for specific performance, or pursue any other remedy available at law or in equity. All the Parties' respective rights and remedies concerning this Agreement and the Property are cumulative.

#### **15. COMMISSIONS**

The Parties mutually acknowledge and warrant to one another that neither Buyer nor Seller is represented by any broker in connection with the transaction contemplated in this Agreement. Buyer and Seller agree to indemnify and hold harmless one another from any claim for commissions in connection with the transaction contemplated in this Agreement.

#### **16. INTERPRETATION; APPLICABLE LAW**

Both Parties having participated fully and equally in the negotiation and preparation of this Agreement, this Agreement shall not be more strictly construed, nor shall any ambiguities in this Agreement be presumptively resolved, against either Party. This Agreement shall be interpreted and enforced according to the laws of the State of Indiana.

#### **17. DISPUTE RESOLUTION; WAIVER OF JURY TRIAL**

Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution. The Parties acknowledge that disputes arising under this Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each Party irrevocably waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by both Parties.

#### **18. WAIVER**

Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

**19. SEVERABILITY**

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

**20. FURTHER ASSURANCES**

The Parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

**21. ENTIRE AGREEMENT**

This Agreement embodies the entire agreement between Seller and Buyer and supersedes all prior discussions, understandings, or agreements, whether written or oral, between Seller and Buyer concerning the transaction contemplated in this Agreement.

**22. ASSIGNMENT**

Buyer and Seller agree that this Agreement or any of Buyer's rights hereunder may not be assigned by Buyer, in whole or in part, without the prior written consent of Seller. In the event Buyer wishes to obtain Seller's consent regarding a proposed assignment of this Agreement, Buyer shall provide any and all information reasonably demanded by Seller in connection with the proposed assignment and/or the proposed assignee.

**23. BINDING EFFECT; COUNTERPARTS; SIGNATURES**

All the terms and conditions of this Agreement will be effective and binding upon the Parties and their successors and assigns at the time the Agreement is fully signed and delivered by Buyer and Seller. This Agreement may be separately executed in counterparts by Buyer and Seller, and the same, when taken together, will be regarded as one original Agreement. Electronically transmitted signatures will be regarded as original signatures.

**24. AUTHORITY TO EXECUTE; EXISTENCE**

The undersigned persons executing and delivering this Agreement on behalf of the respective Parties represent and certify that they are the duly authorized representatives of each and have been

fully empowered to execute and deliver this Agreement and that all necessary corporate action has been taken and done. Further, the undersigned representative of Buyer represents and warrants that Buyer is duly organized, validly existing, and in good standing under the laws of the State of Indiana.

25. **TIME**

Time is of the essence of this Agreement.

**[Signature page follows.]**

IN WITNESS WHEREOF, the Parties hereby execute this Real Estate Purchase Agreement to be effective as of the Contract Date stated above.

BUYER:

Panaderia Y Supermercado San Miguel, Inc.,  
an Indiana corporation

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

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

SELLER:

South Bend  
Redevelopment Commission

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

ATTEST:

