



City of Parma Heights Special Council Meeting

6281 Pearl Road

Monday, August 30, 2021 7:00 PM

1. **ROLL CALL**
2. **PLEDGE OF ALLEGIANCE**
3. **EXECUTIVE SESSION**

A. Adjourn to executive session to discuss pending and imminent litigation

LEGISLATION

4. Consideration of A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO THE FIRST AMENDED TO A SETTLEMENT AGREEMENT WITH ATC SIXTEEN REALTY, INC. AND DECLARING AN EMERGENCY. **ONE READING ONLY**
5. Consideration of A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DEVELOPMENT AGREEMENT WITH DEALPOINT MERRILL LLC [DEVELOPER] AND DECLARING AN EMERGENCY. **ONE READING ONLY**
6. Consideration of A RESOLUTION AUTHORIZING THE SETTLEMENT OF THE LITIGATION CAPTIONED BAYMARK HEALTH SERVICES OF OHIO, INC. ETAL. V. CITY OF PARMA HEIGHTS ETAL., CASE NO. 1:20-CV-02754 AND DECLARING AN EMERGENCY. **ONE READING ONLY**
7. **ADJOURNMENT**

CITY HALL WILL BE OPEN FOR THE COUNCIL MEETING
MASKS ARE REQUIRED IN CITY HALL

RESOLUTION NO. 2021 – DRAFT 8 25 2021

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO THE FIRST AMENDED TO A SETTLEMENT AGREEMENT WITH ATC SIXTEEN REALTY, INC. AND DECLARING AN EMERGENCY

WHEREAS, Ordinance 2020 -1 authorized the Mayor to enter into a Settlement Agreement with ATC Realty Inc.; and

WHEREAS, the parties now wish to amend the Settlement Agreement on financial terms favorable to the City.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1. The Mayor is authorized to enter into the first amendment to the settlement agreement with ATC Realty, Inc. pursuant to terms and conditions approved by the Director of Law and which are substantially in the form as set forth in Exhibit A, which is attached to this Resolution and incorporated herein, 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 Resolution 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 Resolution is declared to be an emergency measure for the public peace, health and safety of the Municipality and for the further reason that amending the provisions of the settlement agreement are financially advantageous to the city; wherefore, this Resolution shall be in full force and effect immediately upon its passage by Council and approval by the Mayor.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____

APPROVED

FILED WITH
THE MAYOR: _____

MAYOR

EXHIBIT A

AMENDED SETTLEMENT AGREEMENT

FIRST AMENDMENT TO SETTLEMENT AGREEMENT

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

THIS "First Amendment To Settlement Agreement" ("**First Amendment**") is made and entered into as of the ___ day of August, 2021, 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 ("**First Amendment Effective Date**") shall be deemed to be the later of (i) the date on which ATC Realty executed the First Amendment, as such date is reflected on the signature page of this First Amendment; (ii) the date on which the City executed the First Amendment, as such date is reflected on the signature page of this First Amendment; and (iii) the date on which the City's City Council approves this First Amendment.

RECITALS

A. The City and ATC Realty entered into that certain "Settlement Agreement And Mutual General Release" made and entered into, and effective, as of February 3, 2020 ("**Original Settlement Agreement**"), concerning certain monies previously transferred from the Cuyahoga County Treasurer to the City. All capitalized terms used in this First Amendment but not otherwise defined shall have their same meanings as set forth in the Original Settlement Agreement.

B. Among other things, the Original Settlement Agreement required the City to pay ATC Realty, in full settlement of the Refund Request, the Settlement Sum of Four Hundred Fifty Thousand Dollars and No Cents (\$450,000.00). The City was to pay the Settlement Sum in two installments. The first installment, in the amount of \$212,500.00 was due on or before March 15, 2020. The City timely paid the first installment. The second installment, in the amount of \$237,500.00 ("**Second Installment**"), was due on or before February 15, 2021. The City has not yet paid the Second Installment.

