

ORDINANCE NO. 2017-01

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND PRIMA GUIDA, LTD IN CONNECTION WITH THE EXPANSION OF AN EXISTING FACILITY LOCATED AT 201 LAWTON AVENUE.

WHEREAS, Prima Guida, LTD has taken steps to expand their existing 80,000 square foot facility located at 201 Lawton Avenue; and

WHEREAS, Council deems it in the best interest of the City of Monroe to enter into a development agreement in connection with this project for the protection of all interested parties concerning the incentives in connection with said project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The City Manager is hereby authorized to enter into a Development Agreement by and between the City of Monroe and Prima Guida, LTD in connection with the expansion of an existing facility located at 201 Lawton Avenue. The terms and conditions are to be substantially similar to Exhibit "A" attached hereto and made a part hereof.

SECTION 2: This measure is hereby declared to be in full force from and after the earliest period allowed by law.

PASSED: February 14, 2017

ATTEST:



Clerk of Council

APPROVED:



Mayor

First Reading: February 14, 2017

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Ohio Public Law, Section 121.22 of the Ohio Code.

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.


Clerk of Council
City of Monroe, Ohio

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of this day of _____, 2017 by and between the **CITY OF MONROE**, an Ohio municipal corporation having an address for purposes hereof at 233 South Main Street, Monroe, Ohio 45050 (hereinafter referred to as the "City"), and **PRIMA GUIDA, LTD** an Ohio limited liability company having an address for purposes hereof at 201 Lawton Avenue, Monroe, Ohio 45050 (hereinafter referred to as "Presto" or the "Company"), under the following circumstances:

A. The Company is exploring a multi-phased expansion of their existing facility ("the Project") located at 201 Lawton Drive, Monroe, Ohio 45050. The existing facility and the adjacent parcels associated with the anticipated expansion are collectively referred to as the "Project Site" and are further specified in Exhibit A. The Project Site is located within the municipal corporate boundaries of the City near the intersection of Lawton Drive and SR 63.

B. The development project is expected to be divided into two construction phases, hereinafter referenced as Phase 1 and Phase 2, the details of which are specified in Exhibit B.

C. The City believes that the establishment of jobs at the Project Site and the mutual fulfillment of this Agreement are all in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and regulations.

C. In order to create an incentive for the Company to undertake the Project, the City has determined that it is necessary to utilize the provisions of its Community Reinvestment Area ("CRA") program and extend a 3-year, 100% real property tax exemption for the Phase 1 of the Project as well as a 5-year, 100% real property tax exemption for Phase 2 of the Project in the manner described in this Agreement.

D. Council of the City, by Ordinance No. ____-2017, duly passed on, _____, 2017 (the "Implementing Ordinance"), has authorized the City Manager to enter into this Agreement with the Company.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises herein contained, the sufficiency of which are acknowledged by the parties hereto, the City and the Company hereby agree as follows:

1. Contingencies. The Company's and the City's obligation to perform the obligations under this Agreement shall be expressly contingent upon the following:
 - a. By no later than March 1, 2017 (unless the Company and City agrees, in writing, to an extension of such date), the Board of Education of the Monroe Local School District (the "School District") shall have approved the CRA offer structured in the manner described in this Agreement. This includes the Company and the School District

having reached a Compensation Agreement with respect to the Project Site that is agreeable to both parties.

b. In the event that the contingency set forth above has not been obtained to the Company's, City's or School District's satisfaction, or waived by all affected parties, by March 1, 2017, the City or the Company shall have the option to terminate this Agreement. In the event that the City or the Company elects to terminate, this Agreement shall be null and void and the parties hereto shall be released from all obligations hereof.

2. City Covenants and Representations. The City covenants and represents to the Company as follows:

a. Neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by the City of any contract, agreement, understanding or instrument to which the City is a party or by which the City is subject or bound, of any judgment, order, writ, injunction or decree issued against or imposed upon them, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority;

b. There is no pending litigation, investigation or claim which affects or which might affect the City's performance of this Agreement and to the best of the City's knowledge, there is no threatened litigation, investigation or claim that affects or that might affect the City's performance of this Agreement;

c. Except for actions contemplated by this Agreement, as of the date of the execution of this Agreement, the City has no information or knowledge of any change contemplated in the applicable laws, ordinances or restrictions or any judicial or administrative action that would prevent, limit, impede or render more costly the Company's undertaking of the Project; and

d. The representations and agreements of the City made in this Agreement shall be deemed to apply as of the date of the execution of this Agreement and shall be construed as continuing representations and agreements and such representations made by the City are made with the knowledge and expectation that notwithstanding any investigation conducted by or on behalf of the Company (except as expressly stated in this Agreement), the Company is placing complete reliance thereon and that such representations are to be treated as material to the Company in entering into this Agreement and the City further represents that no representation set forth in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statement contained herein not materially misleading or not misleading in light of circumstances under which they are made;

