

## PARTIAL VACATION AND RELEASE OF EASEMENT

THIS PARTIAL VACATION AND RELEASE OF EASEMENT (this “**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the CITY OF PARMA, OHIO (the “**City**”), and 6997 STATE PARMA LLC, an Ohio limited liability company (“**6997 State**”). The City and 6997 State are sometimes referred to herein individually as a “**Party**” and together as the “**Parties**”.

### RECITALS:

WHEREAS, the City is the owner of certain real property identified as Cuyahoga County PPN 451-05-044 and legally described on Exhibit A attached hereto and made a part hereof (the “**City Parcel**”); and

WHEREAS, 6997 State is the owner of certain real property identified as Cuyahoga County PPN 451-05-052 and legally described on Exhibit B attached hereto and made a part hereof (the “**6997 State Parcel**” and, together with the City Parcel, the “**Parcels**”); and

WHEREAS, the City Parcel is benefitted by a certain ingress/egress easement evidenced by that certain Easement Plat recorded March 24, 1936 in Volume 129, Page 4 of Cuyahoga County Records, as well as easements and conditions contained in that certain Warranty Deed from the Board of County Commissioners of the County of Cuyahoga to the City of Cleveland recorded November 4, 1935 in Volume 4559, Page 408 of Cuyahoga County Records (collectively, the “**Easements**”); and

WHEREAS, that certain ALTA/NSPS Land Title Survey dated on or about August 3, 2023 prepared by GRS Group, a copy of which is attached hereto as Exhibit C (the “**Survey**”), indicates that approximately (i) 15.6’ of asphalt driveway and (ii) 8.7’ of an existing one-story, multi-car garage building primarily located on the 6997 State Parcel encroach upon the area described in and subject to the Easements (the “**Encroachments**”); and

WHEREAS, the City is willing to partially vacate the Easements such that the Encroachments will no longer encroach upon the area described in and subject to the Easements;

NOW, THEREFORE, in consideration of the mutual covenants, undertakings and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:



1. Partial Vacation and Release of Easements. Solely to the extent necessary to cause the Encroachments to no longer encroach upon the area subject to and described in the Easements, as depicted on the Survey, the City hereby partially vacates and releases the Easements as they encumber the 6997 State Parcel; provided, however, that nothing contained herein shall prejudice or waive the right of the City to install and maintain a drain or water pipe between the City Parcel and State Road, which right is hereby reserved. The foregoing partial vacation and release of the Easements shall (a) be perpetual, (b) create benefits and covenants running with the land, and (c) be binding upon any owner, tenant or other user or occupant of the City Parcel and all of its and their respective heirs, personal representatives, successors and assigns.

2. Use of Property. The City, its employees, contractors, customers, tenants, invitees, guests and agents, agree that in the continued use of the City Parcel, they shall not disturb or unreasonably interfere with 6997 State's use and enjoyment of or operation of the 6997 State Parcel.

3. Maintenance Obligations. 6997 State, its successors and assigns, at their sole cost and expense, shall keep and maintain the Encroachments in good order, condition, and repair.

4. No Mechanics Liens. 6997 State shall not permit any mechanics', materialmen's or other liens to attach to the City Parcel for work or materials furnished in connection with the maintenance and repair of the Encroachments and shall indemnify, defend and hold the City harmless from and against all claims, losses, damages, suits, penalties, fines, demands, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) of whatsoever nature arising out of or relating a breach of its obligations under this Paragraph 4.

5. Representations and Warranties. Each of the Parties hereto represents and warrants to the other that (a) it has the requisite power and authority to own and operate its Parcel, to conduct its business as currently conducted and to execute and deliver this Agreement, and (b) this Agreement constitutes the valid, binding and enforceable obligation of such Party.

6. Real Estate Taxes. Each of the Parties hereto shall pay or cause to be paid (unless exempt therefrom) in a timely fashion all real estate taxes and assessments levied against its respective Parcel. In the event a Party fails to pay or cause to be paid in a timely fashion real estate taxes and assessments levied against its Parcel as required by this Paragraph 6, the remaining Party shall have the right, but not the obligation, to pay such real estate taxes and assessments and the non-performing Party shall reimburse to the performing Party any amounts so paid on its behalf within thirty (30) days after written demand therefor.

7. Insurance. Each of the Parties hereto shall maintain, or cause to be maintained, at its own cost and expense, an adequate policy of general liability insurance covering its Parcel.

8. 6997 State Indemnification. Unless caused by or resulting from the gross negligence or intentional acts or omissions of the City or its employees, tenants, invitees, guests, contractors or agents (the "City Parties"), 6997 State agrees to indemnify, defend and hold harmless the City Parties from and against any and all claims, damages, losses, liens, judgments, fines, penalties, liabilities and/or expenses of any kind or nature (including, without limitation, reasonable attorneys' fees) arising out of or relating

to (a) use of the Encroachments by 6997 State or its employees, tenants, invitees, guests, contractors and agents (the “6997 State Parties”); or (b) injury to or death of any person or loss of or damage to property caused by or resulting from use of the Encroachments.

9. Not a Public Dedication. Nothing herein contained shall be deemed to be a grant or dedication of any portion of the 6997 Parcel or the City Parcel to the general public or for the general public or for any public purposes whatsoever, it being the intention of the Parties hereto that this Agreement shall be strictly limited to and for the purposes herein expressed.

