DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF PARMA, OHIO

AND

PARMA NEST LLC

DATED AS OF MARCH 1, 2021

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made as of March __, 2021 (the **"Agreement Date"**) by and between the CITY OF PARMA, OHIO, a municipal corporation organized and validly existing under the Constitution and laws of the State of Ohio ("**City**"), and PARMA NEST, LLC, d/b/a Little Birdie Wine Nest, an Ohio limited liability company ("**Developer**"). The City and Developer are sometimes referred to collectively as the "**Parties**". Words and terms not otherwise defined herein shall have the meaning set forth in Article I hereof.

RECITALS

A. The City and the Developer, respectively, have previously acquired the fee ownership of certain real property in the City as described in **Exhibit A** attached hereto and made a part hereof (collectively, such properties are referred to herein as the "**Site**").

B. In furtherance of inducing the Developer to develop the Site, and in order to promote the welfare of the people of the City, stabilize the economy, provide employment and assist in the development of industrial, commercial, distribution and research activities to the benefit of the people of the City, and to preserve, maintain or provide additional opportunities for their gainful employment, the City desires to provide certain incentives to the Developer related to the development of the Site.

C. Developer has represented that the development of the Site is anticipated to result in the establishment and maintenance of at least 79 full-time equivalent employee positions at the Site, with estimated annual payroll of $1,537,514.00 by December 31, 2028.

D. In anticipation of the passage of the TIF Ordinance, and in reliance upon the representations and covenants of Developer, including without limitation the indemnity provisions set forth in Section 3.4 hereof, and to facilitate the timely commencement of the Project, the City wishes to establish the TIF Exemption, in accordance with the Act and the TIF Ordinance, authorizing the City to declare improvements to the Site to be a public purpose, and authorizing the to negotiate agreements for use of funds generated through such TIF,.

E. This Agreement was presented to Council and approved by City Ordinance No. 67-2020 on March 1, 2021 (i.e., the "**Development Agreement Ordinance**"), which authorized the Community Services and Economic Development Director to enter into this Agreement on behalf of the City.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1
GENERAL

1.1 Defined Terms. In addition to other terms defined herein, as used in this Agreement, the following terms shall have the meanings indicated below.

"**Act**" means Sections 5709.41, 5709.42, 5709.43 and 5709.91 of the Ohio Revised Code, as in effect from time to time.

"**Agreement**" shall have the meaning set forth in the preamble hereof.

"**Agreement Date**" shall have the meaning set forth in the preamble of this Agreement.

"**Applicable Laws**" shall mean all applicable local, state and federal laws, codes, rules and regulations, including, but not limited to, the Planning and Zoning Code and Environmental Laws.

"**CIC**" shall mean the Parma Community Improvement Corporation, a community improvement corporation organized under Chapter 1724 of the Revised Code.

"**City**" shall have the meaning set forth in the preamble of this Agreement.

"**City Council**" shall mean the City Council of the City of Parma, Ohio.

"**City Default**" shall have the meaning set forth in Section 6.2 below.

"**Completion Date**" shall have the meaning set forth in Section 3.1 below.

"**Developer**" shall have the meaning set forth in the preamble of this Agreement.

"**Developer Default**" shall have the meaning set forth in Section 6.1 below.

"Development Agreement Ordinance" shall have the meaning set forth in the preamble of this Agreement.

"**District**" shall mean the Parma City School District.

"**Environmental Laws**" shall mean and include any and all federal, state or local laws, regulations, codes, statutes, rules, decrees, licenses, permits, approvals or authorizations, ordinances, decisions, orders, judgments or requirements of any federal, state, county or municipal court, body, department, commission, board, bureau or agency having jurisdiction relating to pollution or the environment, including laws and regulations relating to emissions, discharges, releases, migration, generation, storage, handling, disposal, transportation, use, treatment, manufacturing, processing or threatened releases of any Hazardous Substance, all as the same have been and may be from time to time amended, and all regulations adopted pursuant to or under any such statute, rule, law or ordinance (including CERCLA, SARA, RCRA, FWPCA, the Clean Water Act, all as the same have been and may be from time to time amended) and all legally binding requirements regarding petroleum storage tanks and petroleum storage tank corrective action.**"Environmental Losses"** means any and all losses, liabilities, damages, demands, claims, actions, judgments, causes of action, defects in title, assessments, penalties, costs and expenses (including, without limitation, the reasonable fees and disbursements of outside legal counsel and accountants and the reasonable charges of in-house legal counsel and accountants), and all foreseeable and unforeseeable consequential damages, suffered or incurred, by any Indemnitee, arising out of or as a result of: (a) the occurrence of any