3. Company Covenants and Representations. The Company covenants and represents to the City as follows:

a. The Company intends to develop Phase 1 and Phase 2 of the Project Site by constructing indoor facilities appropriate for warehousing, distribution and office functions of the company. The Phase 1 expansion of the existing building received Planning Commission's approval on November 15, 2016. However, as of the date of this document, Planning Commission has not reviewed the Phase 2 building. In order to be eligible for incentives under this Agreement, the Company shall strictly adhere to the most recent Zoning Code currently adopted by the City of Monroe at the time of the project, including (but not limited to) setback requirements, landscaping provisions, and façade design criteria.

b. The Company intends to construct both phases of the Project as outlined in Exhibit B.

c. The Company will make a Declaration of Covenants, Conditions, and Restrictions (the "Declaration") for the benefit of the Company and the City (the form of which is attached hereto as Exhibit C), which Declaration shall be recorded with respect to the Project Site.

d. Neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by the Company of any contract, agreement, understanding or instrument to which the Company is a party or by which the Company is subject or bound, of any judgment, order, writ, injunction or decree issued against or imposed upon them, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority;

e. There is no pending litigation, investigation or claim which affects or which might affect the Company's performance of this Agreement and to the best of the Company's knowledge, there is no threatened litigation, investigation or claim that affects or that might affect the Company's performance of this Agreement; and

f. The representations and agreements of the Company made in this Agreement shall be deemed to apply as of the date of the execution of this Agreement and shall be construed as continuing representations and agreements and such representations made by the Company are made with the knowledge and expectation that notwithstanding any investigation conducted by or on behalf of the City (except as expressly stated in this Agreement), the City is placing complete reliance thereon and that such representations are to be treated as material to the City entering into this Agreement and the Company further represents that no representation set forth in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to

make the statement contained herein not materially misleading or not misleading in light of circumstances under which they are made.

4. Community Reinvestment Area. The City represents that the Project Site is located within the boundaries of a Community Reinvestment Area that created by Emergency Resolution No. 44-2007 on August 14, 2007 and amended by Resolution No. 51-2015 on October 27, 2015. Under the terms of this Agreement, the City shall pass an ordinance authorizing a 3-year, 100% real property tax exemption for the Phase 1 building constructed on the Project Site upon the terms specified hereinbelow, and the Company and the City shall enter into a Community Reinvestment Area Agreement (the "Phase 1 CRA Agreement"), the form of which is attached hereto as Exhibit D.

Provided that the Company takes steps to substantially complete Phase 2 of the project within three years of the issuance of the Certificate of Occupancy for Phase 1 and that Phase 2 will contain increases in both payroll and employee levels that are substantially similar to those associated with the Phase 1 expansion, the City shall pass an ordinance authorizing a 5-year, 100% real property tax exemption for the Phase 2 building constructed on the Project Site upon the terms specified hereinbelow, and the Company and the City shall enter into a Community Reinvestment Area Agreement (the "Phase 2 CRA Agreement"), the form of which shall be substantially similar to the Agreement attached hereto as Exhibit D.

In the event that the Company is unable to complete Phase 2 of the project within the three years referenced above, the City shall pass an ordinance authorizing a 3-year, 50% real property tax exemption for the Phase 2 building, provided that the building is substantially complete within 3-5 years after the issuance of the Certificate of Occupancy for Phase 1.

In the event that the Company is unable to substantially complete Phase 2 of the project within five years of the issuance of the Phase 1 Certificate of Occupancy, there are no provisions in this Agreement that anticipate, guarantee, or otherwise suggest a real property tax exemption for Phase 2.

A rolling year should be used when determining the number of years passed since the issuance of the Phase 1 Certificate of Occupancy for the purposes of this section.

In connection with the granting of the CRA exemptions, the Company agrees, represents and covenants as follows:

- (a) During the term of the Agreement:
 - (i) Payroll and employee levels are expected to increase throughout the Project. As a result, there will be job creation and payroll generation hurdles in each of the CRA Agreements. The Company is expected to maintain these employment and compensation levels for each year of the abatement.

