

ORDINANCE 2020 – 1

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH ATC REALTY SIXTEEN, INC. AND DECLARING AN EMERGENCY

WHEREAS, ATC Realty Sixteen, Inc. [ATC Realty], an entity affiliated with Wells Fargo and is the owner of the “Cornerstone” properties known as Permanent Parcel Nos. 473-23-086, 473-25-001, 473-25-005, 473-25-008 through 015, 473-24-014 through 046, and 473-24-058 through 062, which were acquired through foreclosure sales in 2012; and

WHEREAS, between 2012 and 2017 ATC Realty made half yearly tax payments to the Fiscal Officer of Cuyahoga County for regular real estate taxes which the Fiscal Officer transferred incorrectly to the City; and

WHEREAS, litigation has been threatened by ATC Realty regarding a refund of the payments that were transferred incorrectly to the City by the Fiscal Officer;

WHEREAS, the parties have engaged in protracted settlement negotiations regarding the refund of payments that were transferred incorrectly by the Fiscal Officer; and

WHEREAS, based on those protracted negotiations the parties have mutually agreed to resolve claims regarding the payments that were transferred incorrectly and the parties are desirous of settling all issues between them upon the terms set forth in a settlement agreement, so as to avoid the risk of uncertainty and delay occasioned by litigation; and

WHEREAS, this Council wishes to authorize the Mayor to enter into a Settlement Agreement to resolve these alleged claims.

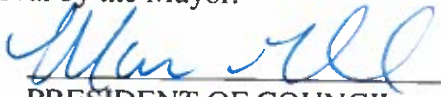
NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARMA HEIGHTS, COUNTY OF CUYAHOGA AND STATE OF OHIO, THAT;

Section 1. The Mayor is authorized to enter into a settlement agreement with ATC Realty pursuant to the terms and conditions approved by the Director of Law, and substantially in the form as set forth in Exhibit A, which is attached hereto, and incorporated into this ordinance, as if fully rewritten.

Section 2. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3. This Ordinance is declared to be an emergency measure necessary for the public peace, health and safety of the Municipality and for the further reason that the approval of the Settlement Agreement will preclude potential litigation; wherefore, it shall be in full force and effect immediately after its passage by Council and approval by the Mayor.

PASSED: 1-30-2020


PRESIDENT OF COUNCIL

ATTEST: Florence A. Bohdan

1-30-2020
APPROVED

FILED WITH
THE MAYOR: 1-30-2020


MAYOR

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

*(concerning certain monies transferred from the Cuyahoga
County Treasurer to the City of Parma Heights)*

THIS SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE (“Agreement”) is made and entered into as of the ___ day of February, 2020, by and between the **City of Parma Heights, Ohio**, an Ohio municipal corporation (“City”), and **ATC Realty Sixteen, Inc.**, a California corporation (“ATC Realty”), but the effective date of this Agreement (“Effective Date”) shall be deemed to be the later of (i) the date on which ATC Realty executed the Agreement, as such date is reflected on the signature page of this Agreement; (ii) the date on which the City executed the Agreement, as such date is reflected on the signature page of this Agreement; and (iii) the date on which the City’s City Council approves this Agreement.

RECITALS

A. In February 2012, by way of Sheriff’s Deeds issued in the wake of foreclosure sales held in January 2012, ATC Realty acquired certain properties located in the City then known as Permanent Parcel Nos. 473-23-086, 473-25-001, 473-25-005, 473-25-008 through -015, 473-24-014 through -046, and 473-24-058 through -062 (collectively, the “Properties”). As of the Effective Date, ATC Realty still owns some, but not all, of those properties.

B. At the time that ATC Realty acquired the Properties, there was a separate pending lawsuit in the Cuyahoga County Court of Common Pleas that, among other things, involved a challenge as to whether the Properties were properly subject to special assessment liens that the City had certified to Cuyahoga County in October 2006 (“Special Assessments Lawsuit”).

