



RESOLUTION R-03-2020

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A REAL ESTATE PURCHASE AGREEMENT WITH THE NEW ALBANY COMPANY IN ORDER TO PURCHASE A 98+/- ACRE PARCEL OF LAND LOCATED AT 5526 EAST DUBLIN GRANVILLE ROAD, IDENTIFIED BY PARCEL NUMBERS 222-002057-00, 222-002059-00 AND 222-002060-00; AND COMMONLY KNOWN AS THE TAYLOR PROPERTY

WHEREAS, the New Albany Company recently entered into a land purchase option agreement for the 98 +/- acre parcel of land located at 5526 East Dublin Granville Road and commonly known as the Taylor Property, as part of a larger land acquisition; and

WHEREAS, the New Albany Company has expressed an interest in selling said 98 +/- acre Taylor Property to the City of New Albany in order to assist the city in its efforts to preserve greenspace and establish a naturalized gateway to the community at its western border; and

WHEREAS, the Taylor Property contains desirable natural features including woodlands, streams, flood plains and wetlands which the city wishes to preserve; and

WHEREAS, the commercial or residential development of the Taylor Property could be detrimental to the environmental wellbeing of the area; and

WHEREAS, the city has obtained a Greenspace Preservation Grant from the State of Ohio to facilitate the acquisition of this 98+/- acre parcel; and

WHEREAS, upon its acquisition of the property, the city will develop a plan to protect and enhance the parcel's natural features in accordance with the terms of the grant.

NOW, THEREFORE, BE IT RESOLVED by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1: The city manager is hereby authorized to enter into a real estate purchase agreement with the New Albany Company in order to acquire a 98+/- acre parcel located at 5526 East Dublin Granville Road, identified as parcel number 222-002057-00, 222-002059-00 and 222-002060-00; and commonly known as the Taylor Property.

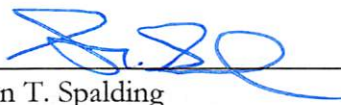
Section 2: The real estate purchase agreement shall be in a form substantially similar in content to that which is attached herein to this resolution as Exhibit A.


Section 3. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 4. Pursuant to Article 6.07(A) of the New Albany Charter, this resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this 21 day of Jan, 2020.

Attest:


Sloan T. Spalding
Mayor


Jennifer H. Mason
Clerk of Council

Approved as to form:


Mitchell H. Banchefsky
Law Director

Legislation dates:

Prepared:	01/13/2020
Revised:	01/17/2020
Introduced:	01/21/2020
Adopted:	01/21/2020
Effective:	01/21/2020

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of the last date of signature below (the "Effective Date"), by and between **The New Albany Company LLC**, a Delaware limited liability company with its address at 8000 Walton Parkway, Suite 120, New Albany, Ohio 43054 ("Seller"), and **The City of New Albany, Ohio**, an Ohio municipal corporation ("Buyer").

WITNESSETH THAT:

WHEREAS, Seller is in contract to acquire certain real property defined below as the "Property," which is generally located on the north side of East Dublin Granville Road, west of Harlem Road in the City of New Albany, County of Franklin, and State of Ohio; and

WHEREAS, Following Seller's acquisition of the Property, Seller desires to sell the Property to Buyer and Buyer desires to purchase the Property from Seller in accordance with the terms and conditions hereinafter provided.

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

1. DEFINITIONS. Certain capitalized words and terms are defined throughout this Agreement for purposes of context and convenience. In addition, the capitalized words and terms set forth in this Section 1 shall, unless the context otherwise requires, have the following meanings:

(a) "Closing" means the consummation of the purchase and sale of the Property as provided for herein, including delivery of the Purchase Price to Seller and the conveyance of the Property to Buyer.

(b) "Closing Date" means the date on which Closing occurs pursuant to the requirements of Section 11(a).

(c) "Commitment" means a commitment for title insurance from the Title Company setting forth the status of title to the Property accompanied by copies of all instruments of record referred to therein.

(d) "Due Diligence Period" means that period of time beginning on the Effective Date and ending at 5:00 p.m. EST on April 30, 2020.

(e) "Hazardous Substances" means hazardous materials or substances as defined in all applicable provisions of any federal regulations, amendments, updates or superseding legislation to or for the Environmental Protection Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendments and Reauthorization Act, or the regulations promulgated thereunder, or

any other federal, state, local or other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous substances, hydrocarbons, hazardous materials, toxic substances or hazardous wastes as defined from time to time in any other federal, state and local laws or the regulations promulgated thereunder applicable to the Property including, but not limited to, any asbestos insulation or other materials composed of or containing asbestos.