- (ii) In order to allow the City to fully evaluate the Company's compliance with the payroll and workforce provisions of this Agreement, the Company hereby waives the confidentiality provisions of the Ohio Revised Code with respect to their tax and payroll records typically filed with the City and authorizes the City's Income Tax Commissioner to release the records to the City Manager's Office for economic development purposes.
- (b) The Company agrees that no Tax Increment Financing funds will be spent by the City to develop Public Infrastructure as required by Phase 1 or Phase 2 of the Project. If the Company requests to use such funds, the City may evaluate the request and potentially modify the terms of this Development Agreement to reflect the additional public funds being directed to the Project.

5. Monroe Area Community Improvement Corporation. In recognition of the fact that the Company is already located in Monroe and continuing to invest in the community through the expansion projects, the City waives the one-time payment to the Monroe Area Community Improvement Corporation that is typically part of the City's Development Agreements.

6. Construction Standards. The Public Infrastructure required to facilitate the development contemplated by this Agreement shall be performed and completed by the Company, its contractors and subcontractors, or any successors thereof, in a good and workmanlike manner using first-class materials in accordance with all applicable laws, ordinances, rules and regulations and related safety standards, including the specifications and standards of the City. Upon the commencement of any construction undertaken pursuant to this Agreement, the Company must diligently pursue such construction to completion.

If at the time of the execution of this Agreement, the City and the Company have not yet finalized plans for the Public Infrastructure, the City reserves the right to review and approve, in a timely fashion, the design and engineering of the Public Infrastructure for consistency with City standards and specifications prior to the issuance of permits. The City will not unreasonably withhold any approvals as part of the review process.

7. Notices. Any notice or consent required or permitted to be given by or on behalf of either party to the other shall be given by mailing such notice or consent by United States certified or registered mail, postage prepaid and return receipt requested, or via a reputable express overnight mail service which provides proof of delivery addressed to the parties as set forth below or at such other address as may be specified from time to time in writing delivered to the other party. Notices shall be effective upon receipt or refusal, as the case may be.

If to the Company: Presto Foods
201 Lawton Avenue
Monroe, Ohio 45050
Attn: Chief Financial Officer

If to the City: City of Monroe
P.O. Box 330
Monroe, Ohio 45050-0330
Attn: City Manager

8. Remedies.

(a) In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by either party hereto, or any successor to such party, such party (or successor) shall, within 15 days of receipt of written notice from the other, proceed to cure or remedy such default or breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations. All rights and remedies shall be cumulative and shall not be construed to exclude any other remedies allowed at law or in equity.

(b) Unforeseeable Delay. Neither party shall be considered in breach of its obligations under this Agreement due to unforeseeable causes beyond its reasonable control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, orders of courts, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such unforeseeable delay, the time for performance of the obligations shall be extended for the period of the unforeseeable delay. The party seeking the benefit of the provisions of this subsection shall, within ten (10) calendar days after the beginning of any such unforeseeable delay, have first notified the other party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the unforeseeable delay. With respect to the Developer, delays or failures to perform due to lack of funds or the inability to procure labor or materials shall not be deemed unforeseeable delays beyond the reasonable control of the Developer.

9. Miscellaneous.

(a) Conflict of Interest: Representatives of the City Not Individually Liable. No official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No official or employee of the City shall be personally liable to the Company, or any successor in interest, in the event of any default or breach by the City or for any amount or amounts which may become due to the Company or any successor to the Company or on any obligations under the terms and conditions of this Agreement.

(b) Severability. In the event that any portions, sections or subsections of this Agreement are rendered invalid by the decision of any court or by the enactment of any law,

ordinance or regulation, such provision of this Agreement will be deemed to have never been included therein and the balance of the Agreement shall continue in full force and effect.

(c) Waiver. No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition, or duty of the other party shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty to be observed by the other party.

(d) Authority. Each party to this Agreement hereby represents and warrants that it is executing this Agreement with the full and proper authority and that the parties whose names appear hereon are duly authorized and empowered to make and execute this Agreement.

(e) Assignment. This Agreement shall be binding on the parties hereto and their respective successors and assigns. Any assignment of this Agreement by the Company, other than to an affiliate entity, shall be subject to the prior written consent of the City Manager, which consent shall not be unreasonably withheld. Any such assignment may only be made to a person or entity financially capable of completing the Improvements described herein and shall expressly provide that the assignee shall comply with all the terms and requirements of this Agreement.

