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Introduced: 10/02/2018
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Revised: 10/17/2018
Adopted: 11/06/2018
Effective: 12/07/2018

ORDINANCE O-18-2018

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF NEW ALBANY BY AMENDING THE ZONING MAP TO REZONE 635.4 +/- ACRES OF LAND GENERALLY LOCATED EAST OF BABBITT ROAD, NORTH OF MORSE ROAD AND WEST OF BEECH ROAD FOR AN AREA TO BE KNOWN AS THE "COUNTY LINE ZONING DISTRICT" FROM ITS CURRENT ZONING OF "AG" AGRICULTURAL DISTRICT AND "L-GE" LIMITED GENERAL EMPLOYMENT DISTRICT TO "L-GE" LIMITED GENERAL EMPLOYMENT DISTRICT AS REQUESTED BY MBJ HOLDINGS LLC C/O AARON UNDERHILL, ESQ.

WHEREAS, the Council of the City of New Albany has determined that it is necessary to rezone certain property located in the city of New Albany to promote orderly growth and development of lands; and

WHEREAS, the Rocky Fork-Blacklick Accord, Planning Commission, and City Council on separate occasions have held public hearings and received public input into the amendment of the zoning ordinance; and

WHEREAS, pursuant to the application by MBJ Holdings LLC c/o Aaron Underhill, the Rocky Fork-Blacklick Accord and Planning Commission of the City of New Albany have reviewed the proposed ordinance amendment and recommended its approval.

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

Section 1. The Council of the City of New Albany hereby amends the Zoning Ordinance Map of the City of New Albany to change the zoning classification of the following described site:

- A. A 635.4 ± acre area of land general located to the east of Babbitt Road, north of Morse Road, and west of Beech Road for an area to be known as the "County Line Zoning District" from its current zoning of "AG" Agricultural District and "L-GE" Limited General Employment District to "L-GE" Limited General Employment District;
- B. The zoning district's limitation text and site plan is hereby attached and marked Exhibit A.

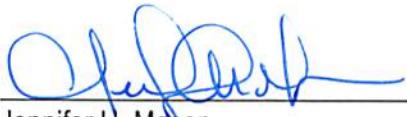
Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the passage of this ordinance were adopted in an open meeting of the council and any decision making bodies of the City of New Albany which resulted in such formal action were in meetings open to the public or in compliance with all legal requirements of the City of New Albany, Counties of Franklin and Licking, State of Ohio.

Section 3. Pursuant to Article 6.07(b) of the New Albany Charter, this ordinance shall become effective thirty (30) days after adoption and after the effective date of the associated annexation.

CERTIFIED AS ADOPTED this 6th day of November, 2018.

Attest:


Sloan T. Spalding
Mayor


Jennifer H. Mason
Clerk of Council

Approved as to form:


Mitchell H. Banchefskey
Law Director

COUNTY LINE ZONING DISTRICT

LIMITATION (L-GE) TEXT

OCTOBER 17, 2018

The County Line Zoning District (hereinafter, the “Zoning District”) serves to extend the same or similar zoning and development standards to property being annexed to the City as currently apply to the Beech Road South Zoning District, and to incorporate the portion of the property from the Beech Road South Zoning District that is located to the west of Beech Road into this zoning so that the property that is the subject hereof will have one uniform set of regulations. The property that is the subject of this zoning text consists of 635.4+- acres generally located adjacent to Beech Road on the east, adjacent to Babbitt Road on the west, and adjacent to Morse Road on the south. To the extent that a standard in this text conflicts with a standard that is provided in the City of New Albany’s Codified Ordinances, the standard contained in this text shall govern. This Zoning District shall be governed by the relevant provisions of the City’s Codified Ordinances to the extent that this text is silent on any particular matter.

A. Zoning Designation: L-GE, Limited General Employment District

B. Permitted Uses: The permitted and conditional uses contained and described in the Codified Ordinances of the City of New Albany, GE, General Employment District, Sections 1153.02 and 1153.03, provided that conditional uses are approved in accordance with Chapter 1115, Conditional Uses. The following uses from these code sections shall be prohibited:

1. Industrial product sales (See Section 1153.03(a)(1));
2. Industrial service (See Section 1153.03(a)(2));
3. Mini-warehouses (See Section 1153.03(a)(4)(c)). For purposes of clarification, this prohibition applies only to such facilities that are made available for rental to the general public.
4. Personal service (See Section 1153.03(b)(2)) and retail product sales and service (See Section 1153.03(b)(3)), except that such uses shall be allowed as accessory uses to a permitted use in this Zoning District;
5. Vehicle services (See Section 1153.03(b)(4));
6. Radio/television broadcast facilities (See Section 1153.03(c)(1)); and
7. Sexually-oriented businesses (See Section 1153.03(c)(3)).

C. Access, Parking, Site Circulation, and Traffic Commitments:

1. The developer shall work with the City Manager or his designee to determine the appropriate timing and phasing of all required street improvements.
2. Subject to other provisions in this text, on public rights-of-way which exist on the date of this text the number, locations, and spacing of curbcuts shall be determined and approved by the City Manager or his designee in consultation with the developer at the time that a certificate of appropriateness is issued for a project in this Zoning District.

3. Vehicular access to and from this Zoning District along Babbitt Road shall be limited to access for emergencies and utilities. The use of Babbitt Road for vehicular ingress and egress shall be prohibited for all other purposes including, but not limited to, construction traffic and employee and general visitor traffic. Any use of this driveway for other than the purposes set forth herein shall not be permitted without prior approval from the City Manager.

4. Parking and loading spaces shall be provided for each use per Section 1167 of the Codified Ordinances of the City of New Albany.