(f) **“Improvements”** means (i) any new buildings and structures, exterior additions or modifications to existing buildings and structures, parking areas, loading areas, boardwalks (but only to the extent located in wetlands areas), signage, and exterior lighting, (ii) excavation and grading, but only to the extent such may impact any wetlands located on the Property, and (iii) all leisure trails or paths, fencing, mounding and landscaping located within the area extending one hundred feet (100’) north of the northern boundary of the Dublin Granville Road right-of-way (the **“Road Frontage Area”**). “Improvements” does not include (w) the demolition of buildings, (x) turf, shrub, or tree installation, removal, repair or replacement located outside of the Road Frontage Area, (y) paths, trails, outdoor seating areas, outdoor activity areas and related equipment located outside of the Road Frontage Area, or (z) any other minor repair or replacement that does not change a building exterior colors or appearance. “Improvements” shall include both original Improvements and all later changes and Improvements.

(g) **“Intended Use”** means the development and operation of the property as a public park which may include open space, trails, pathways and boardwalks, bikeways, picnic areas, shelter houses, public meeting places, event spaces, wooded areas, wetlands, preservation areas, educational areas, storage facilities for equipment utilized for maintenance of the Property, parking areas, and other ancillary uses.

(h) **“Owner’s Policy”** means an Owner’s Policy of Title Insurance (ALTA Form B-2006) in the amount of the Purchase Price, issued pursuant to the Commitment.

(i) **“Property”** means certain real property consisting of 98± acres as generally depicted in **Exhibit A** attached hereto and incorporated herein by reference, which on the Effective Date consists of all of Franklin County Auditor Tax Parcel Numbers 222-002057-00, 222-002059-00 and 222-002060-00, together with all easements, rights, and appurtenances thereto and all mineral rights and improvements thereon.

(j) **“Recorder”** means the Office of the Recorder of Franklin County, Ohio.

(k) **“Survey”** means a current survey of the Property that locates all Schedule B, Section 2 encumbrances identified in the Commitment, is sufficient to delete the survey exception from the Owner’s Policy, and containing all other matters as required by Buyer or Buyer’s lender, if any. The Survey shall be prepared by the surveying and engineering firm of Evans, Mechwart, Hambleton & Tilton (EMH&T) and shall be created in accordance with American Land Title Association/American Congress on Surveying & Mapping (ALTA/ACSM) standards.

(l) **“Title Company”** means Stewart Title of Columbus, 259 W. Schrock Road, Westerville, Ohio 43081.

2. AGREEMENT TO PURCHASE AND SELL. On the Closing Date, Seller shall sell and convey the Property to Buyer and Buyer shall purchase the Property from Seller by paying to Seller the Purchase Price, all in accordance with the terms and conditions set forth herein.

3. PURCHASE PRICE.

(a) Amount. The purchase price to be paid by Buyer to Seller for the Property (the "Purchase Price") shall be the product of Twenty Seven Thousand Two Hundred Fifty Dollars (\$27,250.00) multiplied by the total acreage of the Property, net of any acreage located within any existing public road right-of-way as determined by the Survey, less One Million Dollars (\$1,000,000.00).

(b) Payment. The Purchase Price shall be paid as follows:

(i) Deposit. No later than 5:00 p.m. EST on the fifth (5th) full business day following the Effective Date, Buyer shall deliver to the Title Company, as escrow agent, the sum of Ten Thousand and 00/100 Dollars (\$10,000.00) as earnest money for the transaction contemplated hereunder (the "Deposit"). The Deposit shall be held by the Title Company under the terms of a standard escrow agreement to be provided by the Title Company that is consistent with the terms of this Agreement. This Agreement may be terminated at the election of Seller in the event that Buyer has not deposited the Deposit with the Title Company by 5:00 p.m. EST on the fifth (5th) full business day following the Effective Date; provided, however, that such right shall expire if Buyer deposits the Deposit with the Title Company prior to receipt of a notice of termination pursuant to this Section 3(b)(i).

(ii) Balance of Purchase Price. In addition to the Deposit, Buyer shall pay the balance of the Purchase Price to Seller at Closing, as more particularly set forth in Section 11.

(c) Buyer and Seller acknowledge and agree that the following provisions pertaining to the disposition of the Deposit shall apply:

(i) If the transaction contemplated hereby is closed, the Deposit shall be credited toward the Purchase Price at Closing;

(ii) If the transaction contemplated hereby fails to close due to (1) an uncured Objection as set forth in Section 5 hereof or (2) Buyer's termination under 7(c) below, then the Deposit shall be returned to Buyer and neither party shall have any further rights or obligations to the other hereunder, except for the Property restoration and all indemnification obligations contained herein;

(iii) If the transaction contemplated hereby fails to close due to an uncured Buyer's Default, then as Seller's sole remedy the Deposit shall be paid to Seller as its fixed and liquidated damages and in full satisfaction of all causes of action, claims, demands, damages and remedies that Seller might have against Buyer as a result of such default; the parties have mutually agreed upon such liquidated damages not as a penalty but as a mutually agreeable amount to compensate Seller for its damages and expenses, and for the removal of the Property from the marketplace, and to avoid for both parties expensive and vexatious litigation; and

(iv) If Buyer terminates this Agreement due to an uncured Seller's Default, the Deposit shall be disbursed pursuant to Buyer's election of remedy under Section 18.