C. The City and ATC Realty have agreed that the City shall be released from its obligation to pay the Second Installment if certain events described hereinbelow occur, which release shall constitute a good-faith contribution by, and/or a voluntary fee from, ATC Realty (i) in furtherance of a global settlement that involves, among other things, various amendments to the City's zoning code to facilitate certain future uses by DealPoint Merrill, LLC on Permanent Parcel No. 473-23-086 after it acquires that parcel and a stipulated dismissal of a Section 2506 administrative appeal by DealPoint Merrill, LLC against the City (which dismissal shall be filed separately by the City and DealPoint Merrill, LLC by the date that DealPoint Merrill, LLC closes on its acquisition of Permanent Parcel No. 473-23-086); and (ii) in recognition of the level of income tax revenue to be created by DealPoint Merrill, LLC's intended future uses, City resources expended for the review and approval of DealPoint Merrill, LLC's intended future uses, and additional public services to be utilize by DealPoint Merrill, LLC's intended future uses.

D. The City shall also work in good faith to review the retention system to be proposed by the Northeast Ohio Regional Sewer District (“**NEORSD**”) on the separate property to be acquired by NEORSD from ATC Realty.

E. The parties hereto have entered into this First Amendment to memorialize the circumstances that would release the City from its obligation to pay the Second Installment.

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. Potential Waiver of Payment of the Second Installment.

- (a) The City shall be released of its obligation to pay the Second Installment to ATC Realty if (and only if) DealPoint Merrill, LLC closes on its purchase of Permanent Parcel No. 473-23-086 (“**DPM Closing**”) on economic terms substantially similar to the economic terms set forth in the purchase contract, as amended, between ATC Realty, as Seller, and DealPoint Merrill, LLC, as Purchaser, in effect as of the date of this First Amendment.
- (b) For the avoidance of doubt, if the DPM Closing does not occur by November 30, 2021, then the City shall not be released from its obligation to pay the Second Installment to ATC Realty, and the City shall pay the Second Installment to ATC Realty upon demand. If the City does not thereafter pay the Second Installment to ATC Realty within fourteen (14) days of ATC Realty’s demand, the City also shall pay interest from and after the date of demand until paid, at Ohio’s statutory rate.

2. Representations and Warranties of the Parties. Each party to this First Amendment, on behalf of itself and its predecessors, successors, assigns, and 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 First Amendment.
- (b) That the undersigned signature and execution of this First Amendment on its behalf is made and undertaken by an individual or individuals authorized to execute this First Amendment, 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 First Amendment 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 First Amendment was jointly drafted by the parties and therefore shall not be construed against any party based solely on authorship.

3. **Attorneys' Fees.** Each party shall bear its own attorneys' fees, costs, and disbursements arising from or relating to this First Amendment.

4. **Benefit of this Agreement.** This First Amendment 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.

5. **Amendment.** The Original Settlement Agreement, as amended by this First Amendment, shall not be further amended, altered, or modified except by an instrument in writing duly executed by the parties hereto.

6. **Ratification.** Except as specifically modified by the terms of this First Amendment, the Original Settlement Agreement shall remain otherwise unmodified and in full force and effect, and the parties ratify and confirm the terms of the Original Settlement Agreement as modified by this First Amendment.

7. **Entire Agreement.** This First Amendment 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.

8. **Governing Law.** This First Amendment 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.

9. **Severability.** Each provision, paragraph, and subparagraph of this First Amendment 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 First Amendment, or of any other provision, paragraph, or subparagraph of this First Amendment.

10. **Counterparts.** This First Amendment 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 First Amendment. 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 First Amendment.

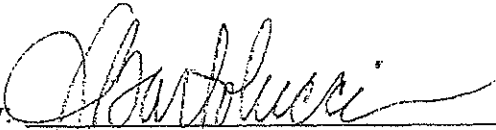
11. **Electronic Copies.** For purposes of executing this First Amendment, a document signed and transmitted by e-mail, a facsimile machine, or telecopier shall be treated as an original document. The signature of any party thereon shall be considered as an original signature, and the document transmitted 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 First Amendment or any amendment thereto.

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

ATC REALTY SIXTEEN, INC.