(f) Merger and Amendment. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the Project and the Project Site, the Improvements, and the Public Infrastructure to be completed thereon, and contains all of the covenants, agreements, and other terms and conditions between the parties hereto with respect to the same. No waivers, alterations or modifications of this Agreement or any agreements in connection therewith shall be valid unless in writing and duly executed by all parties hereto.

(g) Counterparts; Captions. This Agreement may be executed in counterpart, and in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement. Captions have been provided herein for convenience only and shall not affect the construction or interpretation of this Agreement.

(h) Governing Law. This Agreement shall be governed by the laws of the State of Ohio.

(i) Language. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against either the City or the Developer. Section headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way defining, limiting, or amplifying the provisions hereof. The City and the Developer agree that in the event any term, covenant, or condition herein contained is held to be invalid or void by any court of competent jurisdiction, the invalidity of such term, covenant, or condition shall in no way affect any other term, covenant, or condition herein contained.

(j) Recording. This Agreement shall be placed of record in the real estate records of the Recorder of the County of Butler, Ohio

(k) Termination. This Agreement shall terminate on the date that is nine (9) years after the date of the City's issuance of a building permit for the first expansion on the Project Site.

The Developer has caused this Agreement to be duly executed by _____, its
_____, on the _____ day of _____, 2017; and the City has caused
this Agreement to be duly executed by _____, its City Manager, on the
_____ day of _____, 2017 as authorized by Ordinance No. _____ -
2017

CITY OF MONROE, OHIO

By: _____
William J. Brock, P.E.
City Manager

PRIMA GUIDA, LTD

By: _____
Dewey Weeda
President

STATE OF OHIO)
)
COUNTY OF _____) SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, member of Prima Guida, an Ohio limited liability company, on behalf of Prima Guida, LTD an Ohio limited liability company.

Notary Public

STATE OF OHIO)
)
COUNTY OF BUTLER) SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by William J. Brock, City Manager of the City of Monroe, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public

DESCRIPTION OF PROJECT SITE

The Project Site consists of real property (buildings) with the current addresses of 101 Lawton Avenue and 201 Lawton Avenue, respectively, and all associated land between the two buildings.

BUTLER COUNTY PARCELS

C180006430008

C180006430010

C180006430006

C180006430001

DEVELOPMENT PHASES

PHASE 2:

- Complete demolition and removal of existing building located at 101 Lawton Avenue, Monroe Ohio 45050
- Construction of approximately 40,000 SF of additional cooler and dry warehouse and related paving. When complete the total square footage of entire 201 Lawton Avenue property (existing + Phase I + Phase II) will be 172,000 square feet

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this ___ day of _____, 2017 by **PRIMA GUIDA LTD**, an Ohio private limited company ("Declarant").

A. Declarant is the owner of certain real property located in the City of Monroe, Butler County, Ohio and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

B. Declarant desires that the Property shall be held, sold and conveyed subject to the covenants, conditions and restrictions contained herein.

C. Prior to the date hereof, the Declarant entered into that certain Development Agreement dated as of _____, 2017 by and between the City of Monroe, an Ohio municipal corporation (the "City") and the Declarant ("Development Agreement"). The terms of the Development Agreement require the Declarant to impose the restrictions on the ownership and development of the Property as provided in this Declaration for the benefit of the City.

NOW, THEREFORE, in consideration of the premises and for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property, Declarant hereby declares that the Property shall be held, sold and conveyed subject to this Declaration.

SECTION 1.

DEFINITIONS

"Applicable Laws" means the statutes, laws, ordinances, rules, regulations, codes, common law, permits and orders of any governmental or quasi-governmental entity having jurisdiction over the Property.

"Owner" shall mean the fee simple owner of all or any portion of a Parcel.

"Parcel" shall mean that portion of the Property owned by an Owner, and its successors and assigns.

"Tenant" shall mean any person occupying any Parcel pursuant to a written or oral lease agreement with the Owner thereof or with any other person or entity claiming under the Owner.

SECTION 2.