4. FORM OF DEED; DEED RESTRICTIONS. Seller shall convey title to Buyer by Limited Warranty Deed (Ohio Revised Code Sec. 5302.07 - 5302.08) (the "Deed"). In addition to the standard provisions thereof, the Deed shall include the following: (i) a restriction that the Property will be developed, used and operated for the Intended Use for a period of forty (40) years, (ii) a provision that all Improvements developed by Buyer on the Property shall be subject to the reasonable review and approval of Seller for a period of forty (40) years, (iii) a provision regarding the naming of the property or portions thereof after the prior owner of the Property, Eleanor Taylor, a member of her family or the Taylor family collectively, in a manner that recognizes the historical connection of the Taylor family to the New Albany community as determined by Buyer, and (iv) any restrictions or provisions necessary to comply with the terms of the Grant (as defined in Section 8). Buyer and Seller shall work cooperatively and in good faith to agree upon the form of the Deed prior to the expiration of the Due Diligence Period.

5. EVIDENCE OF TITLE; REVIEW OF TITLE AND SURVEY.

Within ten (10) days after the Effective Date Seller shall obtain the Title Commitment and cause the delivery of the same to Buyer. Within twenty (20) days following the Effective Date, Seller shall obtain (at its sole cost and expense) the Survey and cause the delivery of the same to Buyer. If any matter shown in the Commitment or the Survey is objectionable to Buyer, then within twenty (20) days following Buyer's receipt of the later of the Commitment and Survey, Buyer shall provide written notice to Seller setting forth Buyer's specific objections (the "Objections"). If Seller has not provided written notice to Buyer of a plan for curing the Objections or that indicates its inability or unwillingness to cure such Objections (the "Objections Notice") on or before the date that is ten (10) days following Seller's receipt of the Objections, then Buyer may elect, by providing written notice to Seller of its intention on or prior to the expiration of the Due Diligence Period, to either (a) accept title subject to the terms of the Objections Notice with no abatement of the Purchase Price except for monetary liens of a fixed or ascertainable amount (which shall be paid by Seller or credited against the Purchase Price), or (b) terminate this Agreement. Any title matter which is disclosed in the Commitment or the Survey, and to which Buyer does not timely object or elects to take title to the Property subject to, shall be deemed a "Permitted Exception".

Buyer may request in writing that Seller cause the Title Company to update the Commitment at any time prior to Closing. Buyer shall have the right to object to any new exceptions shown on the updated Commitment other than the Permitted Exceptions under the originally issued Commitment and any matters which were approved by Buyer and recorded after the date of the original Commitment. Notwithstanding anything to the contrary, if Seller fails to cure such new items within three (3) days of receipt of a written objection, Buyer shall again have the right to terminate this Agreement and be reimbursed the Deposit or waive the objection, both within seven (7) days after making its objection. If necessary, the Closing Date shall be extended for such purposes.

(a) Notwithstanding any provision hereof to the contrary, Seller shall cause any mortgages and other liens against the Property given by Seller or its predecessors to secure indebtedness to be discharged at Closing without the requirement of any notice or demand by Buyer.

(b) Notwithstanding any provision hereof to the contrary, taxes and assessments which are a lien but not yet due and payable shall not be the subject of any Objection and Buyer shall accept title to the Property subject to the same.

(c) Buyer acknowledges that at or prior to Closing the Property shall be made subject to the restrictions and limitations set forth in the Deed and such other restrictions as the parties may agree, or as may be required pursuant to the terms of the Grant.

6. DISCLAIMER OF CERTAIN REPRESENTATIONS AND WARRANTIES. Except as otherwise expressly stated in this Agreement, disclosed in any documents required by the terms of this Agreement to be delivered by Seller to Buyer, or disclosed in the warranties set forth in the Deed: (a) Seller hereby specifically disclaims any other warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning the Property; (b) Buyer acknowledges that it will inspect the Property and Buyer will rely on its own investigation of the Property; (c) the sale of the Property, except as to title and matters of record as provided for herein, is made on an "as is" basis as of the Closing Date; and (d) Buyer expressly acknowledges that, in consideration of the agreements of Seller herein, Seller makes no other warranty or representation, express or implied, including, but not limited to, any warranty of condition, habitability, merchantability, tenantability or fitness for a particular purpose, in respect of the Property.