CITY OF PARMA HEIGHTS, OHIO

By: 
Jami Bartolucci, Vice President

By: _____
Printed Name: _____
Title: _____

Date: 8/12/21

Date: _____

RESOLUTION NO. 2021 – DRAFT 8 25 2021

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DEVELOPMENT AGREEMENT WITH DEALPOINT MERRILL LLC [DEVELOPER] AND DECLARING AN EMERGENCY

WHEREAS, Developer is currently under contract to purchase a 12.53± acre parcel of real property located at 7011 West 130th St. within the City of Parma Heights, Cuyahoga County, Ohio, and identified as Permanent Parcel Number 473-23-086 (the “Property”); and

WHEREAS, the Property is presently zoned West 130th Street Mixed Use District; and

WHEREAS, Developer proposes to redevelop an existing structure on the Property with an indoor climate-controlled self-storage facility and enclosed outdoor non-climate storage, together with retail/commercial along the West 130th Street (the “Development”); and

WHEREAS, the Planning Commission conducted a public hearing regarding the Developer’s conditional use application and issued recommendations to the council pursuant to 1135.06 of the codified ordinances; and

WHEREAS, the City also desires to enter into a Development Agreement with Developer to ensure the public interest is protected and the Property shall only be used as set forth in this Agreement; and

WHEREAS, the parties desire to enter into this Development Agreement in order to set forth the respective rights, agreements and obligations of the parties as more fully provided herein.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1. The Mayor is authorized to enter into a Development Agreement with Dealpoint Merrill LLC pursuant to terms and conditions approved by the Director of Law and which are substantially in the form as set forth in Exhibit A, which is attached to this Resolution and incorporated herein, as if fully rewritten, said authorization is contingent on council’s acceptance of the recommendations of the Planning Commission.

Section 2. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution 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 Resolution is declared to be an emergency measure for the public peace, health and safety of the Municipality and for the further reason that the Development Agreement sets forth the respective rights, agreements and obligations of the parties; wherefore, this Resolution shall be in full force and effect immediately upon its passage by Council and approval by the

Mayor.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____

APPROVED

FILED WITH
THE MAYOR: _____

MAYOR

EXHIBIT A
DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Development Agreement") is made and entered into this ____ day of August 2021 (the "Effective Date"), by and between PARMA HEIGHTS, OHIO, an Ohio municipal corporation having a mailing address of 6281 Pearl Road, Parma Heights, Ohio 44130 (the "City") and DEALPOINT MERRILL, LLC, a Delaware limited liability company having a mailing address of 22815 Ventura Boulevard, Suite 310, Woodland Hills, California 91364 (the "Developer").

RECITALS:

WHEREAS, Developer is currently under contract to purchase a 12.53± acre parcel of real property located at 7011 West 130th St. within the City of Parma Heights, Cuyahoga County, Ohio, as more specifically described in the legal description attached hereto as Exhibit "A" and incorporated herein by reference, and identified as Permanent Parcel Number 473-23-086 (the "Property");

WHEREAS, the Property is presently zoned West 130th Street Mixed Use District;

WHEREAS, Developer proposes to redevelop an existing structure on the Property with an indoor climate-controlled self-storage facility and enclosed outdoor non-climate storage, together with retail/commercial along the West 130th Street (the "Development"). A copy of the preliminary site plan drawing (the "Site Plan") is attached hereto as Exhibit B, and by this reference is incorporated herein;

WHEREAS, the City undertook a comprehensive review of its Zoning Code. The new Zoning Code will allow the Development, subject to a Conditional Use Permit ("CUP") to be a conditionally permitted use;

WHEREAS, the parties have agreed to use their best efforts to participate in the following project review schedule to be undertaken by City's Planning Commission, Chief Building Official and City Council relative to the Development. A copy of the tentative City Hearing Schedule ("Agenda") is attached hereto as Exhibit C, and by this reference is incorporated herein.

WHEREAS, the City desires to enter into this Development Agreement with Developer to ensure the public interest is protected and the Property shall only be so used as set forth in this Agreement; and

WHEREAS, the parties desire to enter into this Development Agreement in order to set forth the respective rights, agreements and obligations of the parties as more fully provided herein.