event or activity which results in any Hazardous Substance Activity (as hereinafter defined), whether such activity occurred on, before or after the Developer acquired the Site; (b) any violation of any applicable Environmental Laws (as hereinafter defined) relating to the Site or to the Developer's, use, occupancy or operation thereof, whether such violation occurred on, before or after the Developer acquired the Site; (c) any investigation, inquiry, order (whether voluntary or involuntary), hearing, action, or other proceeding by or before any governmental agency in connection with any Hazardous Substance Activity, or allegation thereof, whether such activity occurred or was alleged to have occurred on, before or after the Developer acquired the Site; or (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee, which directly or indirectly relates to, arises from or is based on any of the matters described in clauses (a), (b) or (c) above, or any allegation of any such matters.

"**Force Majeure**" shall have the meaning set forth in Section 7.14 below.

"**Fund**" shall have the meaning set forth in Section 5.2 below.

"**Hazardous Substance**" shall mean and include any hazardous substance or material which is or may be hazardous to the physical environment, persons or property, including individually and collectively: (a) chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, hazardous wastes, hazardous materials, whether solid, liquid or gaseous, including "hazardous materials", "hazardous waste", "toxic waste or substances" or "hazardous substances" as defined under: (i) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("**CERCLA**"), as amended by the Superfund Amendments and Reauthorizations Act of 1986, 42 U.S.C. Section 11002 et seq. ("**SARA**") and as subsequently amended, now or in the future; (ii) the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("**RCRA**"); (iii) the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq. ("**FWPCA**"); (iv) the Clean Water Act, 33 U.S.C. Section 1321 et seq. ("**Clean Water Act**"); or (v) any other Environmental Laws; (b) any materials, substances, or wastes that are toxic, ignitable, flammable, explosive, corrosive, reactive, carcinogenic, or toxic to the reproductive system, and that are regulated by any agency of local government, any agency of the State of Ohio, or any agency of the United States government; (c) asbestos and asbestos-containing materials; (d) oil, petroleum, petroleum fractions, petroleum additives, petroleum based products, and petroleum derived substances; (e) any drilling fluids, produced water or other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources; (f) urea formaldehyde foam insulation; (g) lead and lead based paint; (h) polychlorinated biphenyls (PCBs); and (i) freon and other chlorofluorocarbons.

"**Hazardous Substance Activity**" means any actual, proposed or threatened storage, holding, existence, use, release, migration, emission, discharge, generation, processing, abatement, removal, repair, cleanup or detoxification, disposition, handling or transportation of any Hazardous Substance from, under, into or on the Site or the surrounding property, or any other activity or occurrence that causes or would cause such event to exist.

"**Improvement**" means the means the increase in assessed value of the Site that would first appear on the tax list and duplicate of real and public utility property subsequent to the effective date of the TIF Ordinance were it not for the exemption granted by the TIF Ordinance.

"**Mayor**" shall mean the Mayor of the City.

"**Parties**" shall have the meaning set forth in the preamble of this Agreement.

"**Party**" shall mean either the City or Developer, individually.

"**Planning and Zoning Code**" shall mean the City's Planning and Zoning Code set forth at City Code of Ordinances §§ 1101 *et seq*.

"**Project**" shall mean the redevelopment of the Site in accordance with the terms and conditions of this Agreement.

"**Service Payment**" shall have the meaning set forth in Section 5.1 below.

"**Site**" shall have the meaning set forth in Recital A above.

"**Successor**" shall have the meaning set forth in Section 5.1 below.

"Taxable Year" means the calendar year.

"**Term**" shall have the meaning set forth in Section 2.3 below.

"**TIF**" shall mean tax increment financing.

"TIF Exemption" means the exemption of the Improvement from taxation for a period of thirty (30) years, commencing with the first tax year that the Improvement is listed on the tax duplicate, but in no event shall the exemption period extend beyond 2052.

"TIF Exemption Period" shall have the meaning set forth in Section 5.1 below.