COVENANTS AND RESTRICTIONS OF USE AND OCCUPANCY

2.1 Prohibited Uses. The following operations and uses shall not be permitted on any Parcel subject to this Declaration:

- (a) Residential use of any type;
- (b) Trailer courts or recreation vehicle campgrounds;
- (c) Junk yards and wrecking yards;
- (d) Mining, drilling for, or removing oil, gas or other hydrocarbon substances;
- (e) Refining of petroleum or of its products;
- (f) Commercial excavation of building or construction materials, provided that this prohibition shall not be construed to prohibit any excavation necessary in the course of construction;
- (g) Distillation of bones;
- (h) Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals or other refuse;
- (i) Fat rendering;
- (j) Cemeteries;
- (k) Jail or honor farms;
- (l) Labor or migrant worker camps;
- (m) Automobile, go-cart, motorcycle, or quarter-midget race tracks or other race tracks;
- (n) Adult entertainment establishments, adult arcade, adult cabaret, adult book store, adult entertainment facility, adult theater, adult drive-in theater, adult mini motion picture theater, adult motion picture theater, adult motel, adult video store, nude model studio, sexually oriented business or any other commercial act involving nudity, semi-nudity or sexual orientation; and
- (o) Refueling truck stops.

2.2 Restrictions. No portion of property as described in Exhibit A (the "Restricted Area") shall be used for or permit the following uses:

- (a) farming uses involving liquid manure and tilling methods not generally accepted as good farming practice in the geographic area of the Restricted Area;
- (b) liquor store or other sale of alcoholic beverages, except for on-premises consumption as part of a permitted restaurant use and except for the ancillary sale of liquor, beer and wine pursuant to an otherwise permitted use hereunder;
- (c) any vibration, noise, sound or other disturbance that is reasonably objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (d) any obnoxious emission of odors or of noxious, caustic or corrosive matters, whether toxic or non-toxic, gas, fumes or smoke, this will not preclude the use of any vehicles or methods of transportation;
- (e) any litter, dust, dirt or fly ash in excessive quantities (except as necessary for typical grading purposes);
- (f) any unusual firing, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;
- (g) any recycling facility, truck terminal or petroleum stockyard;
- (h) any auction, public sale or other auction house operation other than charitable sales by schools, churches or other charitable educational organizations, provided that the same are conducted in compliance with all governmental regulations;
- (i) any raising, breeding, slaughtering or keeping animals or poultry of any kind, except for (i) a veterinary hospital or animal care center (provided there is no outdoor boarding of animals) and (ii) security watchdogs kept for security purposes;
- (j) any free standing automobile body/fender repair shop, transmission shop, or similar free standing use; and
- (k) any commercial laundry or dry cleaning plant, self-serve laundromat, self-serve car washing establishment, massage parlor, stand alone billiard establishment, night club (excluding venues run as family or adult entertainment centers such as, for example, Dave & Busters), or dance club (excluding dance studios where teaching or recreational dancing is done).

2.3 No portion of the Parcel shall be developed with metal buildings; provided, however, that this provision is not intended to limit the use of metal as an architectural feature or detail of buildings within the Parcel (e.g., exterior building trim, etc.).

SECTION 3.

MISCELLANEOUS

3.1 City As Intended Beneficiary. Declarant hereby certifies that the City is an intended third party beneficiary of the terms and conditions of this Declaration and, as such, shall

have all right and interest to enforce the terms and conditions hereof. As such, the City agrees that, upon not less than ten (10) business days prior written request, the City shall issue an estoppel certificate certifying that the Property is in compliance with the terms and conditions of this Declaration, and that the Declaration is in full force and effect without modification.

3.2 Duration. The restrictions set forth in this Declaration shall be covenants running with the land and shall bind the Property and every part thereof, and shall (regardless of whether any such beneficiary owns an interest in any Parcel) inure to the benefit of and be enforceable by, the Declarant, the City and each Owner and Tenant and their legal representatives, heirs, devisees, successors and assigns, and, except as otherwise provided herein, shall continue in full force and effect for twenty (20) years from the date on which this Declaration is first recorded in the Recorder's Office of Warren County, Ohio. Thereafter, except as otherwise provided herein, the restrictions contained in this Declaration shall be automatically renewed for successive ten-year periods unless amended or terminated as provided in this Section 3.

3.3 Amendment or Termination. Any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument approved by (i) the Owners of at least 75% of all Parcels, (ii) the Declarant and (iii) the City.

3.4 No Reverter. No covenant, condition, restriction or reservation or easement contained in this Declaration is intended to create, or shall be construed as creating, a condition subsequent or a possibility of reverter.

3.5 Invalidity. The determination by a court of competent jurisdiction that any provision of this Declaration is invalid for any reason shall not affect the validity of any other provision hereof.