5. In conjunction with the filing of an application with the City for a plat or private site development a traffic study shall be filed by the applicant unless the City waives this requirement or modifies it to require less than a full study. The developer shall dedicate property as directed by the City for public street right-of-way as follows:

a. Babbitt Road: The total right-of-way for Babbitt Road shall be 60 feet. Right-of-way shall be dedicated to the City within this Zoning District to a width of 30 feet as measured from the centerline of Babbitt Road. The developer shall grant easements to the City which are adjacent to the aforementioned 60-foot right-of-way to the extent necessary to provide for the installation and maintenance of streetscape improvements, public utility lines, and leisure paths.

b. Morse Road: The developer shall dedicate property to the City as necessary to provide a minimum of 50 feet from the centerline of the right-of-way for Morse Road, unless the developer and the City agree during the time of the final engineering of any improvements to this public street to a greater right-of-way width. The developer shall grant easements to the City which are adjacent to the aforementioned 50-foot right-of-way to the extent necessary to provide for the installation and maintenance of streetscape improvements, public utility lines, and leisure paths.

c. Beech Road: The property owner has previously dedicated to the City right-of-way from this Zoning District necessary to provide a total of 80 feet of right-of-way for Beech Road, as well as easements adjacent to the aforementioned 80-foot right-of-way to the extent necessary to provide for the installation and maintenance of streetscape improvements, public utility lines, and leisure paths.

d. New Public Streets: All other public streets constructed within this zoning district shall have a right-of-way width that is appropriate for the character and anticipated usage of such streets as guided by the City of New Albany 2014 Strategic Plan and determined by the aforementioned traffic study.

D. Lot and Setback Commitments:

1. Lot Coverage: There shall be a maximum lot coverage in this Zoning District of 75%.

2. Setbacks:

a. Morse Road: There shall be a minimum building and pavement setback of 300 feet from the Morse Road as measured from the edge of the right-of-way

after the required right-of-way dedication for this street is completed as provided in this text, provided that drive lanes, but not parking areas, may be located no less than 150 feet from such right-of-way.

b. Babbitt Road: There shall be a minimum building setback of 250 feet from the centerline of the Babbitt Road right-of-way. There shall be a minimum pavement setback of 100 feet from the Babbitt Road as measured from the edge of the right-of-way after the required right-of-way dedication for this street is completed as provided in this text.

c. Beech Road: There shall be a minimum building and pavement setback of 100 feet from the Beech Road right-of-way as it exists on the date of this text.

d. New Public Streets: There shall be a minimum building and pavement setback of 25 feet from the right-of-way for any new public street within this Zoning District.

e. Perimeter Boundaries: Subject to Section J below, there shall be (i) a minimum pavement setback of 50 feet and a minimum building setback of 100 feet from all perimeter boundaries of this Zoning District which are adjacent to property on which residential uses are permitted, and (ii) a minimum pavement and building setback of 25 feet from all other perimeter boundaries that are not adjacent to a public right-of-way. Furthermore, where a parcel boundary follows or generally follows the centerline of a stream, the minimum pavement setback shall be 50 feet and the minimum building setback shall be 100 feet from the centerline of that stream.

f. From Streams: Subject to the immediately preceding subsection e., there shall be a minimum 100-foot wide stream corridor protection zone covering the existing stream which is located within the northern portion of this Zoning District. The amount of the stream corridor protection zone which is located on each side of the centerline of the stream may vary, provided that no less than 25 feet of this protection zone shall be located on either side of the stream. Notwithstanding the foregoing, should any applicable permits from federal or state governmental authorities more restrictive widths for this stream corridor, then the requirements of such permits shall govern.

g. Elimination of Setbacks: In the event that a parcel located within this subarea and an adjacent parcel located outside of this subarea (a) come under common ownership or control, (b) are zoned to allow compatible non-residential uses, and (c) are combined into a single parcel, then any minimum building, pavement, or landscaping setbacks set forth in this text as they apply to common property lines shall no longer apply with respect to these parcels.

E. Architectural Standards:

1. Building Height: The maximum building height for structures in this Zoning District shall be 65 feet, subject to adjustments as contemplated in Section J below.

2. Service and Loading Areas: Service areas and loading docks shall be screened to limit visibility from off-site.

3. Building Design:

- a. Building designs shall not mix architectural elements or ornamentation from different styles.
- b. Buildings shall be required to employ a comparable use of materials on all elevations.
- c. The number, location, spacing, and shapes of windows and door openings shall be carefully considered. Primary entrances to buildings shall be made sufficiently prominent that they can be easily identified from a distance.
- d. For office buildings and complexes, achieving a human or pedestrian scale is of less concern. When achieving such a scale is desired, it may be achieved by careful attention to width of facades, size and spacing of window and door openings, and floor to floor heights on exterior walls.
- e. Use of elements such as shutters, cupolas, dormers, and roof balustrades shall be avoided in building designs that are not based on traditional American architectural styles. Such elements may be employed only when they are common elements of a specific style, and this style shall be replicated in its entirety. When shutters are employed, even if they are non-operable, they must be sized and mounted in a way that gives the appearance of operability.
- f. Elements such as meter boxes, utility conduits, roof and wall projections such as vent and exhaust pipes, basement window enclosures, and trash containers shall be designed, located, or screened so as to minimize their visibility and visual impact from off-site. Solar energy systems shall be excluded from the requirements of this section.
- g. Accessory or ancillary buildings, whether attached or detached, shall be of similar design, materials and construction as the nearest primary structure. Fenestration themes that employ windows, panels and piers that are consistent with the architectural vocabulary of the building are encouraged.

4. Building Form:

- a. All building elevations shall be designed to be compatible with each other and to reflect a consistent design approach.
- b. Gable or hip roofs shall be avoided unless a building design replicates a traditional American architectural style that employs such roof forms. In non-stylistic contemporary designs, low or flat roofs may be employed. Roof visibility shall be minimized.