7. PURCHASER'S DUE DILIGENCE CONTINGENCIES:

(a) The obligations of Buyer under this Agreement are specifically conditioned upon satisfaction, as determined by Buyer in its sole and absolute discretion, of any and all matters relating to the Property which Buyer deems relevant to Buyer's determination that (i) the Grant Funds (as defined in Section 8) can be utilized as partial payment of the Purchase Price and (ii) the Property can be developed and utilized for the Intended Use. At Buyer's sole cost and expense, Buyer shall have the Due Diligence Period in which to investigate and inspect the Property and matters of concern to Buyer related to or that may affect the Property. Seller hereby grants to Buyer a revocable, non-exclusive license for itself and its agents, employees, contractors and consultants to enter upon the Property in order to conduct any tests and inspections Buyer deems necessary. The term of the license granted herein shall begin on the date that the evidence of liability insurance contemplated below is delivered by Buyer to Seller and shall end upon the earlier of (i) the Closing Date, (ii) the termination of this Agreement by either party, or (iii) the receipt of a notice of Buyer's Default from Seller. Buyer shall procure and continue in force from and after the time and date of its first entry upon the Property Commercial General Liability Insurance with limits of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate. Such insurance policy shall be issued by an insurance company licensed to do business in the State of Ohio having an A.M. Best's rating of "AVII" or above. Seller shall be included as Additional Insured under such Commercial General Liability Coverage. Buyer shall deliver a Certificate of Insurance (ISO Form 20 26 or equivalent) to Seller evidencing such coverage prior to the date Buyer enters the Property. Such certificate shall provide that the insurance may not be canceled or amended except upon thirty (30) days prior written notice to Seller.

(c) If Buyer reasonably determines from the results of any test, inspection, analysis or other matter undertaken by Buyer pursuant to this Section 7 that the Grant Funds cannot be utilized as a portion of the Purchase Price or that the Property is not suitable for the Intended

Use, Buyer may terminate this Agreement by delivering written notice of termination to Seller at any time prior to the expiration of the Due Diligence Period, in which event the Deposit shall be refunded to Buyer and the parties shall have no further obligations to each other except for any indemnity obligations provided for in this Agreement. If Buyer fails to notify Seller in writing prior to the expiration of the Due Diligence Period that Buyer has elected to terminate this Agreement, then Buyer shall be deemed to have waived its right of termination pursuant to this Section 7.

8. STATE GRANT; GRANT FUNDS. The Parties acknowledge that Buyer has been awarded a Clean Ohio Conservation Fund grant (the "Grant") and intends to utilize funds provided under the grant (the "Grant Funds") to pay a portion of the Purchase Price. After the Effective Date Buyer shall use diligent efforts to comply with all requirements under the Grant necessary for the final issuance of the Grant Funds. Seller agrees to reasonably cooperate with Buyer in order to comply with the requirements of the Grant, including but not limited to providing necessary information regarding the Property, assisting in providing information required under the Grant, participating in the planning of the future development of the Property, including in the Deed any restrictions required under the term of the Grant to be included in the Deed, and, if necessary, subdividing the Property into multiple parcels at or prior to Closing.

9. [Intentionally Omitted]

10. TAXES AND ASSESSMENTS. All real estate taxes and assessments that are due and owing as of the time of the Closing shall be paid at or prior to Closing by Seller. At Closing, Buyer shall receive a credit for all taxes and assessments that are a lien on the Property but not yet due and payable, prorated through the Closing Date based on a 365-day year and on the then-existing assessed valuation and tax rate. The tax proration at Closing shall be final.

11. CLOSING.

(a) Closing Date. Subject to the terms and conditions of this Agreement, the Closing shall be consummated through escrow with the Title Company in accordance with the terms and conditions of an escrow letter that is reasonably acceptable to the Title Company, Seller, and Buyer and is consistent with the terms of this Agreement. The Closing shall be held on a date (the "Closing Date") that is mutually agreed to between Seller and Buyer and that is no later than December 15, 2020.

(b) Seller's Closing Deliveries. At the Closing, Seller shall deliver (or cause the delivery of) the following items to the Title Company, as escrow/closing agent:

(i) The Deed, duly executed and acknowledged in recordable form, so as to convey the Property to Buyer, subject only to those matters accepted by Buyer as provided in Section 5 hereof and those matters set forth in the Deed approved by Buyer with the final legal description of the Property as agreed upon by Seller and Buyer;

(ii) The closing statement, to be prepared by the Title Company, duly executed by Seller;

(iii) Mechanics' and materialmen's lien affidavit concerning the Property, duly executed by Seller and acknowledged;

(iv) Evidence of authority for the execution of all documents sufficient to the Title Company;

(v) "Non-foreign person" and "vendor's" affidavits, executed by Seller and acknowledged; and

(vi) Such other affidavits, certificates, resolutions and related materials that are reasonably requested by the Title Company in connection with Closing.