"**TIF Ordinance**" means Ordinance No. __-2021 authorizing the exemption of certain real property from ad valorem property taxes to be considered for third reading by City Council on _____, 2021.

1.2 Interpretation. As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word "including" or any variation thereof is used herein, it shall mean "including, without limitation," and shall be construed as a term of illustration, not a term of limitation. Wherever the word "or" is used herein, it shall mean "and/or".

1.3 Incorporation by Reference. All exhibits, schedules or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and shall be considered a part of this Agreement as if fully rewritten or set forth herein.

1.4 Calculation of Time. Unless otherwise stated, all references to "day" or "days" shall mean calendar days and any reference to "business days" means any day that is not a Saturday, Sunday or holiday observed by the State of Ohio.

ARTICLE 2
GENERAL AGREEMENT; TERM; CONVEYANCE OF SITE

2.1 Relationship of the Parties. Notwithstanding any term or condition of this Agreement to the contrary, nothing in this Agreement shall be deemed to create the relationship of principal and agent or to create any joint venture or partnership of any kind by or between the Parties.

2.2 Compliance With Applicable Law. Developer will comply with Applicable Laws in connection with its performance under this Agreement.

2.3 Term. This Agreement will be effective as of its date and will continue in full force and effect for the TIF Exemption Period as set forth in the TIF Ordinance (the "**Term**"). The Parties agree that the Term shall not be extended as a result of Force Majeure, market conditions, or any other reason arising under this Agreement.

2.4 Conveyance of Site. The City will cause the CIC to convey the Site to the Developer for a purchase price not greater than One and 00/100 Dollars ($1.00).

ARTICLE 3
DEVELOPER'S GENERAL OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

3.1 Developer's General Development Obligation. Developer shall acquire the Site from the CIC and thereafter shall utilize Developer's best efforts to develop the Project. Developer will oversee and be solely responsible for the redevelopment of the Site and shall be responsible for the payment of all of the costs of the Project on the Site, including costs of financing the Project. The Project will be subject to all permit and licensing requirements of the City. Upon Developer's completion of the Project on the Site, Developer will be solely responsible for the maintenance of the Site. As an inducement to the City's obligations hereunder, Developer agrees that, by December 31, 2021, it shall have used commercially reasonable efforts to cause Improvements to the Site substantially as described on **Exhibit B** hereto, with an estimated investment cost of at least $2.48 million. It is understood by the parties hereto that this estimated amount is a reasonable, good faith estimate of minimum costs of the Project based on all information available as of the date of this Agreement. The date of substantial completion is referred to herein as the "**Completion Date**".

3.2 Representations, Warranties and Covenants of Developer. Developer hereby represents, warrants and covenants to the City that:

(a) It (i) is a limited liability company duly organized, validly existing and in full force and effect under the laws of the State of Ohio, and (ii) has all requisite power and authority and all necessary licenses and permits to own and operate its properties and to carry on its business as now being conducted and as presently proposed to be conducted.

(b) It has the authority and power to execute and deliver this Agreement, perform its obligations hereunder and acquire, own and develop the Site, and it has duly executed and delivered this Agreement.

(c) The execution and delivery by it of this Agreement and the compliance by it with all of the provisions hereof (i) will not conflict with or result in any breach of any of the provisions of, or constitute a default under, any agreement, its organizational documents or other instruments to which it is a party or by which it may be bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over it or any of its activities or properties, and (ii) have been duly authorized by all necessary action on its part.

(d) There are no actions, suits, proceedings, inquiries or investigations pending, or to its knowledge threatened, against or affecting it in any court or before any governmental authority or arbitration board or tribunal that challenges the validity or enforceability of, or seeks to enjoin performance of, this Agreement or the ownership and development of the Site, or if successful would materially impair its ability to perform its obligations under this Agreement or to acquire and renovate the Site.

(e) Neither it nor any person, company, affiliated group or organization that holds, owns or otherwise has a controlling interest in it has provided material assistance to an organization listed on the U.S. Department of State Terrorist Exclusion List. Developer shall provide to the City, on or before the date of this Agreement, a fully completed and executed Declaration Regarding Material Assistance/Nonassistance to a Terrorist Organization, utilizing the current form provided by the Ohio Department of Public Safety.