5. Materials:

- a. Exterior building materials shall be appropriate for contemporary suburban

designs and shall avoid overly reflective surfaces. Traditional materials such as, but not limited to, wood, stone, brick, and concrete shall be permitted, along with contemporary materials such as, but not limited to, aluminum, metal, glass, stucco, or cementitious fiberboard (e.g., hardiplank or equivalent) shall be permitted on buildings not employing traditional styles. The use of reflective or mirrored glass shall be prohibited.

b. Prefabricated metal buildings, untreated masonry block structures, and buildings featuring poured concrete exterior walls are prohibited. Notwithstanding the foregoing, ancillary structures built and operated for the purpose of enclosing equipment and which are not occupied by a tenants or persons on a regular basis may be constructed using pre-engineered metal.

c. Generally, the quantity of materials selected for a building shall be minimized. A single material selection for the independent building components of roof, wall and accents is permitted (i.e., Architectural Grade shingle roof with Brick Masonry wall and EIFS Cornice and Accents).

d. Loading docks are not required to have the same degree of finish as a main entry unless they are visible from a public right-of-way.

e. Additional Standards for Uses Not Governed by DGRs: Buildings that are constructed to accommodate certain uses are not governed by the City's Design Guidelines and Requirements (DGRs). For example, buildings that are constructed for the operation of warehousing and/or distribution uses are not subject to the DGRs and can present challenges in meeting the community standard for architectural design. Such buildings are necessarily large and typically include long walls that together form a square or rectangular box. The goal for the development of buildings that are not subject to the DGRs is to balance the practical needs of these buildings with the desire to provide exterior designs that are attractive and complimentary to the architecture that will be found elsewhere in this zoning district.

Architecture by its nature is a subjective medium, meaning that the adoption of strict objective standards in all instances may not provide the best means for achieving appropriate design. In recognition of this fact, the standards set forth herein provide guidelines and suggestions for designing buildings that are not subject to the DGRs in an effort to set expectations for the quality of architecture that will be expected for these structures. On the other hand, these standards are meant to allow for some flexibility to encourage innovative design provided that the spirit and intent of these provisions are met.

In conjunction with an application for a certificate of appropriateness for each building or structure in this Zoning District that is not subject to or governed by the DGRs, and subject to Section J of this text, the applicant shall be required to submit to the City illustrations of the proposed exterior design of the building or structure for review and approval by the Design Review Committee contemplated in Section 1157.08(a)(1)(D) of the City Code. In designing such buildings, the user or applicant shall take into account the following, which are intended to set a level of expectation for the quality of design:

- i. Architectural design for all portions of a building or structure that are visible from a public right-of-way (excluding public rights-of-way whose primary purpose is to accommodate truck traffic or service loading areas) shall meet the community standard in terms of quality while taking into account the unique nature of the use(s) that will be found therein.
- ii. Uninterrupted blank wall facades shall be prohibited to the extent that they are visible from a public right-of-way. Design variations on long exterior walls shall be employed in order to create visual interest. Examples of such design variations include, but are not limited to, the use of offsets, recesses and/or projections, banding, windows, and/or reveals; scoring of building facades; color changes; texture or material changes; and variety in building height.
- iii. The use of one or more architectural or design elements may be used to soften the aesthetics of the building, such as but not limited to canopies, porticos, overhangs, arches, outdoor patios, community spaces, or similar devices.
- iv. Contemporary exterior designs, while not required, shall be encouraged in order to create architecture that does not look aged or dated even many years after the facility is built.
- v. Landscaping and/or the use of existing vegetation shall be utilized where appropriate to enhance the aesthetics of the building and to lessen its visual impact when viewed from public rights-of-way.
- vi. HVAC, generators and similar equipment and associated gravel or concrete yards or pads shall be located subject to the minimum building setbacks.

6. **Roof-Mounted Equipment:** Complete screening of all roof-mounted equipment shall be required on all four sides of buildings with materials that are consistent and harmonious with the building's façade and character. Such screening shall be provided in order to screen the equipment from off-site view and to buffer sound generated by such equipment.

F. **Buffering, Landscaping, Open Space, and Screening:** The following landscaping requirements shall apply to this Zoning District:

1. **Tree Preservation:** Standard tree preservation practices will be in place to preserve and protect trees during all phases of construction, including the installation of snow fencing at the drip line.
2. **Street Trees:** A street tree row shall be established along all publicly dedicated rights-of-way within or adjacent to this Zoning District and shall contain one (1) tree for every thirty (30) feet of road frontage. Trees may be grouped or regularly spaced. Minimum street tree size at installation shall be three (3) caliper inches. This requirement may be waived in areas where existing vegetation occurs, subject to approval of the City Landscape Architect.

3. **Parking Areas:** Within this Zoning District, there shall be no less than one (1) tree planted for every ten (10) parking spaces located therein. At least five percent (5%) of the vehicular use area shall be landscaped or green space (or treed areas). Parking lots shall be designed to accommodate parking lot islands with tree(s) at the end of parking aisles.
4. **Minimum On-Site Tree Sizes:** Unless otherwise set forth herein, minimum tree size at installation shall be no less than two and one half (2 ½) inches in caliper for shade trees, six (6) feet in height for evergreen trees, two (2) inches in caliper for ornamental trees, and thirty (30) inches in height for shrubs. Caliper shall be measured six (6) inches above grade.
5. **Pedestrian Circulation:** Unless they are part of a campus which for safety or security reasons requires access by the public to be restricted, for buildings whose primary use is office, an internal pedestrian circulation system shall be created so that a pedestrian using a public sidewalk along a public sidewalk along a public street can access the adjacent buildings through their parking lots as delineated with markings, crosswalks, and/or different materials, directing foot traffic, where possible, away from primary access drives. Pedestrian connections shall be provided between parking lots and the front of buildings. A building shall be considered to have offices as its primary use when greater than 50% of its total square footage is occupied by office uses. The requirements of this paragraph shall not apply to any building with a main entrance which is located 500 feet or more from a public right-of-way.
6. All street trees that are not installed prior to infrastructure acceptance shall be bonded to guarantee installation.
7. All project landscape plans are subject to review and approval by the City Landscape Architect.
8. **Screening – Residential Uses:** For those perimeter boundaries which abut properties containing existing residential uses or, as determined at the time that an application is filed for a building permit (“Building Permit”) in this Zoning District, has a zoning classification which permits the development and operation of residential uses thereon that are not owned by the developer (any real property meeting either of the foregoing criteria to be referred to herein as “Residential Property”), a minimum six (6) foot high mound shall be installed along the property line and shall include a landscape buffer on the mound which shall consist of a mixture of deciduous trees, evergreens and bushes to provide an opacity of 75% on the date that is 5 years after planting to a total height of 10 feet above ground level. These mounds shall be installed within the minimum pavement setback area as required by this zoning text and may encroach on the abutting property if that owner is in agreement with the mound’s installation on his/her property. The plan for these areas must be reviewed and approved by the City’s Landscape Architect. For purposes of determining which properties qualify as a Residential Property hereunder, if two properties have an intervening public street right-of-way between them, they shall still be considered abutting.