3.6 Headings. The headings of the Sections are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

3.7 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular the plural, and vice versa.

3.8 Conflict. In the event of a conflict between the restrictions set forth in this Declaration or any one or more of them and other private restrictions which may be recorded before or after this Declaration, the more restrictive restriction, covenant, condition, easement or other obligation shall control.

3.9 Covenants Running with Land. This Declaration and all amendments hereto (a) shall be, and shall be construed as, covenants running with the land, (b) shall be binding upon Declarant, any mortgagee, each Owner, each Tenant and all claiming under each Owner, or Tenant, and (c) shall (regardless of whether or not any such beneficiary owns an interest in any Parcel) inure to the benefit of and be enforceable by (i) Declarant; (ii) the City, and (iii) each Owner and all claiming under each Owner.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officer as of the day and year first above written.

PRIMA GUIDA, LTD

By: _____
Printed Name: _____
Title: _____

STATE OF OHIO)
)SS:
COUNTY OF BUTLER)

The foregoing Declaration was acknowledged before me this ____ day of _____, 2007 by _____, the _____ of PRIMA GUIDA, LTD, an Ohio limited liability company, on behalf of such company.

Notary Public

My commission expires: _____

EXHIBIT D

COMMUNITY REINVESTMENT AREA AGREEMENT

This Community Reinvestment Agreement (this "Agreement") is made and entered into by and between the City of Monroe, Ohio an Ohio municipal corporation, with its main offices located at 233 South Main Street, Monroe, Ohio (hereinafter referred to as "City") and Prima Guida, LTD an Ohio limited private company with its principal office located at 201 Lawton Avenue, Monroe, Ohio 45050 (doing business as Presto Foods and referred to in this document as "Presto" and "the Company"), under the following circumstances:

WHEREAS, the Council adopted Emergency Resolution No. 46-2007 on August 14, 2007, describing the boundaries of the Community Reinvestment Area and determined that such area contains the conditions described in Section 3735.65(B) of the Code and confirmed said area as a Community Reinvestment Area under Chapter 3735 of the Code; and

WHEREAS, Presto desires to construct a 46,000 square foot expansion on their existing 86,000 square foot facility to be used for office, warehousing and distribution operations of a food products supplier, as more particularly described on the site plan attached hereto as Exhibit A (the "Project"), which will be located on certain real property within the boundaries of the Community Reinvestment Area as more specifically described on Exhibit B hereto (the "Project Site"), provided that the appropriate development incentives are available to support the economic viability of the Project; and

WHEREAS, Presto will own the Project; and

WHEREAS, the City, having the appropriate authority, desires to provide Presto with incentives available for the development of the Project in the Community Reinvestment Area under Chapter 3735 of the Code; and

WHEREAS, Presto has submitted a proposed application to the Housing Officer of City for this Agreement (which is attached hereto as Exhibit C, hereinafter referred to as the "Application"); and

WHEREAS, Presto has remitted to the City the required state application fee of \$750.00 made payable to the Ohio Development Services Agency which the City will forward to the Ohio Development Services Agency together with this Agreement; and

WHEREAS, the Housing Officer of the City has reviewed the proposed construction of the Project and the facts asserted in the Application and has determined that the proposed construction of the Project meets the requirements for an exemption under Section 3735.67 of the Code; and

WHEREAS, the Project Site is located in the Monroe Local School District (the "School District") School District and the Butler Technology and Career Center Joint Vocational School District (the "JVSD"), and the respective Boards of Education of the School District and the JVSD have been notified in accordance with Section 5709.83 and been given a copy of this Agreement; and

WHEREAS, this expansion and any activities related to the expanded footprint of the building are not intended to result in the moving of employees, inventory, and/or equipment from any other location in Ohio; and

WHEREAS, pursuant to Section 3735.67(A) of the Code and in conformance with the format required under Section 3735.671(B) of the Code, the parties hereto desire to set forth their Agreement with respect to matters hereinafter contained;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Presto's contractor shall construct the Project as described in recitals to this Agreement. The Project will be located on the Project Site. Presto will invest in the Project and the Project Site an amount estimated to exceed \$9,000,000 (nine million) for the costs of site development and construction of a new building (exclusive of any amounts for acquisition of machinery and equipment, furniture and fixtures, and inventory). There are no existing buildings at the Project Site. The estimates provided in this Section are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemption provided in this Agreement. The parties recognize that costs do not necessarily equal otherwise taxable value.

