

RESOLUTION NO. 22-2023

**A RESOLUTION AUTHORIZING AND DIRECTING THE VILLAGE ADMINISTRATOR TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH PC 161 HOLDINGS, LLC**

**WHEREAS**, the owner of certain real properties, parcel 150021024.000 in Union County and parcel 02-00076.000 in Madison County, desires to annex said properties into the Village of Plain City; and

**WHEREAS**, the owner of the subject properties to be annexed also desires to seek a rezoning of the properties in order to facilitate its future development; and

**WHEREAS**, the owner desires to seek said rezoning concurrently with the processing of the annexation petition related to the properties; and

**WHEREAS**, the owner and the Village have agreed it is in the best interest of both parties to enter into a pre-annexation agreement pertaining to the pending submittal of an annexation petition for the properties.

**NOW THEREFORE BE IT RESOLVED** by the Council of the Village of Plain City, Ohio, a majority of the members elected or appointed thereto concurring, as follows:

**Section 1.** The Village Council hereby authorizes and directs the Village Administrator to enter into a pre-annexation agreement with the property owner in general accordance with the draft agreements identified as Exhibit A, attached hereto and made a part hereto.

**Section 2.** The Village Administrator is further authorized and directed to take subsequent action, upon execution of said agreement, to fulfill the Village's requirements under said agreement.

**Section 3.** This Resolution shall be effective from and after the earliest period provided by law.

Passed: July 10, 2023.

Attest: Justin Orain Clerk of Council      Joely Carney Mayor

First reading: June 26, 2023. Vote: \_\_\_ yea \_\_\_ nay \_\_\_ abstain

Second reading: July 10, 2023. Vote: 5 yea \_\_\_ nay \_\_\_ abstain

### Certificate of Publication

The undersigned, being Clerk of Council of the Village of Plain City, hereby certifies that the foregoing was published by posting for 15 days as required by law and in accordance with Section 4.15 of the Codified Ordinances. The posting was done from July 11, 2023 to July 26, 2023 at the Office of the Clerk of Council located at 800 Village Boulevard; being in the Village of Plain City, Ohio, and the Village of Plain City Website at [www.plain-city.com](http://www.plain-city.com).

Date: July 11, 2023

Austin Proctor  
Clerk of Council

**PPRE-ANNEXATION AGREEMENT**

This Pre-Annexation Agreement ("Agreement") is entered into as of July 10, 2023 by and between **PC 161 Holdings, LLC**, an Ohio Limited Liability Company ("Owner"), whose mailing address is 800 Cross Pointe Road, Suite A, Gahanna, Ohio 43230 and the Village of Plain City ("Plain City"), an Ohio municipal corporation, whose mailing address is 800 Village Boulevard, P.O. Box 167, Plain City, Ohio 43064 (referred to collectively as "Parties").

**RECITALS**

WHEREAS, the Company is the owner of 70.663+/- acres of real property that is located in Jerome Township, Union County, Ohio with an address of 0 SR 161, Plain City, Ohio 43064 (the "Union County Parcel"), being known as Union County Auditor Parcel Number 150021024.000, and being depicted Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, the Company also is the owner of 42.484+/- acres of real property that is located in Darby Township, Madison County, Ohio with an address of 8940 SR 161, Plain City, Ohio 43064 (the "Madison County Parcel"), being known as Madison County Auditor Parcel Number 02-00076.000, and being depicted Exhibit "A"; and

WHEREAS, each of the Union County Parcel and the Madison County Parcel (together, the "Property") is located beyond the present corporate boundaries of the Village of Plain City; and

WHEREAS, the Company desires to annex the Property to Plain City in order to obtain municipal services to support the Property and its future development; and

WHEREAS, Plain City desires to annex the Property.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound, the Parties hereby agree as follows:

1. Annexation:
  - a. Company will, at its own expense, prepare the necessary annexation petition with accompanying map or plat. The petition shall appoint one or more attorneys with the law firm of Underhill & Hodge LLC, whose mailing address is 8000 Walton Parkway,