(c) Buyer's Deliveries. At the Closing, Buyer shall deliver (or cause the delivery of) the following items to the Title Company, as escrow/closing agent:

(i) The closing statement, to be prepared by the Title Company, duly executed by Buyer;

(ii) Evidence of authority for the execution of all documents satisfactory to the Title Company; and

(iii) Such other affidavits, certificates, resolutions and related materials that are reasonably requested by the Title Company in connection with Closing.

On the Closing Date, Buyer shall wire transfer to the Title Company an amount of cash or other good funds immediately available in Columbus, Ohio equal to the Purchase Price less the Deposit.

(d) Escrow Instructions; Disbursements. On the Closing Date and at such time as the Title Company (x) is in possession of all items required to be delivered pursuant to subsections (b) and (c) hereinabove, and (y) is prepared to issue the Owner's Policy to Buyer in form and substance acceptable to Buyer, the Title Company, as escrow/closing agent, shall close the sale and conveyance of the Property by Seller to Buyer in accordance with any escrow instruction provided by Seller and/or Buyer.

(e) Possession. At Closing, Seller shall deliver to Buyer physical possession of the Property free of all occupants or otherwise as required pursuant to this Agreement or any other agreement between the parties pertaining to the Property, subject only to the Permitted Exceptions or other matters of record as approved by Buyer.

12. CLOSING CHARGES. Seller shall be responsible for the payment of the cost of the Commitment and the Owner's Policy (excluding the cost to delete any standard pre-printed exceptions or the cost of any endorsement requested by Buyer or required under the Grant), and the Ohio conveyance fee applicable to the Deed. Buyer shall pay the cost to delete any standard pre-printed title exceptions, and the cost of any title endorsements requested by Buyer or required under the Grant, the cost of recording the Deed. Buyer and Seller shall equally share the costs of the Survey and any associated legal descriptions, the Title Company's escrow and closing fees. Each Party shall be responsible for their respective attorney's fees.

13. EMINENT DOMAIN. If prior to the Closing Date all or any part of the Property shall be taken by any governmental authority under its power of eminent domain, Buyer may: (a) elect to proceed with the transaction, in which event the Buyer shall be entitled to all payments payable to Seller on account of such taking, such sum not to exceed the Purchase Price; or (b) elect to

rescind this Agreement in which event all parties hereto shall be released from all liability hereunder and the entire Deposit shall be forthwith returned to Buyer. If Buyer elects to rescind this Agreement, it shall so notify the Seller in writing within ten (10) days after Buyer receives written notice from Seller of such taking. Failure by Buyer to so notify Seller shall constitute an election to proceed with the transaction. If Buyer does not rescind, prior to Closing Buyer and Seller shall jointly have the right to defend at such proceeding and/or negotiate a settlement of such award and/or compensation due it as a result of such eminent domain or condemnation. Seller represents, to the best of its knowledge, that there are no threatened takings which would affect, involve or be adverse to the Property.

14. **SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller makes the following representations and warranties, which are true and correct on and as of the Effective Date, and will be true and correct on and as of the Closing Date, for the purpose of inducing Buyer to enter into this Agreement. As used herein, when a particular representation or warranty is qualified by the phrase "to the best of Seller's knowledge", it shall mean to the actual knowledge of William G. Ebbing, as President of Seller, or Richard D. Roggenkamp, a Director of Real Estate of Seller, without any obligation to further investigate.

(a) Seller is a party to a binding contract to acquire the Property and as of the Closing Date shall own the Property in fee simple, subject to all matters of record or otherwise as set forth in the Commitment, except those that will be discharged on or before the Closing Date. No person, other than Buyer, has any right, agreement, commitment, option, right of first refusal or any other agreement, whether oral or written, with respect to the purchase, assignment or transfer of all or any portion of the Property except as may be agreed to and approved by Buyer. Other than as set forth in the Commitment or as otherwise agreed between the parties, no party other than Seller has or claims any unrecorded or undisclosed legal or equitable interest in the Property.

(b) Seller is duly organized and is in good standing under the laws of the State of Delaware and is duly qualified to transact business in the State of Ohio; Seller has the requisite power and authority to enter into and perform this Agreement; performance by Seller under this Agreement does not conflict with or result in a violation of Seller's governing documents, or any judgment, order, or decree of any court or arbiter to which Seller is a party.

(c) Seller has not been notified within the period of three (3) years immediately preceding the Effective Date of any contemplated improvements to the Property by any public authority, any part of the cost of which might be assessed against any part of the Property in the future.