\_\_\_\_\_  
Quentin M. Phillips, Secretary

## EXHIBIT A

### Description of Property

**Parcel Key No.** 018-4096-357902

**Legal Description:** A PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 37 NORTH, RANGE 2 EAST, PORTAGE TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, IN ACCORDANCE WITH TITLE IAC:865 OF THE STATE OF INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 10; THENCE SOUTH 89°47'09" WEST ALONG SAID SOUTH LINE OF THE NORTHWEST QUARTER (NW 1/4), A DISTANCE OF 121.50 FEET, TO A POINT AT THE SOUTHERLY EXTENSION OF THE EAST LINE OF A PARCEL OF LAND OWNED BY DCI PROPERTIES AS SAID PROPERTY IS KNOWN AND RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY IN INSTRUMENT NUMBER 1308367, THENCE NORTH 00°39'58" WEST ALONG SAID SOUTHERLY EXTENSION AND ALONG SAID EAST LINE, A DISTANCE OF 39.00 FEET TO A SET REBAR WITH CAP "ABONMARCHE-0050", BEING THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 00°39'58" WEST, ALONG SAID EAST LINE, A DISTANCE OF 435.10 FEET TO A FOUND REBAR WITH CAP "ABONMARCHE-0050" BEING IN THE SOUTH LINE OF A PARCEL OF LAND OWNED BY R.L.R. INVESTMENTS AS SAID PROPERTY IS KNOWN AND RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY IN INSTRUMENT NUMBER 0100633; THENCE NORTH 89°47'09" EAST, ALONG THE SOUTH LINE OF SAID R.L.R. INVESTMENTS PROPERTY, A DISTANCE OF 92.20 FEET, TO A SET REBAR WITH CAP "ABONMARCHE- 0050", BEING IN THE WEST LINE OF RIGHT OF WAY OWNED BY THE CITY OF SOUTH BEND AS SAID PROPERTY IS KNOWN AND RECORDED IN THE OFFICE OF THE RECORDER OF SOUTH BEND IN INSTRUMENT NUMBER 1804668, SAID POINT BEING 29.30' WEST OF THE EAST LINE OF SAID NORTHWEST QUARTER; THENCE SOUTH 00°39'58" EAST, BEING PARALLEL WITH SAID EAST LINE, A DISTANCE OF 406.94 FEET TO A SET REBAR WITH CAP "ABONMARCHE-0050"; THENCE SOUTH 89°47'09" WEST, PARALLEL TO THE SOUTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 28.71 FEET TO A SET REBAR WITH CAP "ABONMARCHE-0050"; THENCE SOUTH 00°2'51" EAST, PERPENDICULAR TO SAID SOUTH LINE, A DISTANCE OF 28.16 FEET TO A SET REBAR WITH CAP "ABONMARCHE-0050", BEING 39.00 FEET NORTH OF SAID SOUTH LINE; THENCE SOUTH 89°47'09" WEST, BEING PARALLEL WITH SAID SOUTH LINE A DISTANCE OF 63.27 FEET TO THE AFOREMENTIONED POINT OF BEGINNING.

ABOVE DESCRIPTION CONTAINING 0.90 ACRES OF LAND MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS AND PUBLIC RIGHTS OF WAY OF RECORD

**Commonly known as:** 2401 W. Western Ave., South Bend, IN 46619

**EXHIBIT B**

**Form of Special Warranty Deed**

**AUDITOR'S RECORD**

TRANSFER NO. \_\_\_\_\_

TAXING UNIT \_\_\_\_\_

DATE \_\_\_\_\_

KEY NO. 018-4096-357902

**SPECIAL WARRANTY DEED**

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

CONVEYS AND SPECIALLY WARRANTS to Panaderia Y Supermercado San Miguel, Inc., an Indiana corporation with its registered office at 2712 W. Western Ave., South Bend, IN 46619(the "Grantee"), for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following real estate located in St. Joseph County, Indiana (the "Property"):