Suite 260, New Albany, Ohio 43054, as agent for the current owners of the Property ("Agent"). The annexation petition shall be filed by Agent as an "Expedited Type 2" annexation as provided in Section 709.023 of the Ohio Revised Code. Agent shall file the signed and completed petition with the Board of County Commissioners of Union County (which is the County in which the majority of the Property is located) and shall provide notice and service to all required parties under the Ohio Revised Code. Company agrees to pay any filing fee(s) charged by the board of county commissioners for the filing and processing of the petition. Company agrees that it will take all reasonable actions which are necessary to cause the current owners of the Property not to withdraw their names from, or request withdrawal of, the petition during the annexation process and/or any subsequent administrative or legal action involving the annexation.

- b. The Parties agree to cooperate and provide information necessary for the Board of County Commissioners of Union County to review the annexation as required by Section 709.023 of the Ohio Revised Code.
  - c. Should the annexation be approved, the Parties agree to process the annexation as provided by law subject to the terms of this Agreement.
  - d. Company, at its own expense, agrees to file or arrange to be filed an annexation petition, map, and plat that complies with Section 709.023 of the Ohio Revised Code within thirty (30) days after the execution of this Agreement.
2. Municipal Services:
- a. Plain City agrees to enact, within twenty (20) days after the date of the filing of the annexation petition with the Board of County Commissioners of Union County, the appropriate service and zoning buffer resolutions as required by Chapter 709 of the Ohio Revised Code. The resolutions, once adopted, shall be immediately certified and filed with the Clerk of the Board of Commissioners of Union County by Plain City.
  - b. Once the water and sewer extension lines have been installed, funded by the Owners, and approved by the Plain City Engineer, Plain City may provide standard water and sewer services, following the same terms as any Village customer. However, it is

important to note that in certain cases, alternative service providers for water and sewer may be available. In such instances, it is the responsibility of the developer to work with the appropriate service provider to ensure the availability and extension of services to the site.

- c. Upon annexation, the Owners will also be entitled to fire protection, police protection, recreation services, sanitation services, street maintenance, and related street services, provided that the streets are properly installed and dedicated to public service.

3. Zoning:

- a. The portion of the Property located within the Union County Parcel is currently zoned RU, Rural Residential in Jerome Township, and the portion of the Property located within the Madison County Parcel is currently zoned A-1, Agricultural in Darby Township pursuant to Madison County zoning regulations. The Parties acknowledge that Company desires to rezone the Property to Planned Unit Development (PUD)<sup>1</sup> under the Village of Plain City Zoning Code. Once filed, any rezoning request will be reviewed and decided upon by Plain City utilizing the regular procedure for processing an application to rezone in the Village and there is no guarantee that any particular zoning will be granted.
- b. Plain City agrees to promptly cooperate and assist the Company and its successors or assignees to facilitate the annexation, zoning, and development, including, but not limited to, required meetings or hearings.
- c. Plain City recognizes that once the annexation is placed before the Plain City Council (i.e., after the expiration of 60 days from the date when the transcript of the proceedings of the Board of Commissioners of Union County has been delivered to Plain City) Plain City has one hundred twenty (120) days to accept or reject the annexation. Plain City agrees that it will not accept the annexation of the Property unless and until it is prepared to contemporaneously rezone the Property into a zoning classification as detailed in the immediately preceding subsection (a). At any time during the one hundred twenty (120) day acceptance period for the annexation, Plain City may, on its own initiative, or shall, at the request of Company, delay its acceptance of the

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<sup>1</sup> For discussion with Plain City. Its zoning code is in the process of being amended.

annexation until the rezoning is settled to the satisfaction of the Parties. In the event that the Property is annexed but the Property is then not rezoned in a manner that is satisfactory to Company, or if Company exhausts its appeals of Plain City's zoning determination, or the proposed rezoning is rejected by the voters, Plain City agrees to execute a petition to detach the Property from its jurisdiction upon the request of Company.

4. Representations and Warranties of Plain City:

a. Plain City hereby represents and warrants to Company:

- i. Plain City is a duly established and validly existing municipal corporation within the State of Ohio, with all requisite power and authority to enter into this Agreement, pursuant to law, and to perform its obligations hereunder;
- ii. Plain City, acting by and through its agents, has taken all such actions which are necessary or appropriate to authorize the execution of this Agreement by the person executing the same; and
- iii. This Agreement is the valid and binding act of Plain City, enforceable against the Village in accordance with its terms.