WITNESSETH:

For and in consideration of the covenants herein contained, and upon the terms and conditions herein set forth, the City and Developer hereby agree as follows:

- 1) **Council Approval.** Each party shall take such steps as are necessary and advisable to place the Development on the agenda of the City's Planning Commission for consideration in accordance with the approved amendments to the Zoning Code as they relate to the West 130th Street Mixed Use District. Thereafter, the recommendation of the Planning Commission will be forwarded to the City Council for consideration. In addition, the City shall place this Development Agreement on the Council's Agenda or as an emergency resolution, as applicable, in conjunction with Council's consideration of the Development, the use, and the Development Agreement. The City will use its best efforts to have all the necessary approvals granted by the City no later than October 31, 2021.
- 2) **Construction of Improvement.** Developer shall construct and install the Development in a good and workmanlike manner, according to all applicable City codes and specifications and in substantial compliance with the proposed Site Plan. All required applications shall be submitted, and fees paid in accordance with the applicable laws, rules, regulations, codes and ordinances in effect on the Effective Date. All permits necessary for the Development shall be issued by the City, subject to Developer qualifying therefor, as soon as practicable after submittal and approval by the appropriate City officials, boards, commissions or City council in the usual course of business. The improvements shall consist of 1) two Front Outlot Buildings (to be submitted in the future) that have a retail or commercial use, 2) indoor self-storage of the entire interior building, and 3) outdoor non-climate self-storage no greater than 15,500 square feet as designed on the attached Site Plan.
- 3) **Timing of Improvement and Development.** Developer shall commence work upon the Development (excluding the development of two proposed out parcels along the frontage of the Property (collectively the "Front Outlot Buildings") no later than nine (9) months after the approval of the Development by the City Council. In the event that Developer is unable at any time to meet the timing set forth above through no fault of its own, the City may, in its sole and absolute discretion, grant an extension of up to six (6) months.
- 4) **Site Plan/Area Variances.** The City Council has adopted the new Zoning Code as they relate to the West 130th Street Mixed Use District. The Developer has applied to the City for all necessary Site Plan and conditional use approvals required for the Development.
- 5) **Voluntary Development Fee.** Within twenty (20) days of the issuance of all necessary Conditional Use approvals and Building Permits required for the Development, Developer shall remit a voluntary development fee in the amount of Five Hundred Thousand Dollars (\$500,000.00) to the City (the "Development Fee"). The Development Fee will be used to offset the minimal income tax revenue created by the Development, City resources expended for the review and approval of the Development and additional public services

utilized by the Development. Developer shall apply for Building Permits within one hundred and twenty (120) days of the issuance of the Conditional Use approvals and any required site plan approvals. In the event that Developer is unable at any time to meet the timing set forth above, the City may grant an extension of up to thirty (30) days.

6) Future development of the Front Outlot Buildings on the Property shall be at the Developer's sole and absolute discretion and shall be permitted subject to receipt of the necessary City approvals consistent with the development regulations in the applicable Sections of the Codified Ordinances of the City of Parma Heights.

7) **Development Terms and Conditions.**

- a) Except where specified otherwise in this Development Agreement and subject to the approval of the City Council, Developer shall comply with the development regulations in the applicable Sections of the Codified Ordinances of the City of Parma Heights. In reliance upon the NFA letter from the Ohio Department of Commerce dated October 22, 2004 (the "NFA Letter"), the City accepts the NFA Letter as evidence of environmental clearance to allow development of the Property.
- b) Developer shall be permitted to provide the following development: 1) two Front Outlot Buildings that have a retail or commercial use, 2) indoor self-storage of the entire interior building, and 3) outdoor non-climate self-storage no greater than 15,500 square feet as designed on the attached Site Plan. Business operations shall be prohibited within any of the outdoor self-storage units. The storage of vehicles, equipment, commercial equipment, trucks, tractors, mobile homes, and campers shall be prohibited. Further, the outdoor self-storage shall be located on the southern and northern portion of the Property per the Site Plan only. This paragraph shall survive the termination of this Development Agreement.
- c) Developer shall install a block masonry wall or solid vinyl fence no higher than 6 feet at the rear of the building along the property line within the Development in order to provide adequate screening from the adjacent residential properties.
- d) In addition to any additional signage that may be permitted per applicable Sections of the Codified Ordinances of the City of Parma Heights, Developer shall be permitted to install a ground mounted sign at the entrance drive lane off of West 130th Street and a wall mounted sign on the existing structure.
- e) In the event the Development creates a need for any additional infrastructure improvements determined in the City's sole discretion, which such determination shall not be unreasonable and shall be made within twelve (12) months after issuance of a Certificate of Occupancy for the Development, Developer shall be