**Parcel Key No.** 018-4096-357902

**Legal Description:** A PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 37 NORTH, RANGE 2 EAST, PORTAGE TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, IN ACCORDANCE WITH TITLE IAC:865 OF THE STATE OF INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 10; THENCE SOUTH 89°47'09" WEST ALONG SAID SOUTH LINE OF THE NORTHWEST QUARTER (NW 1/4), A DISTANCE OF 121.50 FEET, TO A POINT AT THE SOUTHERLY EXTENSION OF THE EAST LINE OF A PARCEL OF LAND OWNED BY DCI PROPERTIES AS SAID PROPERTY IS KNOWN AND RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY IN INSTRUMENT NUMBER 1308367, THENCE NORTH 00°39'58" WEST ALONG SAID SOUTHERLY EXTENSION AND ALONG SAID EAST LINE, A DISTANCE OF 39.00 FEET TO A SET REBAR WITH CAP "ABONMARCHE-0050", BEING THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 00°39'58" WEST, ALONG SAID EAST LINE, A DISTANCE OF 435.10 FEET TO A FOUND REBAR WITH CAP "ABONMARCHE-0050" BEING IN THE SOUTH LINE OF A PARCEL OF LAND OWNED BY R.L.R. INVESTMENTS AS SAID PROPERTY IS KNOWN AND RECORDED IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY IN INSTRUMENT NUMBER 0100633; THENCE NORTH 89°47'09" EAST, ALONG THE SOUTH LINE OF SAID R.L.R. INVESTMENTS PROPERTY, A DISTANCE OF 92.20 FEET, TO A SET REBAR WITH CAP "ABONMARCHE- 0050", BEING IN THE WEST LINE OF RIGHT OF WAY OWNED BY THE CITY OF SOUTH BEND AS SAID PROPERTY IS KNOWN AND RECORDED IN THE OFFICE OF THE RECORDER OF SOUTH BEND IN INSTRUMENT NUMBER 1804668, SAID POINT BEING 29.30' WEST OF THE EAST LINE OF SAID NORTHWEST QUARTER; THENCE SOUTH 00°39'58" EAST, BEING PARALLEL WITH SAID EAST LINE, A DISTANCE OF 406.94 FEET TO A SET REBAR WITH CAP "ABONMARCHE-0050"; THENCE SOUTH 89°47'09" WEST, PARALLEL TO THE SOUTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 28.71 FEET TO A SET REBAR WITH CAP "ABONMARCHE-0050"; THENCE SOUTH 00°2'51" EAST, PERPENDICULAR TO SAID SOUTH LINE, A DISTANCE OF 28.16 FEET TO A SET REBAR WITH CAP

"ABONMARCHE-0050", BEING 39.00 FEET NORTH OF SAID SOUTH LINE; THENCE SOUTH 89°47'09" WEST, BEING PARALLEL WITH SAID SOUTH LINE A DISTANCE OF 63.27 FEET TO THE AFOREMENTIONED POINT OF BEGINNING.

ABOVE DESCRIPTION CONTAINING 0.90 ACRES OF LAND MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS AND PUBLIC RIGHTS OF WAY OF RECORD

**Commonly known as:** 2401 W. Western Ave., South Bend, IN 46619

The Grantor warrants title to the Property only insofar as it might be affected by any act of the Grantor during its ownership thereof and not otherwise.

The Grantor hereby conveys the Property to the Grantee free and clear of all leases or licenses; subject to real property taxes and assessments; subject to all easements, covenants, conditions, restrictions, and other matters of record; subject to rights of way for roads and such matters as would be disclosed by an accurate survey and inspection of the Property; subject to all applicable building codes and zoning ordinances; and subject to all provisions and objectives contained in the Commission's 2019 River West Development Area Plan and the City's 2014 West Side Main Streets Plan, as thereafter amended from time to time, and any design review guidelines associated therewith.

The Grantor conveys the Property to the Grantee subject to the limitation that the Grantee, and its successors and assigns, shall not discriminate against any person on the basis of race, creed, color, sex, age, or national origin in the sale, lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property.

Pursuant to Section 11 of the Purchase Agreement, the Grantor conveys the Property to the Grantee by this deed subject to certain conditions subsequent. In the event the Grantee fails to perform the Property Improvements, or satisfactorily to prove such performance, in accordance with Section 11 of the Purchase Agreement, then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and re-vest in the Grantor the estate conveyed to the Grantee by this deed and all of the Grantee's rights and interests in the Property without offset or compensation for the value of any improvements to the Property made by the Grantee. The recordation of a Certificate of Completion in accordance with Section 11 of the Purchase Agreement will forever release and discharge the Grantor's reversionary interest stated in this paragraph.

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

**[SIGNATURE PAGE FOLLOWS]**



GRANTOR:

SOUTH BEND  
REDEVELOPMENT COMMISSION

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

ATTEST:

\_\_\_\_\_  
Quentin M. Phillips, Secretary

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

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

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the \_\_\_\_ day of \_\_\_\_\_, 2021.

My Commission Expires:

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

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Sandra L. Kennedy.

This instrument was prepared by Sandra L. Kennedy, Assistant City Attorney, City of South Bend, Indiana, Department of Law, 227 W. Jefferson Boulevard, Suite 1200S, South Bend, IN 46601. .