If there are existing trees within this perimeter area and the City Landscape Architect recommends preservation of them then the mounding may be omitted and the existing trees may be utilized as the required screening. The requirement for 75% opacity 5 years after installation is still applicable with this alternative and, therefore, if

necessary, additional landscaping materials (i.e., deciduous trees, evergreens or bushes) shall be planted along those perimeter boundary areas to meet the 75% opacity requirement. The plan for these areas must be reviewed and approved by the City's Landscape Architect.

Utilities and permitted access drives may be placed within or cross through perimeter boundaries which abut residentially zoned and used properties and the screening provided for above, provided, however, that the developer shall use good faith efforts to place utilities in a manner that minimizes the impact on the required screening.

In recognition of the amount of land area contained within this Zoning District, the following provisions shall apply to the installation of the required mounding and landscaping contemplated in this Section F.8:

- a. Such mounding and landscaping shall be required to be installed along the entirety of the perimeter boundaries of any individual tax parcel, or project phase within a tax parcel, which includes a perimeter boundary line of this Zoning District that abuts Residential Property and upon which construction of buildings and/or pavement is to be undertaken pursuant to the issuance of a Building Permit by the City and installation shall be complete prior to the issuance of a Certificate of Occupancy; or
- b. If the perimeter boundary line of the tax parcel, or project phase within a tax parcel, on which construction is to occur does not include a perimeter boundary line of this Zoning District that abuts a Residential Property, but an application for a Building Permit has been issued by the City with respect to that tax parcel, or project phase within a tax parcel, which allows for construction of a structure or pavement within 500 feet of a perimeter boundary line of a Residential Property, then the mounding and landscaping required by this Section F.8 shall be required to be installed along the entirety of the shared boundary line with that Residential Property and installation shall be complete prior to the issuance of a Certificate of Occupancy.

9. Master Landscape Standards Plan: The City of New Albany Business Campus South – Beech Road South Landscape Standards Master Plan which was previously created for the Beech Road corridor and approved by the Planning Commission on June 5, 2017 shall apply to the Beech Road frontage in this Zoning District.

10. Morse Road, Beech Road, and Babbitt Road:

- a. Landscaping within the minimum required pavement setback along each of Morse Road, Beech Road, and Babbitt Road shall be coordinated and consistent throughout this zoning district and surrounding areas. Stormwater and other similar non-building activities require the landscaping stated in this text be installed. The rural character of the land along road ways should be designed/maintained as contemplated in Beech Road South Landscape Standards Master Plan.
- b. A landscape buffer shall be located within the required minimum pavement setback along each of Morse Road, Beech Road, and Babbitt Road. The buffer shall be planted with a minimum quantity of one tree per 25 feet, in addition to

street trees. Trees shall be randomly planted to create a naturalized appearance. Trees shall be of native species. Evergreen trees or shrubs shall not be permitted in the area between the buffer landscape and the edge of street pavement. For landscaping which is not used to meet zoning text, codified ordinance and street tree requirements, the minimum caliper of tree material may be reduced to 1" caliper to gain additional plant material. A four-board white horse fence may be located 1 foot from the edge of the right-of-way along Morse Road.

c. The landscape buffer may consist of mounding. Mounding, when used, shall be a maximum of 12 feet in height. Trees shall be planted on the mound with a minimum of 70% of the trees occurring on the street side. No trees shall be located within the upper quartile of the crest of the mound.

11. Preservation Areas: Certain portions of the Zoning District contain environmentally sensitive elements that will be preserved and protected. These "Preservation Zones" are generally identified on the attached Preservation Plan. The intent of the Preservation Plan is to generally depict the portions of the Zoning District that will not be developed or disturbed. In addition to preservation zones which are noted on the Preservation Plan, Preservation Zones shall be deemed to include all minimum pavement setbacks along the perimeter boundaries of the Zoning District that are not adjacent to a public right-of-way. Within the Preservation Zones located within these perimeter setbacks, the developer shall preserve existing healthy and mature trees and vegetation but shall be permitted to place utilities within or allow them to cross through these areas, provided, however, that the developer shall use good faith efforts to place utilities in a manner that minimizes the impact on healthy and mature trees. Trees that are in good health and that are at least four (4) caliper inches in diameter at a height of three (3) feet above the ground shall be preserved where reasonably practical. Trees within these areas may be removed if they present a danger to persons or property.

The Preservation Zones that are located outside of the minimum required perimeter pavement setbacks as shown on the Preservation Plan illustrate the land that has been preserved pursuant to applicable federal and state permits that have been issued or once they are approved and issued by the Ohio Environmental Protection Agency and the U.S. Army Corps of Engineers. These Preservation Areas shall be maintained, protected, and preserved in accordance with such permits. The Preservation Plan is being provided for illustrative purposes only, and the final boundaries of the Preservation Zones that are located outside of the minimum required perimeter pavement setbacks shall be the same as the boundaries of the portions of the site that will be required to be preserved under applicable federal and state permits, as may be amended from time-to-time. Prior to commencing development in a portion of the Zoning District that contains a Preservation Zone that is located outside of the minimum required perimeter pavement setbacks, the developer shall provide detailed legal descriptions of such Preservation Zone to the Director of Development for record-keeping and enforcement purposes. Should the boundaries of any Preservation Zone that is located outside of the minimum required perimeter pavement setbacks change in the future as a result of amendments to or replacements of relevant federal and state permits, then the developer shall provide updated legal descriptions and an updated Preservation Plan to the Director of Development within a reasonable amount of time after such information is available, and the Preservation Plan then shall be considered to be enforceable as amended.