responsible for any and all costs associated with said additional infrastructure improvements directly related to the Development and shall commence work on said infrastructure improvements within six (6) months notification of same.

- f) Developer shall further comply with all other applicable laws, rules, regulations, codes and ordinances relative to the approval of the Development and construction thereof.
 - g) The Development shall be operated in accordance with all applicable zoning requirements.
 - h) Within the Development, Developer shall open and operate a retail facility within the climate control storage facility selling packaging and shipping supplies to serve the customers of the Development and general public.
- 8) **Termination of Agreement.** This Development Agreement shall terminate on the one (1) year anniversary of the issuance of a Certificate of Occupancy for the Development. In the event of termination, each Party shall bear its own costs and fees.
- 9) **Default.** In the event Developer fails to comply in any material respect with any term or condition of this Agreement, the City may declare a default through the provision of written notice to Developer. In the event Developer fails to cure such default within thirty (30) days after receipt of written notice from the City (or if such further time is reasonably required to cure, the City in its sole discretion may grant an extension in writing of up to sixty (60) days provided Developer commences actions to cure such default within such thirty (30) day period and diligently pursues same), the City may, at its sole option, terminate this Agreement. It is understood that the Front Outlot Buildings construction is not a condition of Developer to perform under this Development Agreement.
- 10) **Entire Agreement.** This Development Agreement and the Exhibits attached hereto set forth the complete understanding and agreement of the parties. No oral statements, representations or agreements other than contained in this Development Agreement shall have any force or effect and the City and Developer agree that they will not rely on any representations or agreements other than those contained in this Agreement.
- 11) **Miscellaneous.**
- a) **City Council.** This Development Agreement and all terms and provisions hereof are subject to and conditioned upon the approval of the City of Parma Heights Council.
 - b) **Approvals of the City.** Any provision of this requiring the approval of the City, the satisfaction or evidence of satisfaction from the City, certificate or certification

by the City where the opinion of the City, shall be interpreted as requiring action by the Mayor, Planning Commission, Chief Building Official, Board of Zoning Appeals, or City Council (or such other applicable official(s) as the Mayor may from time to time appoint or designate) granting, authorizing or expressing such approval, satisfaction, certification or opinion, as the case may be, unless such provision or the administrative procedures applicable to the City expressly provide otherwise.

- c) **Severability.** If any one or more of the provisions contained in this Development Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Development Agreement and this Development Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had not been contained herein.
- d) **Waiver.** The failure of either party to insist, in any one or more instances, upon a strict performance of any of the terms and conditions of this Agreement, or to exercise any option or right contained herein, shall not be construed as a waiver or a relinquishment for the future right or option, but same shall continue and remain in full force and effect. The continued performance by either party of this Development Agreement with knowledge of the breach of any term or condition hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision hereof shall be deemed to have been made, or operate as estoppel, unless expressed in writing and signed by such party.
- e) **Notices.** All notices herein authorized or required to be given hereunder shall be sent by certified mail, registered mail or overnight express, postage prepaid, to the following addresses, or such other addresses as the parties may from time to time designate in writing:

If to the City:
Parma Heights, Ohio
Attn: Director of Public Service
6281 Pearl Road
Parma Heights, Ohio 44130

With a copy to:

Michael Pokony, Esq., Director of Law

If to the Developer:
DealPoint Merrill, LLC
Attn: David Frank, CEO

22815 Ventura Boulevard, Suite 310
Woodland Hills, California 91364

With a copy to:

Kenneth J. Fisher, Esq.
Kenneth J. Fisher Co., L.P.A.
50 Public Square, Suite 2100
Cleveland, Ohio 44113