3.3 Indemnification. Developer and its Successors shall defend, indemnify and hold harmless the City, its elected officials, officers, employees and agents (hereinafter referred to individually as an "Indemnitee" and collectively, as the "Indemnitees"), and each of them, from and against legal liability for all claims losses, damages and expenses (including reasonable attorney's fees) of whatsoever kind and nature, to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions or conduct of Developer and its Successors and their respective agents, employees and representatives, in the financing, preparation of plans, specifications and design, and/or renovation and demolition activities related to the Site; provided, that nothing herein shall require the Developer or its Successors to indemnify the Indemnitees for the gross negligence of willful misconduct of any of the Indemnitees.

Developer and its Successors hereby agree to indemnify, defend, and hold harmless the Indemnitees from and against any and all Environmental Losses (as hereinafter defined). Developer and its Successors shall pay when due any judgments or claims for damages, penalties or otherwise against Indemnitees, and shall assume the burden and expense of defending all suits, administrative proceedings and resolutions of any disputes with all persons, political subdivisions or government agencies arising out of the occurrences set forth in this Indemnity. In the event that such payment is not made, Indemnitees, at their sole discretion, may proceed to

file suit against Developer and its Successors, or any of them, to compel such payment. Notwithstanding anything to the contrary herein, this Indemnity shall not extend to Environmental Losses arising from the ownership or operation of a public utility by any Indemnitee, nor shall Developer be responsible for losses (including Environmental Losses) incurred as a result of the gross negligence or willful misconduct of any Indemnitee.

3.4 Costs and Expenses. On the date hereof, Developer and its Successors shall pay to or at the direction of the City all reasonable costs, expenses and attorney's fees incurred by the City in connection with the transactions contemplated by this Agreement and, thereafter, promptly reimburse the City for all reasonable costs, expenses and attorney's fees incurred by the City in connection with the performance by the City of its obligations under this Agreement, including, without limitation, in enforcing the terms of this Agreement. The City acknowledges receipt of a deposit of _____ Thousand Dollars ($__,000) to be drawn against such costs and expenses. The City shall provide to Developer an itemized list of its expenditures for costs and expenses. Any amount of the deposit remaining after all of the City's costs and expenses have been paid shall be returned to the Developer, and any amount of the City's costs and expenses unpaid after application of the deposit shall be promptly paid by the Developer.

ARTICLE 4
REPRESENTATIVES

4.1 Developer Representative. The designated representative of Developer for the purposes of this Agreement is as follows:

Tim Bratz
Manager
Parma Nest LLC

_____

_____

with a copy to: Kevin M. Hinkel, Esq.
Frantz Ward LLP
200 Public Square
Suite 3000
Cleveland, OH 44114

4.2 City Representative. The designated representative of the City for the purposes of this Agreement is as follows:

Erik Tollerup, Director
Economic Development and Community ServicesDepartment
City of Parma
5517 State Road
Parma, Ohio 44134

4.3 Party Representatives. The designated representative of a given Party under Sections 4.1 or 4.2 above may be changed by such Party by delivering written notice of such change to the other Party.

ARTICLE 5
TAX INCREMENT FINANCING

5.1 Tax Increment Financing. Pursuant to the TIF Ordinance, the City will declare one hundred percent (100%) of the Improvements with respect to the Site to be a public purpose and exempt from real property taxation for a period of thirty (30) years, which exemption period shall commence as of the first tax year in which the value of Improvements is reflected on the real estate tax duplicate and will extend until the thirtieth anniversary of such effective date but not beyond December 31, 2052 (the "**Exemption Period**"), subject to the payment to the Parma City School District of any amounts the District would have received but for the TIF Exemption. Developer, for itself and any successors in interest (each, a "**Successor**"), hereby agrees to make semiannual service payments in lieu of real property taxes (the "**Service Payments**") with respect to the Improvements during the TIF Exemption Period pursuant to and in accordance with the requirements of the Act, and pursuant to the TIF Ordinance.

The Service Payments shall be made semi-annually to the Cuyahoga County Treasurer (or designated agent for collection of the Service Payments, as designated by the Cuyahoga County Treasurer in writing from time to time) on or before the date on which real property taxes would otherwise be due and payable for the Improvements. In the event that any Service Payment is not paid when due, to the extent that Cuyahoga County does not impose a late fee or delinquency charge, the City may impose and collect a late payment charge, payable to the City, in the amount of the charges for late payment of real property taxes, including penalty and interest, that would have been paid pursuant to Section 324.21 of the Ohio Revised Code on the delinquent amount.