C. Between 2012 and 2017, ATC Realty made certain half-yearly tax payments that Cuyahoga County agreed would be used only for certain undisputed “regular” real estate taxes, and not for disputed special assessments or related line items on the tax duplicate that were the subject of the Special Assessments Lawsuit. However, the Cuyahoga County Treasurer from time to time applied portions of ATC Realty’s tax payments to the disputed line items instead of to the undisputed line items, and from time to time transferred those incorrectly-applied monies to the City in a total amount of \$597,660.60 (as calculated by the City and as hereby stipulated by ATC Realty) (“Transferred Monies”).

D. The result of the Special Assessments Lawsuit was a determination that although the special assessment liens were valid, a 2007 order by Judge Villanueva had caused the special assessment liens to be transferred from the Properties to the net proceeds of a sale of the Properties that had been conducted in the Special Assessments Lawsuit. Thus, at the time that ATC Realty acquired the Properties in 2012, the Properties actually were free and clear of the special assessment liens.

E. Based on the results of the Special Assessments Lawsuit, ATC Realty contacted the City for a refund of the Transferred Monies (“Refund Request”) and the parties have had various discussions about ATC Realty’s Refund Request.

F. The parties to this Agreement are mindful of the costs and uncertainties that would be engendered by litigation relating to the Refund Request and, after consulting with their respective counsel, have agreed to a full and complete compromise and settlement concerning the Refund Request on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, the parties agree as follows.

1. **Payment.** In full settlement of the Refund Request, the City shall pay ATC Realty the sum of Four Hundred Fifty Thousand Dollars and No Cents (\$450,000.00) (the “Settlement Sum”). The City shall pay the Settlement Sum by wire transfer of immediately-available federal funds, in two installments as follows:

- \$212,500.00 on or before March 15, 2020; and
- \$237,500.00 on or before February 15, 2021.

ATC Realty shall provide wire-transfer instructions to the City at least fourteen days in advance of the payment dates set forth above. Any payment due under the terms of this Agreement that is not paid by the date specified herein shall bear interest from the date such payment was due at Ohio’s statutory rate.

2. **Release by ATC Realty.** In consideration of the foregoing and of the covenants and agreements contained herein, ATC Realty, on behalf of itself, its predecessors, successors, assigns, members, partners, and employees, and all persons claiming by, through, or on behalf of ATC Realty, hereby releases, remises, acquits, and forever discharges the City, and the City’s predecessors, successors, assigns, heirs, affiliates, parents, subsidiaries, officers, directors, partners, employees, agents, consultants, attorneys, insurers and reinsurers, from any and all claims, demands, causes of action, payments, rights, obligations, losses, judgments, awards, damages, attorneys’ fees, interest, costs, and liabilities, of whatever kind or character, whether known or unknown, arising out of, or in any way relating to the Transferred Monies and the Refund Request. Notwithstanding anything in this Agreement to the contrary, if the City fails to make any payment to ATC Realty when due, ATC Realty, at its sole election, (a) may declare this Agreement and the release of the City herein null and void, and seek to recover the entire Transferred Monies (less any payments of the Settlement Sum that it received from the City), or (b) may seek to recover from the City the remaining payments due under this Agreement; together with (in either case) interest, attorney’s fees, costs, reimbursables, and disbursements.

3. **Release by the City.** In consideration of the foregoing and of the covenants and agreements contained herein, the City, on behalf of itself, its predecessors, successors, assigns, members, partners, and employees, and all persons claiming by, through or on behalf of the City, hereby releases, remises, acquits, and forever discharges ATC Realty, and ATC Realty’s

predecessors, successors, assigns, heirs, affiliates, parents, subsidiaries, officers, directors, partners, employees, agents, consultants, attorneys, insurers and reinsurers, from any and all claims, demands, causes of action, payments, rights, obligations, losses, judgments, awards, damages, attorneys' fees, interest, costs, and liabilities, of whatever kind or character, whether known or unknown, arising out of, or in any way relating to the Transferred Monies and the Refund Request.