G. Lighting:

1. All parking lot and private driveway lighting shall be cut-off type fixtures and down cast. Parking lot lighting shall be from a controlled source in order to minimize light spilling beyond the boundaries of the site.
2. All parking lot lighting shall be of the same light source type and style. Building, pedestrian, and landscape lighting may be incandescent or metal halide.
3. All parking lot light poles shall be black or New Albany green and constructed of metal. Light poles shall not exceed 30 feet in height.
4. Landscape uplighting from a concealed source shall be subject to staff approval. All uplighting fixtures must be screened by landscaping. Lighting details shall be included in the landscape plan which is subject to review and approval by the City Landscape Architect.
5. No permanent colored lights or neon lights shall be used on the exterior of any building.
6. All other lighting on the site shall be in accordance with City Code.
7. Street lighting must meet the City Standards and Specifications.

H. Signage: All signage shall conform to the standards set forth in Chapter 1169 of the Codified Ordinances of the City of New Albany.

I. Utilities: Except as provided in this subsection I, all utility lines in this Zoning District shall be installed underground. Above-ground electric utility poles shall be permitted within an individual parcel (or multiple contiguous parcels under common ownership) located to the south of the stream identified as the "North Stream" on the plans which accompany this text provided that any such poles shall be located at least 300 feet from the edge of public rights-of-way, shall be of a monopole design, and shall not exceed the minimum height required by applicable utility installation standards. Reasonable efforts shall be made to minimize the visibility of above-ground electric utility poles from any public roadway.

For the purposes of this subsection I, connections by way of piping, cables, or conduits between a building and ground mounted equipment or accessory structures may be installed above-ground provided that, when such a connection is to be made between a building façade that is oriented toward a public right-of-way and ground-mounted equipment or an accessory structure located between that building façade and the public right-of-way:

1. The ground mounted equipment or structure is located at least 500 feet from the edge of the public right-of-way or the piping, cables, and/or conduits between a building and ground mounted equipment or structures are not visible from the public right-of-way; and
2. The connection is installed for its entire length at a height that does not exceed the height of the ground mounted equipment or structure to which the connection is made; and
3. The connection is on the rear of the ground-mounted equipment or structure (i.e., the

side which faces the building where the other end of the connection is being made).

J. Height Adjustments: It is anticipated that technology-oriented companies and other large parcel users may have certain operational and design requirements necessitating the development of buildings in excess of 65 feet in height. The Planning Commission shall have the authority, upon application from a property owner or other applicant as provided in Section J.1 below, to increase the allowable height for a building to a maximum of 85 feet within those portions of the Zoning District which are located to the south of the stream identified as the "North Stream" on the plans which accompany this text. This Section J shall not be read or applied to override or supersede the provisions of Section 1165.05 of the Codified Ordinances as they relate to the right for certain elements of a building to exceed the maximum height provided for in this text in the absence of a request for an increase in building height.

1. Procedure for Approval: A property owner or other applicant seeking an increase in building height as contemplated in this Section J shall request the Planning Commission's review by filing an application with the City on a form that is prescribed by its zoning staff. Such an application and any decisions made thereon by the Planning Commission shall not be considered to be a variance, but instead shall be considered to be administrative in nature in that the Planning Commission's function will be to apply and administer the requirements of Section J.2 below to any application made pursuant hereto. The Planning Commission shall hold a public hearing on the application at its first meeting following the date that is 30 days after the application is filed in a manner that is deemed to be complete by the City's zoning staff or on such later date as may be agreed by the applicant. The Planning Commission may vote on the application at any time following such public hearing, provided that in no circumstance shall such a vote occur later than the next meeting of the Planning Commission which immediately follows the meeting when the public hearing occurred (unless the applicant otherwise consents). The Planning Commission's decision to approve or disapprove the application shall be based upon its consideration of the matters contemplated in Section J.2 below, and a decision to approve the application may be issued with conditions that are not inconsistent with the requirements set forth in Section J.2.

2. Basis for Approval: The Planning Commission shall approve the request for an increase in permissible building height if it determines that the following requirements are met (or waived by the Planning Commission based on the facts and circumstances of the particular proposal):

a. Buildings exceeding 65 feet in height shall:

- i. Have a minimum setback of 300 feet as measured from the centerline of Babbitt Road;
- ii. Have a minimum setback of 200 feet from any parcel as to which the current zoning permits residential uses and on which a residence exists on the date that the Planning Commission reviews the application for increased building height if the request is for a building height of up to 75 feet, and a minimum setback of 250 feet from any such parcel if the request for an increase in building height is between 76 feet and 85 feet; and

iii. Be located no closer to Beech Road than the western boundary of the wetlands mitigation/preservation area identified on the attached plans or a line

- extending in a straight line from that boundary to each of the northern and southern boundaries of this Zoning District;
- b. The need for an increase in building height (a) is the result of a technological or operational need or other function that cannot be reasonably, practically, or economically addressed or accommodated in a building that complies with the height requirement contained in Section E.1 above, or (b) reflects best or favored practices in the relevant industry;
 - c. Roof-mounted mechanical equipment and other appurtenant building elements shall be screened to limit from view from the rights-of-way for Beech Road, Morse Road, or Babbitt Road;
 - d. No lights or signage shall be installed on the building at a height greater than that which would be permitted without the increase in building height;
 - e. The design of the building with the additional height:
 - i. Incorporates, into the portions of the primary architectural elements of the building that exceed 65 feet, two or more of the architectural design elements contemplated in Section 5.e.ii of this text in order to reduce or eliminate the appearance of the building as being monolithic in form (or other design elements as reasonably determined by the Planning Commission to meet this objective);
 - ii. Does not include blank facades which are visible from a public right-of-way. For purposes of this text, a “blank facade” shall be defined to mean “the use of a single exterior façade material without any variations using other materials, patterns, textures, colors, or other means of creating visual interest extending full height in a vertical direction and 100 feet in a horizontal direction, unless otherwise approved by the Planning Commission based on sound architectural design principles”;
 - iii. Shall meet the architectural requirements set forth in Section E.2 through Section E.6 of this text, it being the intent that that the requirement of this Section J are in addition to other requirements for buildings as provided in this text;
 - f. The proposed building will utilize a sprinkler system; and
 - g. The relevant provider of fire protection services for the proposed building has confirmed that it will be able to provide adequate fire suppression services to the building with the increased height.