Each semi-annual Service Payment shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvements had the TIF Exemption not been granted. The obligation of Developer

and its Successors to make the Service Payments shall be unconditional, and shall not be terminated for any cause, and there shall be no right to suspend or set off the Service Payments for any cause, including without limitations any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Site, commercial frustration of purpose, or any failure by the City to perform or observe any obligation, or covenant, whether express or implied, arising out of or in connection with this Agreement; but nothing herein shall be deemed to prevent the Developer from lawfully contesting the assessed value of the Site, including the Improvements.

Developer further agrees for itself and its Successors to prepare and file in cooperation with the City all necessary applications and supporting documents to obtain the TIF Exemption authorized by the Act and the TIF Ordinance to enable Cuyahoga County to collect Service Payments thereunder and disburse such payments to the City. The City will assist and cooperate with Developer or its successors in interest in connection with the preparation and filing of the required exemption applications. Developer shall prepare and file such required DTE 24 form exemption application with the Cuyahoga County Fiscal Office.

It is intended and agreed, and as shall be provided in any future conveyance from Developer, that the covenants provided in this Section 5.1 shall be covenants running with the land and that they shall, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of and enforceable by the City, against Developer and its Successors, whether or not this Agreement remains in effect or whether or not such provision is included by Developer in any succeeding instrument of conveyance by Developer to any of its Successors. It is further intended and agreed that these agreements and covenants shall remain in effect for the full TIF Exemption Period permitted in accordance with the requirements of the Act and the TIF Ordinance and shall have priority over any other lien or encumbrance on the Site, except those approved by the City.

If Developer shall sell, convey, or otherwise transfer the Site or any part thereof (except as collateral security for the repayment of debt), it shall automatically be released and relieved of and from all other and further obligation and liability under this Section which arise, mature, or relate to any period from and after the date of such sale, conveyance or transfer, but not prior thereto, it being intended hereby that the covenants and obligations on the part of the Developer shall be binding upon and enforceable against each Successors and assign of the Developer only in respect of their respective periods of ownership in the fee simple estate in and to the Site (or portion thereof), and in all cases only as to the portions of the Site that it owns (as more fully set forth in the paragraph below). The provisions of this Section are not intended to, and shall not be construed to, release or modify any covenant created hereunder that is intended to run with the land.

If there is, at any time and from time to time, a diversity of ownership of the Site or any part of the Site, each owner of the Site or any portion thereof shall, except as otherwise expressly set forth in this Agreement:

(a) be responsible to make Service Payments,

(b) be entitled to the benefits created, and be subject to the burdens imposed, under this Section only as and to the extent that same benefit, burden and /or otherwise affect that portion of the Site that it owns (and no others), and

(c) have only those rights, and be required to observe and perform only those obligations, created under this Section only as and to the extent that those rights and obligations affect that portion of the Site that it owns (and no others), and

(d) have only those rights, and required to observe and perform only those obligations, created under this Section 5.1 only as and to the extent that those rights and obligations affect that portion of the site it owns (and no others).

5.2 Undertakings of the City with respect to Service Payments. Pursuant to the TIF Ordinance, the City shall deposit all Service Payments it receives from the Cuyahoga County Treasurer into the Little Birdie Urban Redevelopment Tax Increment Equivalent Fund established pursuant to the TIF Ordinance (the "**Fund**") and such funds shall be used as follows:

(a) To reimburse Developer for costs and expenses of the Project, in accordance herewith;

(b) To pay any payments due to the District from the City pursuant to the TIF Ordinance.

The Fund shall remain in existence so long as Service Payments are collected and used for the aforesaid purposes, after which time the Fund shall be dissolved in accordance with Section 5709.43 of the Ohio Revised Code.

Payments made to the Developer pursuant to Section 5.2(a) shall be paid upon receipt by the City of evidence of requests for payment from Developer, showing the costs and expenses to be paid and accompanied by such evidence and documentation as the City may reasonably request. At any time during normal business hours and as often as the City may deem necessary, Developer shall make available to the City and/or its designee(s), all of its records with respect to all matters covered under this Agreement, and will permit the City and/or its designee(s) to review, examine, and make excerpts or transcripts from such records and to have independent third party reviews made of all contract, invoices, materials, payrolls, records of personnel, conditions of employment, and other data pertaining in whole or in part to matters covered by this Agreement. Nothing in this Section 5.2 shall require Developer to make available or provide information of the type described in this Section 5.2 if the disclosure of such information is prohibited by law.