10. Estoppel Certificate. At any time from and after the date hereof, 6997 State shall have the right to request that the City deliver a written statement certifying: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, stating the modifications and that the modified Agreement is in full force and effect); (b) whether or not, to the best the City’s knowledge, 6997 State is in default in performance of any of its obligations under this Agreement, and, if so, specifying each such default; (c) that there are no amounts due or obligations outstanding to or from 6997 State or the City to each other; and (d) any other information reasonably requested concerning this Agreement (the “**Estoppel Certificate**”). In the event 6997 State fails to dispute the Estoppel Certificate by delivery to the City of a notice specifying the nature and circumstances of any matter in the Estoppel Certificate that is disputed by 6997 State within ten (10) days of receipt of the Estoppel Certificate, then all matters specified in the Estoppel Certificate shall be deemed true and correct, and the Estoppel Certificate shall thereafter be binding on the Parties, any party having a security interest in either Parcel, or any party designated by 6997 State, and all of such parties may thereafter rely on the Estoppel Certificate as a conclusive statement of fact by the City as to the matters set forth therein.

11. Partial Invalidity. Invalidation of any of the provisions or the covenants, conditions, and restrictions herein contained, whether by order of court of competent jurisdiction, or otherwise, shall in no way affect any other provisions in this Agreement, which other provisions shall remain in full force and effect.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

13. Notices. All notices, request, approvals, or other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered by personal delivery, certified mail, return receipt requested, or by nationally recognized overnight courier service, to the following addresses:

If to the City: City of Parma

\_\_\_\_\_

Attn: \_\_\_\_\_

If to 6997 State: 6997 STATE PARMA LLC  
640 Meadowbrook Dr  
Aurora, OH 44202  
Attn: Christine Gruly

14. Miscellaneous.

(a) Each and every covenant, easement, right and obligation made or created under this Agreement shall be binding upon the Party making or assuming such obligation and such Party's successors and assigns and shall inure to the benefit of the remaining Party hereto and its successors and assigns.

(b) Each Party to this Agreement shall abide by and shall require its members, partners, managers, directors, officers, employees, agents, tenants, clients, guests, invitees, licensees, successors and assigns to abide by the terms hereof.

(c) In no event shall there be a merger of the rights and easements created by this Agreement into the fee simple title to the Parcels described herein, except in the event fee simple title to both Parcels is owned at the same time by the same fee owner free and clear of any other tenancies or agreements and an instrument releasing such rights and easements is duly recorded in the office of the Cuyahoga County, Ohio Fiscal Officer. Except as otherwise specifically set forth in the preceding sentence or pursuant to a release of the rights and obligations described herein by the fee simple owner of the Parcels duly recorded in the office of the Cuyahoga County, Ohio Fiscal Officer, this Agreement and the rights and easements granted hereunder shall continue in full force and effect at all times as to the Parcels. The partial vacation and release of the Easements herein described shall constitute covenants running with the land and shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

(d) No delay or omission by any Party hereto in the exercise of any right accruing under any default shall impair any such right or be construed to be a waiver thereof. A waiver by any Party hereto of a breach or a default of any of the terms and conditions of this Agreement by the other Party shall not be construed to be a waiver of any subsequent breach or default of the same or any other provisions hereof. Except as otherwise herein provided, no remedy provided in this Agreement shall be exclusive, but each shall be cumulative with all other remedies herein and at law or in equity and may be exercised at one time or at different times.

(e) It is expressly agreed that no breach of the provisions of this Agreement shall entitle either Party hereto to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which either Party may have hereunder by reason of any breach of the provisions of this Agreement. The provisions of this Agreement shall be binding upon and effective against any person or entity who acquires title by foreclosure, trustee's sale, tax sale, or any grantee by deed in lieu of foreclosure or trustee's sale.

(f) The provisions of this Agreement may only be abrogated, modified, rescinded, terminated or amended in whole or in part by a written instrument, in recordable form, executed by the

Parties hereto, their respective heirs, successors and assigns, and duly recorded in the office of the Cuyahoga County, Ohio Fiscal Officer.

(g) It is intended that the rights and benefits granted under this Agreement shall be senior to any other liens or encumbrances on the Parcels and each Party shall obtain written agreements from the holder(s) of any prior liens or encumbrances, in form and substance reasonably acceptable to the other Party, subordinating such liens and encumbrances to this Agreement.

(h) This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

(i) This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes any prior understandings and agreements, whether written or oral, with respect to the subject matter hereof.

(j) If any provision of this Agreement or its application to any person or circumstance shall, for any reason and to any extent, be invalid, illegal or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforceable to the fullest extent permitted by law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK-  
SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

THE CITY OF PARMA, OHIO

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

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

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State aforesaid, personally appeared The City of Parma, Ohio, by and through \_\_\_\_\_, its \_\_\_\_\_, who acknowledged that he/she did sign the foregoing instrument and that the same is his/her free act and deed. This is an acknowledgment clause. No oath or affirmation was administered to the signer.

GIVEN, under my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

6997 STATE PARMA, LLC,  
an Ohio limited liability company

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

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

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State aforesaid, personally appeared 6997 State Parma, LLC, an Ohio limited liability company, by and through Christine Gruly, its sole member, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed. This is an acknowledgment clause. No oath or affirmation was administered to the signer.

GIVEN, under my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

Prepared By:

T. David Mitchell (0042601)  
Brenner Kaposy Mitchell, L.L.P.  
30050 Chagrin Blvd., Suite 100  
Pepper Pike, Ohio 44124-5704  
(tel) 216-292-5555

**EXHIBIT A**

Legal Description of the City Parcel



**EXHIBIT B**

Legal Description of the 6997 State Parcel

**EXHIBIT C**

Survey