4. **Representations and Warranties of the Parties.** Each party to this Agreement, on behalf of itself and its predecessors, successors, assigns, related and/or affiliated persons or entities, represents and warrants:

- (a) That it is validly organized and existing under the laws of its place of incorporation, organization, or formation at the time of the execution of this Agreement.
- (b) That the undersigned signature and execution of this Agreement on its behalf is made and undertaken by an individual or individuals authorized to execute this Agreement, which individual(s) has the authority to bind the party on whose behalf he or she is signing.
- (c) That it made and executed this Agreement with advice of counsel, and that it was not influenced, coerced, or induced to make this compromise settlement by an improper action by the other party or any third person.
- (d) That this Agreement was jointly drafted by the parties and therefore shall not be construed against any party based solely on authorship.

5. **Attorneys' Fees.** Except as set forth in the last sentence of Paragraph 2, each party shall bear its own attorneys' fees, costs, and disbursements arising from or relating to the Transferred Monies, the Refund Request, and this Agreement.

6. **Benefit of this Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, devisees, executors, administrators, legal representatives, successors, assigns, attorneys, and related and/or affiliated persons or entities.

7. **Amendment.** This Agreement shall not be amended, altered, or modified except by an instrument in writing duly executed by the parties hereto.

8. **Entire Agreement.** This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments, or understandings with respect to the subjects provided for herein. The terms hereof are contractual in nature, and not merely a recital.

9. **Governing Law.** This Agreement and the rights and obligations of the parties hereto and any claims or disputes relating thereto shall be governed by and construed in accordance with the laws of the State of Ohio applicable to contracts to be fully performed therein, without regard to conflicts of law principles.

10. **Severability.** Each provision, paragraph, and subparagraph of this Agreement constitutes a separate and distinct covenant, and if any provision, paragraph, or subparagraph is adjudged by any court of law to be void or unenforceable in whole or in part, such adjudication shall not be deemed to affect the validity of the remainder of this Agreement, or of any other provision, paragraph, or subparagraph of this Agreement.

11. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same Agreement. This document will not be binding on or constitute evidence of a contract between the parties until such time as a counterpart of this document has been executed by each party and a copy thereof delivered to the other party to this Agreement.


12. **Electronic Copies.** For purposes of executing this Agreement, a document signed and transmitted by e-mail, a facsimile machine, or telecopier shall be treated as an original document. The signature of any party thereon shall be considered as an original signature, and the document transmitted shall be considered to have the same binding legal effect as if it were originally signed. At the request of any party, any document transmitted by e-mail, facsimile, or telecopy shall be re-executed by the parties in original form. No party hereto may raise the use of e-mail, a facsimile machine, or telecopier or the fact that any signature was transmitted through the use of e-mail, a facsimile machine, or telecopier as a defense to the enforcement of this Agreement or any amendment thereto.

IN WITNESS HEREOF, the undersigned have duly executed this Agreement, or have caused this Agreement to be duly executed on their behalf, as of the Effective Date.

ATC REALTY SIXTEEN, INC.

CITY OF PARMA HEIGHTS, OHIO

By: _____
Jami Bartolucci, Vice President

By: 
Printed Name: MIKE BYRNE
Title: MAYOR

Date: _____

Date: 2/3/2020



Parma Heights, Ohio

6281 Pearl Road

Parma Heights, Ohio 44130

440-884-9600

Fiscal Officer's Certificate

As the Chief Fiscal Officer of the City of Parma Heights, Ohio, I certify that as of the date of execution of this Certificate, the amount required to satisfy payment under the agreement has been lawfully appropriated for such purpose and is in the treasury to the credit of, or has been levied placed on the duplicate and in process of collection for the appropriate fund, and not appropriated for any other purpose; or is being obtained by sale of bonds issued on account of said improvement, which bonds are sold and in process of delivery.

Signature
Director of Finance

Date: 1/30/2020