The obligations of the City pursuant to this Article 5 shall never constitute a general debt of the City or give rise to any pecuniary liability of the City but shall be payable solely out of the Service Payments received by the City.

ARTICLE 6
EVENTS OF DEFAULT; REMEDIES

6.1 Developer Default. "**Developer Default**" shall mean any of the following:

6.1.1 Failure of Developer to comply with any non-monetary obligation under this Agreement and such failure is not cured within forty-five (45) days after written notice from the City; provided, however, if such failure cannot be cured within such forty-five (45)-day period, and Developer is expeditiously and continuously using best efforts to cure such failure, then Developer shall have such additional time as is necessary to cure such failure not to exceed a total of one hundred and twenty (120) days after Developer's receipt of the above written notice from the City;

6.1.2 Any report, certificate or other document furnished by Developer pursuant to this Agreement is false or misleading in any material respect as of the time furnished and has been relied upon by the City to its material and adverse detriment prior to correction by the Developer;

6.1.3 the filing by Developer of a petition for the appointment of a receiver or a trustee, and such petition is not dismissed within sixty (60) days;

6.1.4 the making by Developer of a general assignment for the benefit of creditors, and such assignment is not dismissed within sixty (60) days;

6.1.5 the entry of an order for relief pursuant to any Chapter of Title 11 of the U.S. Code, as the same may be amended from time to time, with Developer as debtor, and such entry is not dismissed within sixty (60) days;

6.1.6 the filing by Developer of an insolvency proceeding with respect to Developer or any proceeding with respect to Developer for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors, and such proceeding is not dismissed within sixty (60) days;

6.1.7 the failure of Developer to comply with, or cause the Site to comply with Applicable Law if such failure reasonably creates a condition that could endanger the health or safety of people or result in bodily injury or property damage and such failure is not cured within fourteen (14) days after written notice from the City; provided, however, if such failure cannot be cured within such fourteen (14)-day period, then so long as Developer has commenced such cure within such fourteen (14)-day period and continuously uses best efforts to cure such failure, then Developer shall have such additional time as is necessary to cure such failure not to exceed a total of forty-five (45) days after receipt of the written notice from the City.

6.2 City Default. "**City Default**" shall mean failure by the City in the due and punctual payment, performance or observance of any obligation of the City under this Agreement and such failure is not cured by the City within forty-five (45) days after written

notice from Developer; provided, however, if such failure cannot be cured within such forty-five (45)-day period, and the City is expeditiously and continuously using best efforts to cure such failure, then City shall such additional time as is necessary to cure such failure not to exceed a total of ninety (90) days after the City's receipt of the above written notice from Developer.

6.3 Remedies for Default . Upon the occurrence of a Developer Default or a City Default hereunder and if such Default is not cured to the other party's satisfaction within thirty (30) days following written notice thereof to the party alleged to be in Default, then the party alleging such Default shall have the right, upon ten (10) days further prior written notice to the party alleged to be in Default, to pursue any and all rights and remedies available at law and/or in equity to obtain performance of such terms, covenants, conditions, provisions and Agreements and/or to remedy such Default.

6.4 Costs of Enforcement. If an action is brought by the City for the enforcement of any provision of this Agreement, Developer, to the extent that Developer is found to be in default or breach of this Agreement, shall pay to the City all costs and other expenses that become payable as a result thereof, including reasonable attorneys' fees and expenses.

ARTICLE 7
MISCELLANEOUS

7.1. Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Ohio, without regard to its conflict of law provisions that would cause the application of the laws of another jurisdiction.

7.2 Entire Agreement. This Agreement represents the entire and integrated agreement among the Parties concerning the Project and supersedes all prior negotiations, representations or agreements, either written or oral.

7.3 Assignment. No Party shall have the right to assign all or any of this Agreement, to any other person or party without the prior written consent of the other Parties which may be withheld or granted in such Parties' reasonable discretion.