5. Representations and Warranties of Company:

a. Company hereby represents and warrants to Plain City that:

- i. Company is in contract to purchase the Property to be included in the annexation petition; and
- ii. Company, acting by and through their agent, has taken all such actions which are necessary to appropriate to authorize the execution of this Agreement by the person executing the same.

6. Waiver:

a. The failure of any party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of any right hereunder, nor shall it deprive that party of the right thereafter to insist upon strict adherence to that term or any other

term of this Agreement. Any waiver must be made in writing.

7. Execution:

- a. Neither this Agreement nor any subsequent agreement amending or supplementing this Agreement shall be binding on the parties unless and until it has been signed on their behalf by a duly authorized representative. Commencement of performance hereunder or under any subsequent agreement shall not constitute a waiver of this requirement.
- b. As used herein, the term "Agreement" shall mean this Agreement and any Exhibits hereto. This Agreement may be executed in one or more counterparts by either party hereto and by all parties hereto in separate counterparts, each of which, when so executed and delivered to the other party, shall be deemed an original. All such counterparts together shall constitute one and the same instrument.

8. Severability:

- a. If any provision of this Agreement should be or become fully or partly invalid or unenforceable for any reason whatsoever or violate any applicable law, this Agreement is to be considered divisible as to such provision and such provision is to be deleted from this Agreement, and the remainder of this Agreement shall be deemed valid and binding as if such provision were not included herein.

9. Governing Law:

- a. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The parties hereto further agree that any action, suit or proceeding in respect of or arising out of this Agreement, its validity or performance shall be initiated and prosecuted as to all parties and their heirs, successors and assigns and consent to and submit to the exercise of jurisdiction over its person by any court situated therein having jurisdiction over the subject matter.

10. Relationship of the Parties:

- a. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the parties to this Agreement.

11. No Third Party Beneficiary:

- a. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the parties to this Agreement.

12. Time is of the Essence:

- a. Time is of the essence for all matters in this Agreement and each party shall diligently pursue and complete its obligations hereunder.

13. Force Majeure:

- a. Neither party shall be in default in the performance of any obligation on such party's part to be performed under this Agreement, other than an obligation requiring payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by labor disputes, lockouts, acts of God, enemy action, civil commotion, riot, and conditions that could not have been reasonably foreseen by the claiming party.

14. Approvals:

- a. Unless otherwise stated herein, whenever a party to this Agreement is required to consent to, or approve an action by the other party or to approve any such action taken by another party, such approval or consent shall be given or withheld within the earliest time allowed by law and the process that is utilized in performing the function.

15. Binding Effect:

- a. This Agreement and all of the provisions herein shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

16. Entire Agreement/Merger:

- a. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter set forth herein and supersedes any and all agreements, oral or written.

17. Survival:

- a. The representations, warranties, and covenants contained in this Agreement shall not terminate for a period of twenty (20) years.

18. Notice:



- a. All required notices, requests, consents, approvals, demands, and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been duly given when (a) delivered personally or (b) three (3) business days after deposit in the United States Mail, postage prepaid, by certified mail, return receipt requested, or (c) by e-mail or facsimile telephone transmission, if given below, or later provided, addresses as follows or to such other person or address as either party shall designate by notice to the other party given in accordance herewith:

Company: PC 161 Holdings LLC  
800 Cross Pointe Road  
Suite A  
Gahanna, OH 43230  
Attn: Jacob Benjamin

Village: Village of Plain City  
800 Village Boulevard  
P.O. Box 167  
Plain City, OH 43064  
Attn: Haley Lupton, Village Administrator

COMPANY:  
PC 161 Holdings LLC

PLAIN CITY:

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

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

Print Name: \_\_\_\_\_

Haley Lupton

Title: \_\_\_\_\_

Village Administrator

Approved as to form:

\_\_\_\_\_  
Law Director

Village of Plain City