2. The value for Ohio personal property tax purposes of the non-inventory personal property of Presto that is located at another location in Ohio prior to the execution of this Agreement and that is to be relocated from that location to the Project Site is \$0.00. The value for Ohio personal property tax purposes of the non-inventory personal property of Presto located at the Project Site prior to the execution of this Agreement is \$0.00. The average value for Ohio personal property tax purposes of the inventory of Presto held at another location in Ohio prior to the execution of this Agreement and to be relocated from that location to the Project Site is \$0.00.

3. Presto intends to commence construction of the building on or about April 1, 2017 and the scheduled estimated completion date for the building shell portion of the Project is no later than approximately October 1, 2017. The estimates provided in this Section are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemption provided in this Agreement, except as otherwise provided in Section 5.

4. Presto estimates that there will be created at the Project Site, cumulatively, approximately 20 full-time permanent equivalent employee positions, 0 full time temporary equivalent employee positions, 0 part time permanent equivalent employee positions and 0 part time temporary employee positions, with an additional aggregate annual payroll of approximately \$1,076,000. Presto estimates that hiring will commence on about the day of expected completion of the Project (October 1, 2017) and will continue incrementally during the following years as set forth in the following table:

Year following completion	Full Time Equivalent Employees	Full Time Payroll (\$)
12/31/2017	125	9,856,000
12/31/2018	130	10,136,000
12/31/2019	135	10,394,000
12/31/2020	140	10,659,000
12/31/2021	145	10,932,000

Presto currently has approximately one hundred and twenty-five full-time equivalent employee positions in Ohio. The estimates provided in this Section 4 are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemption provided in this Agreement, except as provided in Section 11.

5. The City hereby grants Presto a tax exemption for real property improvements made to the Project Site pursuant to Section 3735.67 of the Code which shall be in the following amounts:

100% for 3 years.

The exemption commences the first year for which the real property improvements would first be taxable were that property not exempted from taxation. No exemption shall commence after the tax year ending December 31, 2019 nor extend beyond the tax year ending December 31, 2021. Developer acknowledges that the tax exemption with respect to Project is subject to the filing of a real property tax exemption application with the Housing Officer following the completion of construction of the Project. The City agrees that upon receipt of the real property tax exemption application, the Housing Officer shall certify the tax exemption to the County Auditor.

6. Presto shall provide to the Tax Incentive Review Council of the City any information reasonably required by the council to evaluate the property owner's compliance with the Agreement, including returns filed pursuant to Section 5711.02 of the Code if requested by the Council. Presto shall also provide employment and tax-related information by February 15th of each reporting year for the purposes of the Ohio Development Services Agency annual reporting requirement.

7. Consistent with previous practice in the City, the City Council has waived the annual fee provided for in Section 3735.671 of the Code.

8. Presto shall pay such real property taxes as are not exempted under this Agreement and are charged against the Project and the Project Site and shall file all tax reports and returns as required by law. If Presto fails to pay such taxes or file such returns and reports, all incentives granted under this Agreement will be rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter, and the City may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this Agreement.

9. The City shall perform such acts as are reasonably necessary to appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

10. If for any reason the City revokes the designation of the Community Reinvestment Area, all entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless Presto materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation granted under this Agreement.

11. If Presto materially fails to fulfill the payroll obligations (as determined based on the City of Monroe's audited annual wage reconciliation Form W-3 for such year for the Company at the Site) as outlined in Section 4 for any year, then the City may terminate or modify the exemptions from taxation granted under this Agreement, and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under the Agreement. However, Presto shall be able to avoid termination or modification of the Agreement for the year in which the payroll estimate was not met by paying the City an amount equal to the value of the abated real property taxes for that year. This penalty payment is payable by June 1 following the calendar year in which the payroll hurdle was not met. This penalty payment provision shall not be used more than once during the term of the exemption. Upon the second year in which the payment estimate is not met, there is no option for a penalty payment and the City may terminate or modify the Agreement as noted above.

12. If Presto materially fails to fulfill its obligations under this Agreement, or if City determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the City may terminate or modify the exemptions from taxation granted under this Agreement, and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this Agreement. At the request of the City, Presto shall execute and deliver to the City, in form and substance reasonably satisfactory the City, a mortgage securing such obligation.

12. Presto hereby certifies that at the time this Agreement is executed, that Presto does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and do not owe delinquent taxes for which the company is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Revised Code, or, if such delinquent taxes are owed, the company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against Presto. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.