7.4 No Individual Liability. No official, officer, director, member, representative, agent or employee of the City shall be personally liable to Developer or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement. No officer, director, member, representative, agent or employee of the Developer shall be personally liable to the City or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to the City or successor or on any obligation under the terms of this Agreement.

7.5 Extent of Provisions Regarding the City and Developer; No Personal Liability. No representation, warranty, covenant, agreement, obligation or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future trustee, member, partner, officer, agent or employee of the City or Developer in an individual capacity Neither the City, nor, to the extent

authorized and permitted by applicable law, no official executing or approving the City's or Developer's participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

7.6 Amendments. Except as otherwise provided herein, no amendment to this Agreement shall be valid unless executed by an instrument in writing by the Parties hereto with the same formality as this Agreement.

7.7 Consent in Writing. Unless otherwise specifically provided herein, no consent or approval by a Party permitted or required under the terms of this Agreement shall be valid unless the same shall be in writing, signed by the Party by or on whose behalf such consent is given.

7.8 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

7.9 Notices. Any notice, demand, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be sent by overnight courier or registered letter, to the other Party at the address set forth in Article 4 for the Designated Representatives. Each party shall have the right to change the place to which notice shall be sent or delivered by sending a similar notice to the others in like manner. The effective date of any notice issued pursuant to this Agreement shall be as of the addressee's receipt of such notice.

7.10 Severability. If any clause or provision in this Agreement shall be held by final judgment of a court of competent jurisdiction to be invalid or unenforceable for any reason, such invalidity or lack of enforceability shall not affect the validity or enforceability of any other clause or provision of this Agreement.

7.11 Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or other electronic means shall be equally as effective as delivery of a manually executed original counterpart of this Agreement.

7.12 Contract Language. The language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Party. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

7.13 Survival of Provisions. Sections 3.4 and 3.5 shall survive any termination or expiration of this Agreement in accordance with Applicable Laws.

7.14 Force Majeure. If any Party is delayed or hindered in, or prevented from the performance or completion of any obligation required under this Agreement by reason of earthquakes; landslides; strikes; lockouts; labor troubles; failure of power; riots; insurrection; war; terrorism (international and domestic); acts of God; federal, state or local regulations, laws, rules or requirements; or other reason of the like nature not the fault of the Party delayed in performance of its obligation; unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen due to any of such causes, but not including lack of financing or financial capacity by any Party hereto ("**Force Majeure**"), such Party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay. The Party claiming Force Majeure shall take commercially reasonable steps to remove the Force Majeure event, and shall promptly notify the other Parties, as applicable, within a period of thirty (30) days, when it first learns of the existence of a Force Majeure condition and will similarly notify the other Parties, as applicable, within a period seven (7) business days, when a Force Majeure is terminated. Notwithstanding anything herein to the contrary, if a Party fails to notify the other Parties, as applicable, within a period of thirty (30) days, after it first learns of the existence of an event of Force Majeure, then such Party shall be deemed to have waived its right to be excused from performance of its obligations by reason of such event of Force Majeure.

7.15 Good Faith. Whenever in this Agreement any Party is required or permitted to grant approval or consent, take any action or request any other Party to take any action, make decisions or otherwise exercise judgment as to a particular matter, arrangement or term, the Party granting such approval or consent, taking or requesting such action, making decisions or otherwise exercising judgment shall act reasonably and in good faith and, in the case of approvals or consents, shall act with all deliberate speed in making its determination of whether or not to approve or consent to any particular matter and shall not impose conditions on the granting of such approval or consent that the approving or consenting Party does not believe are necessary in connection with such approval or consent.

7.16 Further Assurances. The Parties shall take or cause to be taken any and all other further actions reasonably necessary, required or requested of the other Parties in order to effectuate the terms and conditions herein.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth above.

CITY:

CITY OF PARMA, OHIO

By: _____
Name: Erik Tollerup
Title: Director, Community Services and Economic Development
Date: _____

DEVELOPER:

PARMA NEST LLC, d/b/a Little Birdie Wine Nest

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form:

By: _____
Timothy Dobeck, Director of Law
City of Parma

CERTIFICATE OF FISCAL OFFICER

The undersigned, Auditor of the City under the foregoing Agreement, certifies hereby that the monies required to meet the obligations of the City during the year 2021 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

By: _____
Brian Day, Auditor
City of Parma, Ohio