(d) Seller has not received notice of (a) any actual or pending litigation or proceeding by any organization, person, individual or governmental agency against Seller with respect to the Property or against the Property, (b) any violation of the Property's compliance with applicable fire safety laws, building code ordinances, zoning ordinances or any similar statutes, ordinances, laws, rules or regulations, or (c) any pending or threatened condemnation proceeding against the Property.

(e) No improvements or services (site or area) have been installed or furnished by any public authority, the cost of which is to be assessed against any part of the Property in the future.

(f) There are no encroachments on the Property or any off-record conditions or restrictions applicable to the Property, except as may be shown in the Survey and/or the Commitment or as otherwise may be agreed to and approved by Buyer.

(g) There are no actions, suits, or proceedings pending or, to the best of Seller's knowledge, threatened against Seller, the subject matter of which directly questions or challenges Seller's title to the Property or Seller's ability to convey the Property or Seller's use and quiet enjoyment of the Property at law or in equity or before any federal, state, municipal or other governmental agency or instrumentality, nor is Seller aware of any facts which to its knowledge would be likely to result in any such action, suit or proceedings.

All representations and warranties of Seller contained in this Agreement, whether in this section or elsewhere, shall be deemed true at the date of Closing as though such representations and warranties were made at such time (without giving effect to any reference therein to the Effective Date or another date), unless Seller notifies Buyer in writing to the contrary.

15. BUYER'S REPRESENTATIONS AND WARRANTIES. Buyer makes the following representations and warranties, which are true and correct on and as of the Effective Date, and will be true and correct on and as of the Closing Date, for the purpose of inducing Seller to enter into this Agreement.

(a) Buyer is a duly organized and chartered municipality in good standing under the laws of the State of Ohio.

(b) The transaction set forth herein has been duly approved the Buyer's City Council pursuant to appropriate legislation and/or resolution.

(c) The individual(s) executing or otherwise signing this Agreement are duly authorized to do so and are further authorized to execute all documents and take all other actions necessary to close the transaction contemplated in this Agreement.

16. BROKER. Seller and Buyer represent that no real estate brokers have been involved in this transaction.

17. DEFAULT BY BUYER; REMEDIES OF SELLER. If Buyer fails to comply with any obligation, term, covenant, warranty or agreement to be kept, honored, observed or performed by Buyer pursuant to the terms and provisions of this Agreement (a "Buyer's Default"), and such Buyer's Default is not cured within ten (10) days after written notice thereof (other than Buyer's failure to tender the Purchase Price and close on the Closing Date, for which no notice is required) and if there is not also a Seller's Default (as defined below) then Seller may terminate this Agreement by notice to Buyer, in which event the Deposit shall be released by the Title Company and delivered to Seller as agreed upon liquidated damages, and neither Buyer nor Seller shall have any further obligations or liabilities hereunder, except pursuant to the Property restoration and other indemnification provisions expressly set forth in this Agreement. Seller's retention of the Deposit shall be Seller's sole remedy under this Agreement upon the occurrence of an uncured Buyer's Default.

18. DEFAULT BY SELLER; REMEDIES OF BUYER. If Seller fails to comply with any obligation, term, covenant, warranty or agreement to be kept, honored, observed or performed by

Seller pursuant to the terms and provisions of this Agreement (a "Seller's Default"), and such Seller's Default is not cured within ten (10) days after written notice thereof and if there is not also a Buyer's Default, then Buyer may, at its option: (i) terminate this Agreement by notice to Seller, in which event the Deposit shall be released by the Title Company and delivered to Buyer, Seller shall reimburse Buyer's actual out of pocket due diligence expenses, up to a maximum amount of Five Thousand and 00/100 Dollars (\$5,000.00), and neither Buyer nor Seller shall have any further obligations or liabilities hereunder, except pursuant to the Property restoration and indemnification provisions expressly set forth in this Agreement; or (ii) Buyer shall have the right to enforce specific performance of this Agreement.

19. DAMAGE TO OR DESTRUCTION OF PROPERTY. Risk of damage to the Property from an environmental or other casualty shall be borne by Seller until delivery of possession of the Property by Seller to Buyer, provided that if the Property is substantially damaged or destroyed by casualty prior to the Closing, the Buyer may elect to proceed with the transaction and then shall be entitled to the proceeds of any insurance, not exceeding the Purchase Price, if any, payable to the Seller under any and all policies of insurance covering the portion of the Property so damaged or destroyed.