Prepared: 10/12/2018
Introduced: 10/23/2018
Revised:
Adopted: 11/06/2018
Effective: 11/06/2018

ORDINANCE O-20-2018

AN ORDINANCE TO ACCEPT THE EXPEDITED TYPE 1 ANNEXATION OF 1.0+/- ACRES FROM JERSEY TOWNSHIP, LICKING COUNTY TO THE CITY OF NEW ALBANY, AND DECLARING AN EMERGENCY TO WAIVE THE THIRTY-DAY WAITING PERIOD

WHEREAS, pursuant to the petition filed by Joseph Tanoury, Underhill & Hodge LLC, agent for petitioners, with the Licking County Development and Planning Department, on August 14, 2018, and

WHEREAS, the foregoing Resolution #96-69 of the Licking County Commissioners granting the petition was delivered to the City of New Albany on August 23, 2018, and more than sixty (60) days have lapsed since the Resolution of the Board of County Commissioners was transmitted to the City of New Albany, and

WHEREAS, pursuant to Resolution R-35-2018 of the City of New Albany, the New Albany City Manager was authorized to enter into a Roadway Maintenance Agreement with the Licking County Board of Commissioners for the maintenance of sections of roadways impacted by this annexation, and

WHEREAS, the real estate is located in Licking County and is subject to the "New Albany East Community Authority" and subject to a special property assessment in compliance therewith, and

WHEREAS, pursuant to New Albany Codified Ordinance 1125.05, all newly annexed areas shall immediately be zoned into the Agricultural District and shall be subject to the regulations and restrictions pertaining thereto, and

WHEREAS, this ordinance constitutes an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the city and for the further reason that this ordinance is required to be immediately effective to promote timely economic development, and

WHEREAS, The New Albany City Council has determined that annexation of the real estate is in the best interests of the residents of the City of New Albany.

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

Section 1: The application of property owners set forth in Licking County requesting the annexation of 1.0+/- acres, which is contiguous to the City of New Albany, is hereby accepted, and the corporate boundaries of New Albany shall be extended to include the territory, more particularly described in Exhibit A, attached hereto and incorporated herein as if fully written.

Section 2: An accurate map of the territory attached as Exhibit B, the petition for its annexation, other related documents, and a certified transcript of the proceedings of the Licking County Board of Commissioners regarding the annexation proceedings have been on file with the Clerk of Council of the City of New Albany for sixty (60) days prior to being presented to this Council as required by law, and are hereby accepted.

Section 3: City Council of the City of New Albany hereby accepts the annexation of a 36.2+/-acre tract, situated in Jersey Township, Licking County, Ohio, the same being land of the owners set forth above, for annexation to the City of New Albany.

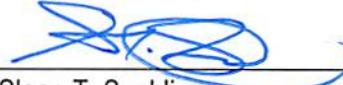
Section 4: The Clerk is herewith directed to deliver certified copies of this ordinance and other Proceedings relative to the annexation to the County Auditor, County Recorder, and the Secretary of State.

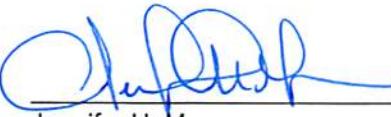
Section 5. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 6. This ordinance is declared to be emergency legislation, waiving the thirty (30) day waiting period, necessary for reasons stated above, and shall be effective upon passage.

CERTIFIED AS ADOPTED this 6th day of November, 2018.

Attest:


Sloan T. Spalding
Mayor


Jennifer H. Mason
Clerk of Council

Approved as to form:


Mitchell H. Banchefsky
Law Director

**CERTIFICATION BY CLERK OF COUNCIL
OF PUBLICATION OF LEGISLATION**

I certify that copies of Ordinance O-20-2018 were posted in accordance with Section 6.12 of the Charter, for 30 days starting on November 7, 2018.



Jennifer Mason, Clerk of Council

11/7/18
Date

EXHIBIT A - O-20-2018

**PROPOSED ANNEXATION
1.8± ACRE**

FROM: JERSEY TOWNSHIP, LICKING COUNTY OHIO

TO: CITY OF NEW ALBANY

Situated in the State of Ohio, County of Licking, Township of Jersey, lying in Section 25, Township 2, Range 15, United States Military Lands, and being all of the 0.62 and 0.38 acre tracts conveyed to Barbara E. Pealer by deed of record in Instrument Number 200103200008591, (all references are to the records of the Recorder's Office, Licking County, Ohio) and being more particularly described as follows:

Beginning, for reference, at the centerline intersection of Morse Road SW and Beech Road SW, in the southerly City of New Albany corporation line, established by Ordinance Number O-15-2015, of record in Instrument Number 201506090011435, and the northerly corporation line of the City of Pataskala;

Thence North 85° 59' 17" West, with the centerline of said Morse Road SW, with said common corporation line, a distance of 1666.65 feet to the southeasterly corner of said 0.62 acre tract, a southwesterly corner of that 90.389 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200002020003279, the TRUE POINT OF BEGINNING;

Thence North 85° 59' 17" West, continuing with the centerline of said Morse Road SW, with the northerly corporation line of the City of Pataskala, with a southerly line of said 0.38 acre tract, with the southerly line of said 0.62 acre tract, a distance of 180.00 feet to an angle point the City of New Albany corporation line, the southwesterly corner of said 0.38 acre tract, a southeasterly corner of that 0.756 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200107200026097:

Thence North 03° 39' 34" East, with said City of New Albany corporation line, with the westerly line of said 0.38 acre tract, with an easterly line of said 98.756 acre tract, a distance of 242.00 feet to northwesterly corner of said 0.38 acre tract;

Thence South 85° 59' 17" East, continuing with said City of New Albany corporation line, with the northerly line of said 0.38 acre tract, with a southerly line of said 98.756 acre tract, a distance of 180.00 feet to a point in the westerly line of said 90.389 acre tract, the northeasterly corner of said 0.38 acre tract, a southeasterly corner of said 98.756 acre tract;

Bence South 03° 39' 34" West, continuing with said City of New Albany corporation line, with the easterly line of said 0.62 acre tract, with an easterly line of said 0.38 acre tract, with a westerly line of said 90.389 acre tract, a distance of 242.00 feet to the TRUE POINT OF BEGINNING, containing 1.0 acre, more or less.