- f) **Further Assurances.** Either party, upon the request of the other party, shall execute and deliver such further documents or instruments as may be reasonable and appropriate to carry out the terms and conditions of this Agreement, provided that such further documents and instruments are consistent with the terms and conditions of this Agreement.
- g) **Survival.** All agreements, representations, warranties and indemnifications herein, including those made in the Recitals, shall be considered to have been relied upon and shall survive the execution and delivery of this Agreement.
- h) **Assignment.** The Developer may not assign this Development Agreement or any of its rights, interests, or obligations hereunder without the written consent by the City, which shall not be unreasonably withheld, conditioned or delayed. For the purposes of this Agreement, any change in ownership of Developer by merger, consolidation, sale of assets, transfer of shares or units, or other means of transferring ownership and/or control of Developer and its business shall be deemed an assignment. This section shall not apply to assignments to any single asset entity owned by the Developer.
- l) **Headings.** The Section headings in this Development Agreement are for purposes of reference only and shall not affect or define the meanings of the Sections hereof.
- j) **Exhibits.** The Exhibits attached hereto are made a part of this Agreement.
- k) **Applicable Law and Binding Effect.** This Development Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio. This Development Agreement shall inure to the benefit of and be shall binding upon the parties hereto and their respective successors and assigns.
- l) **Counterparts/Signature.** This Development Agreement may be signed in multiple identical counterparts with the same effect as if the signatures thereof and hereto were upon the same instrument. Signatures delivered by electronic means (facsimile, pdf scan, etc.) shall be deemed originals thereof.

[SIGNATURE PAGE TO FOLLOW]EXECUTED on the date first written above.

PARMA HEIGHTS, OHIO

DEALPOINT MERRILL, LLC

Michael P. Byrne, Mayor

David Frank, CEO

APPROVED AS TO FORM:

Michael Pokorny, Law Director

EXHIBIT "A"
Legal Description of the Property

EXHIBIT "B"
Site Plan

EXHIBIT "C"
AGENDA

RESOLUTION 2021 – DRAFT

**A RESOLUTION AUTHORIZING THE SETTLEMENT OF THE LITIGATION
CAPTIONED BAYMARK HEALTH SERVICES OF OHIO, INC. ETAL. V. CITY OF
PARMA HEIGHTS ETAL., CASE NO. 1:20-CV-02754 AND DECLARING AN
EMERGENCY**

WHEREAS, Baymark Health Services of Ohio, etal. v. City of Parma Heights, et al., 1:20-CV-02754, was filed on December 11, 2020 in the United States District Court for the Northern District of Ohio; and

WHEREAS, the Court conducted status conferences on January 12, 2021 and July 6, 2021; and

WHEREAS, during the course of the litigation counsel for the parties engaged in discussions regarding the resolution of the litigation;

WHEREAS, a proposed settlement was discussed in an Executive Session of the Parma Heights City Council on June 28, 2021 and on August 30, 2021;

WHEREAS, the legal representatives of the parties have negotiated a Consent Decree setting forth the terms and conditions of the resolution of this matter in the United States Federal District Court; and

WHEREAS, appointed special legal counsel and the law department are recommending settlement of this matter under terms and conditions discussed in executive session by the council.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Parma Heights, State of Ohio:

Section 1. This Council is authorizing appointed special legal counsel to execute the Consent Decree on behalf of the City of Parma Heights under terms and conditions discussed in executive session of the council.

Section 2. The city has agreed to provide contribution toward the settlement and the funds to pay for this expenditure are authorized to be derived from the General Fund.

Section 3. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of the Council and any of its committees comprised of a majority of the members of the Council that result in those formal actions were in meetings open to the public, in compliance with the law.

Section 4. This Resolution is declared to be an emergency measure immediately necessary for the public peace, health, and safety of the Municipality and for the further reason that approving the consent decree will conclude this litigation and preclude protracted and costly

litigation in the federal court; wherefore, this Resolution shall be in full force and effect from and immediately after its passage by Council and approval by the Mayor.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

APPROVED

FILED WITH
THE MAYOR: _____

MAYOR