20. MISCELLANEOUS.

(a) Notice. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, (c) by facsimile, or (d) by email. All such notices and communications shall be addressed to the parties hereto at the following addresses:

To Seller: The New Albany Company LLC
8000 Walton Parkway, Suite 120
New Albany, OH 43054
Attention: Dick Roggenkamp, Director of Real Estate
Fax: (614) 939-8325
Email: droggenkamp@newalbanycompany.com

with a copy to: The New Albany Company LLC
8000 Walton Parkway, Suite 120
New Albany, OH 43054
Attention: Molly Iams, Esq.
Fax: (614) 939-8325
Email: miams@newalbanycompany.com

To Buyer: The City of New Albany
99 W. Main Street
New Albany, OH 43054
Attention: Joseph Stefanov, City Manager
Fax: _____
Email: jstefanov@newalbanyohio.org

with a copy to: The City of New Albany

99 W. Main Street
New Albany, OH 43054
Attention: Mitchell Banchevsky, Law Director
Fax: _____
Email: mbanchevsky@newalbanyohio.org

or at such other address(es) as either may specify from time to time to the other in a notice given in accordance with this section. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery; or in the case of expedited prepaid delivery and telecopy, on the date evidenced by the signed receipt or electronic confirmation.

(b) Severability. If any term, clause or provision of this Agreement is held to be illegal, invalid or unenforceable, or the application thereof to any person or circumstance shall to any extent be illegal, invalid or unenforceable under present or future laws effective during the term hereof or of any provisions hereof which survive Closing, then and in any such event, it is the express intention of Seller and Buyer that the remainder of this Agreement, or the application of such term, clause or provision other than to those as to which it is held illegal, invalid or unenforceable, shall not be affected thereby, and each term, clause or provision of this Agreement and the application thereof shall be legal, valid and enforceable to the fullest extent permitted by law.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Any action, suit or proceeding relating to, arising out of or in connection with the obligations, terms, covenants, warranties or agreements contained in this Agreement may be brought in the Court of Common Pleas of Franklin County, Ohio; Seller and Buyer hereby waiving any objection to jurisdiction or venue in any proceeding before said Court.

(d) Survival. Buyer's and Seller's warranties, agreements, covenants, conditions, representations and remedies set forth in this Agreement shall survive Closing through the first (1st) anniversary of the Closing Date and shall not be merged upon delivery of the Deed from Seller to Buyer, nor upon payment of the Purchase Price by Buyer to Seller.

(e) Successors and Assigns; Assignment. This Agreement shall apply to, inure to the benefit of and be binding upon and enforceable against the parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives to the same extent as if specified at length throughout this Agreement. Neither Seller nor Buyer shall be permitted to assign its rights and/or obligations under this Agreement to any party without the other party's written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, Seller and Buyer each may assign its rights and/or obligations under this Agreement to an affiliated person or entity of such party without the prior consent of the other party, provided that written notice of such assignment and the identity and address of the assignee is delivered by the assigning party to the other party hereto within a reasonable time after such assignment is completed.

(f) Time. Time is of the essence of this Agreement. If the date for performance of any action or for the expiration of any time period shall fall on a weekend or holiday honored by

the federal government, such date of performance or expiration shall be extended until the next Monday or non-holiday, as applicable.

(g) Section Headings; Gender and Number. The headings inserted at the beginning of each section are for convenience of reference only and shall not limit or otherwise affect or be used in the construction of any of the terms or provisions hereof. The plural shall include the singular and the singular, the plural, wherever the context so admits. The use of any one gender shall include all others.

(h) Entire Agreement. This Agreement contains all of the terms, agreements, promises, covenants, conditions, representations and warranties made or entered into by and between Seller and Buyer, and supersedes all prior discussions and agreements, whether written or oral, between Seller and Buyer with respect to the sale and purchase of the Property, and constitutes the sole and entire agreement between Seller and Buyer with respect thereto. This Agreement may be executed with signatures delivered by either facsimile or scanned email, and copies of such signatures so delivered shall be deemed as originals.

(i) Amendment. This Agreement may not be modified or amended unless such amendment is set forth in writing and executed by both Seller and Buyer with the formalities hereof.

(j) Authority. Seller and Buyer each represent and warrant to the other that the individuals executing this Agreement on their behalf are duly authorized and empowered to do so, and that upon such execution, this Agreement shall be binding upon and enforceable by Seller and Buyer in accordance with its terms.

(k) Waiver. No waiver by Seller or Buyer, their respective successors or assigns, of any term, covenant, condition, restriction or agreement, or any breach or Seller's Default or Buyer's Default of any of the foregoing shall be deemed to imply or constitute a further waiver of the same or any subsequent breach or default.

(l) Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, and all such counterparts shall together constitute but one and the same agreement. Each of Seller and Buyer shall be permitted to exchange electronic copies of this Agreement with its authorized signature in pdf form, and signatures found on such electronic copies shall be deemed to be original signatures. The executed version of this Agreement may be delivered by each party to the other by electronic mail without the formalities of the notice requirements found in Section 20(a) above.