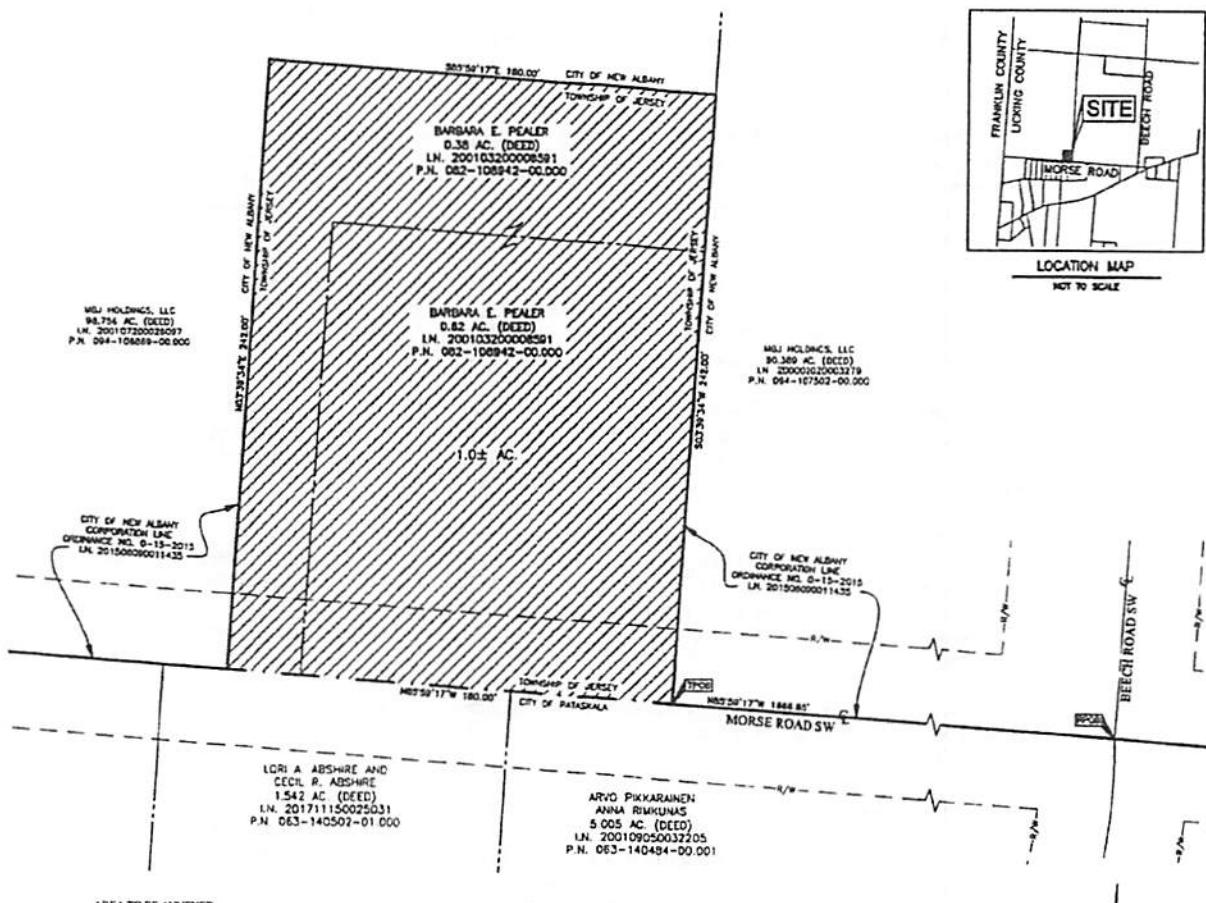
This description is for annexation purposes only and is not for transfer.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

DRAFT

Joshua M. Meyer Date
Professional Surveyor No. 8485

**ANNEXATION OF 1.0± ACRE
TO THE CITY OF NEW ALBANY FROM JERSEY TOWNSHIP**
SECTION 25, TOWNSHIP 2, RANGE 15
UNITED STATES MILITARY LANDS
TOWNSHIP OF JERSEY, COUNTY OF LICKING, STATE OF OHIO



**PROPOSED CITY OF NEW ALBANY
CORPORATION LINE**

**EXISTING CITY OF NEW ALBANY
CORPORATION LINE**

Contingency Note:
Total perimeter of annexation area is 844.0 feet, of which 664.0 feet is contiguous with the City of New Albany. Ordinance Number O-15-2013, going 78.7% perimeter contiguous.

Note:
This annexation does not create islands of unincorporated areas within the limits of the area to be annexed.

Proposed Annexation
of 1.0± acre to the City of New Albany

The within map marked exhibit "A" and made a part of the petition of annexation filed with the Board of Commissioners of Licking County, Ohio, on 20____ under Chapter 709 of the Ohio Revised Code, is submitted as an accurate map of the territory in said petition described under the requirements of said Chapter 709 of the Ohio Revised Code.