13. Presto and the City acknowledge that this Agreement must be approved by formal action of the legislative authority of City as a condition for the Agreement to take effect. This Agreement takes effect upon the signatures of the City Manager and Presto, and after the statutorily-required 30 day referendum period following the second reading of the legislation, provided that there are objections filed during the referendum period.

14. Exemptions from taxation granted under this Agreement shall be revoked if it is determined that Presto, any successor property owner, or any related member (as those terms are defined in Section 3735.671 of the Code) has violated the prohibition against entering into this Agreement under Division (E) of Section 3735.671 or Section 5709.62 or 5709.63 of the Code prior to the time prescribed by that division or either of those sections.

15. Presto affirmatively covenants that it has not knowingly made any material false statements to the State or local political subdivisions in the process of obtaining approval of the Community Reinvestment Area Incentives. If any representative of Developer or Operator has knowingly made a material false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives, Presto shall be required to immediately return all benefits received under the Community Reinvestment Area Agreement pursuant to ORC Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC Section 9.66 (C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC Section 2921.12(D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

16. Except as provided below, this Agreement and the benefits and obligations thereof are not transferable or assignable without the express, written approval of the City. The City Manager may, in his or her discretion, approve the transfer or assignment of this Agreement and the benefits and obligations hereof from Company to Transferee, subject to compliance with the procedure stated below in this Section. If Transferee is a Permitted Transferee, the City Manager hereby does approve, and Company shall not need further consent by the City with respect to, the transfer or assignment of this Agreement and the benefits and obligations hereof to Permitted Transferee.

“Transferee,” as used herein, is defined as each person or entity, except Company, which is a legal successor in interest to all or any part of the Project or the Project Site (the “Transferred Property”) whether by sale, grant, or other means of transfer of interest, including but not limited to the formation of subsidiaries, affiliates, joint ventures, successor entities or other arrangements used to carry out the terms of this Agreement (each a “Successor”).

“Permitted Transferee,” as used herein, is defined as (a) Prima Guida, LTD, (b) any entity in which Presto directly or indirectly holds an ownership interest; (c) successor entities to Presto where Presto had ownership as described in (b) and where there remains at least one other party with an ownership interest; and (d) entities resulting from a consolidation, conversion, acquisition or merger of Company.

Provided, however, that as a condition to this right to receive tax exemption as set forth in this Agreement, each Transferee shall execute and deliver to the City an Assignment and Assumption Agreement in form and content reasonably satisfactory to the City, wherein such Transferee:

- (a) assumes all obligations of Presto under this Agreement with respect to the Transferred Property, whether the Transferee received the Transferred Property directly from Company or a Successor, and
- (b) certifies to the validity, as to the Transferee and the Transferred Property, of the representations, warranties and covenants contained herein and in the Assignment and Assumption Agreement

It is acknowledged and agreed by the City that the form of Assignment and Assumption Agreement attached hereto as Exhibit D shall be deemed satisfactory to, and approved by, the City.

Upon approval by the City of such Assignment and Assumption Agreement, as to the Transferred Property, the approved Transferee shall have all entitlements and rights to tax exemption, and obligations, as an “Owner” under this Agreement, in the same manner and with like effect as if the Transferee had been the original Company and a signatory to this Agreement. The City agrees to execute each such Assignment and Assumption Agreement and to deliver an original thereof to the Transferee (but execution of such agreement by the City will not be a condition to the effectiveness thereof, with respect to an assignment to a Permitted Assignee).

(Balance of Page Intentionally Omitted)

IN WITNESS WHEREOF, the City of Monroe, Ohio, pursuant to Ordinance 2015-42 of the Council of City of Monroe, Ohio, and PRIMA GUIDA, LTD, have caused this instrument to be executed on this ____ day of _____, 2017.

CITY OF MONROE, OHIO

PRIMA GUIDA, LTD

An Ohio private liability company

By _____
William J. Brock, P.E., CM
City Manager

By _____

STATE OF OHIO)
)SS:

Sworn to and subscribed in my presence by
presence by

Sworn and subscribed in my

William J. Brock, City Manager of Monroe,
this ____ day of _____, 2017.

_____,

this

____ day of _____, 2017.

Notary Public

Notary Public

This Agreement was prepared by City of Monroe, 233 South Main Street Monroe OH 45050.

Approved as to form:

K. Philip Callahan, Law Director

- Exhibit A – Site Plan
- Exhibit B – Project Site
- Exhibit C – Application
- Exhibit D – Assignment and Assumption