(m) Further Assurances. Seller and Buyer agree that at any time and from time to time after the execution of this Agreement and whether before or after Closing they shall, upon request of the other, execute and deliver such further documents and instruments, and to take such further acts and things as such party may reasonably and customarily request, in order to fully effect the purpose and intent of this Agreement; provided, however, that the non-requesting party will not be required to incur any additional expense, or assume or incur any additional liability or potential liability or to agree to any delay in Closing in connection therewith.

[End of Agreement - Signatures found on the following page]

IN WITNESS WHEREOF, Seller and Buyer have caused this Purchase and Sale Agreement to be executed under proper authority, to be effective as of the Effective Date.

SELLER:

THE NEW ALBANY COMPANY LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

Date: _____

PURCHASER:

CITY OF NEW ALBANY, OHIO

By: _____

Printed: _____

Title: _____

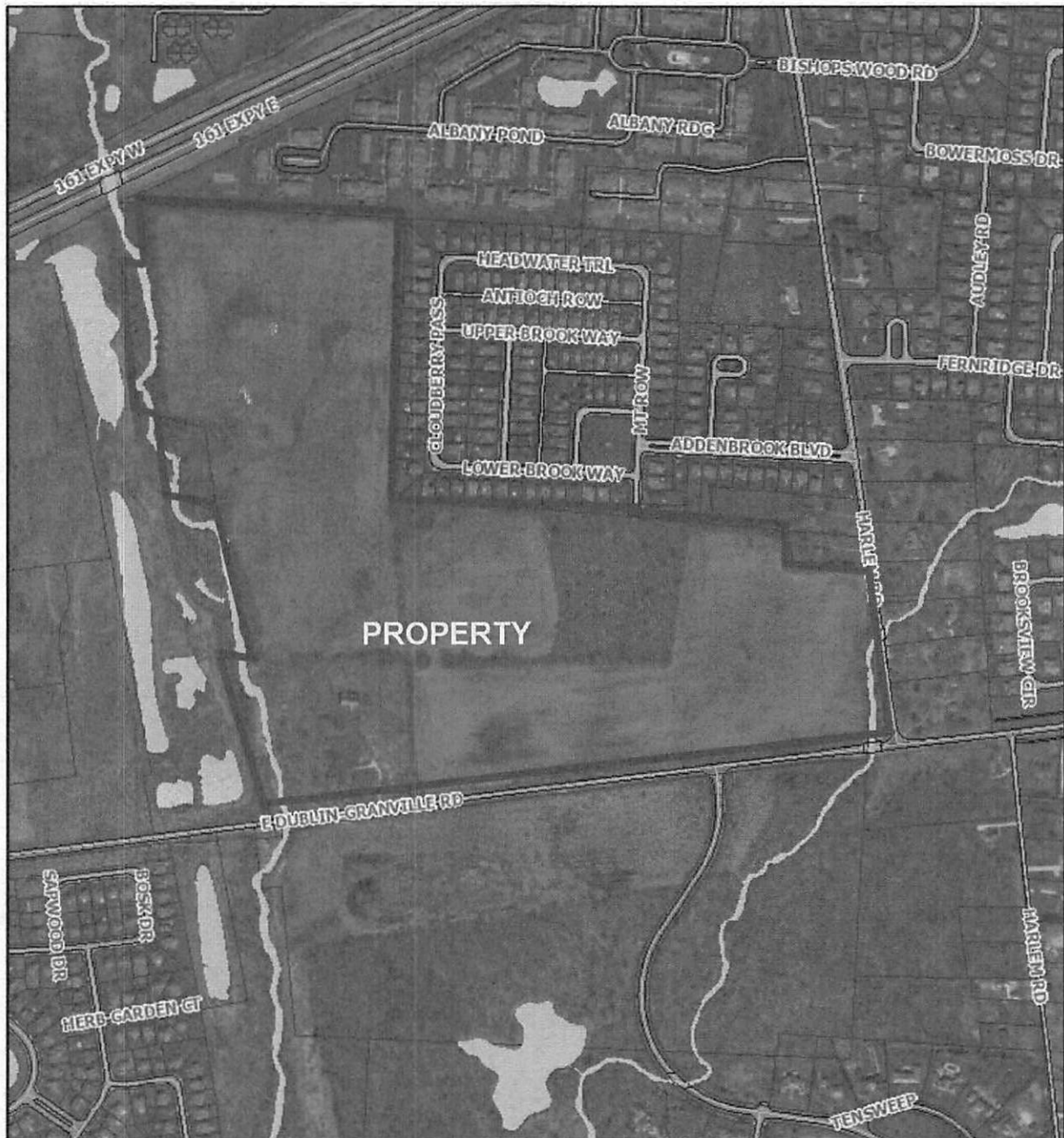
Date: _____

Approved as to Form:

Mitchell H. Banchefsky
Law Director
City of New Albany

EXHIBIT A

Franklin County Auditors Office



October 14, 2018