Agree for Petitioners

The Board of County Commissioners of Licking County, Ohio, having received a petition bearing the signed names and addresses of the parties interested in the annexation to the City of New Albany, Ohio, of the territory shown herein and having given due consideration to the prayer of said petition, do hereby grant the same

0 30 0 30 60
GRAPHIC SCALE (in feet)

Petition Received _____ 20____ Commissioner _____

Petition Approved _____ 20____ Commissioner _____

Transferred this ____ day of _____, 20____ upon the duplicates of this office

Containing _____ pages
Transfer Fee _____ Licking County Auditor _____

Received for Record _____ 20____ at _____ (AM-PM) and received
20____ in plain ordinance, petition, etc. in Instrument Number _____

File Fee _____
Ordinance, etc. Fee _____ Licking County Recorder _____

Council for the City of New Albany, Ohio, by ordinance _____ passed
20____ and approved by the mayor on _____ 20____ did accept the territory
above herein for annexation to the City of New Albany, Ohio, a municipal corporation

Attest _____ Clerk, City of New Albany

DRAFT

By: Joshua M. Meyer
Professional Surveyor No. 3485

Date:

EMHT		Date: June 20, 2018
		Scale: 1" = 30'
		Job No: 20180045
		Sheet: 1 of 1
REVISIONS		
MARK	DATE	DESCRIPTION



Prepared: 10/12/2018
Introduced: 10/23/2018
Revised:
Adopted: 11/06/2018
Effective: 11/06/2018

ORDINANCE O-21-2018

AN ORDINANCE TO ACCEPT THE EXPEDITED TYPE 1 ANNEXATION OF 374.2+/- ACRES FROM PLAIN TOWNSHIP, FRANKLIN COUNTY AND FROM JERSEY TOWNSHIP, LICKING COUNTY TO THE CITY OF NEW ALBANY, AND DECLARING AN EMERGENCY TO WAIVE THE THIRTY-DAY WAITING PERIOD

WHEREAS, pursuant to the petition filed by Aaron L. Underhill, Esq., Underhill & Hodge LLC, agent for petitioners, with the Franklin County Development and Planning Department, on August 14, 2018, and

WHEREAS, the foregoing Resolution #0556-18 (Case #ANX-19-18) of the Franklin County Commissioners granting the petition was delivered to the City of New Albany on August 23, 2018, and more than sixty (60) days have lapsed since the Resolution of the Board of County Commissioners was transmitted to the City of New Albany, and

WHEREAS, pursuant to Resolution 20-2018 of the City of New Albany, the New Albany City Manager was authorized to enter into a Roadway Maintenance Agreement with the Franklin County Board of Commissioners; and no roadways were impacted in Licking County by this annexation, and

WHEREAS, pursuant to New Albany Codified Ordinance 1125.05, all newly annexed areas shall immediately be zoned into the Agricultural District and shall be subject to the regulations and restrictions pertaining thereto, and

WHEREAS, pursuant to New Albany Codified Ordinance 1125.06, all future annexed properties shall be added to the applicable New Albany Community Authority as described therein and are subject to a special property assessment in compliance therewith, and

WHEREAS, this ordinance constitutes an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the city and for the further reason that this ordinance is required to be immediately effective to promote timely economic development, and

WHEREAS, The New Albany City Council has determined that annexation of the real estate is in the best interests of the residents of the City of New Albany.

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

Section 1: The application of property owners set forth in Franklin and Licking County requesting the annexation of 374.2+/- acres, which is contiguous to the City of New Albany, is hereby accepted, and the

corporate boundaries of New Albany shall be extended to include the territory, more particularly described in Exhibit A, attached hereto and incorporated herein as if fully written.

Section 2: An accurate map of the territory attached as Exhibit B, the petition for its annexation, other related documents, and a certified transcript of the proceedings of the Franklin County Board of Commissioners regarding the annexation proceedings have been on file with the Clerk of Council of the City of New Albany for sixty (60) days prior to being presented to this council as required by law, and are hereby accepted.

Section 3: Council of the City of New Albany hereby accepts the annexation of a 374.2 +/- acre tract, situated in Plain Township, Franklin County, Ohio and Jersey Township, Licking County, the same being land of the owners set forth above, for annexation to the City of New Albany.

Section 4: The clerk is herewith directed to deliver certified copies of this ordinance and other proceedings relative to the annexation to the Franklin and Licking County Auditor, Franklin and Licking County Recorder, and the Secretary of State.

Section 5. 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 6. This ordinance is declared to be emergency legislation, waiving the thirty (30) day waiting period, necessary for reasons stated above, and shall be effective upon passage.

CERTIFIED AS ADOPTED this 6th day of November, 2018.

Attest:



Sloan T. Spalding
Mayor



Jennifer H. Mason
Clerk of Council

Approved as to form:



Mitchell H. Banchefskey
Law Director

**CERTIFICATION BY CLERK OF COUNCIL
OF PUBLICATION OF LEGISLATION**

I certify that copies of Ordinance O-21-2018 were posted in accordance with Section 6.12 of the Charter, for 30 days starting on November 7, 2018.



Jennifer Mason, Clerk of Council

11/7/18
Date

Exhibit A

DESCRIPTION APPROVED	
JARED N. KNERR	
LICKING COUNTY ENGINEER	
APPROVED BY	08/02/2018
JR	

ANNEXATION
PLAT & DESCRIPTION
ACCEPTABLE
CORNELL R. ROBERTSON, P.E., P.S.
FRANKLIN COUNTY ENGINEER
By fm Date 9/3/18
PROPOSED ANNEXATION
374.2± ACRES

RECEIVED

AUG 03 2018

Franklin County Engineer
Cornell R. Robertson, P.E., P.S.

EXHIBIT A - O-21-2018

FROM: PLAIN TOWNSHIP, FRANKLIN COUNTY AND JERSEY TOWNSHIP, LICKING COUNTY

TO: CITY OF NEW ALBANY

Situated in the State of Ohio, County of Franklin, Township of Plain, in Lots 1, 2 and 3, Quarter Township 4, Township 2, Range 16, and County of Licking, Township of Jersey, in Sections 16 and 25, Township 2, Range 15, United States Military Lands, being comprised of all of that 12.950, 17.998, and 52.996 acre tracts conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201802020014909, all of that 1.000, 2.508, 6.16, 8.04, 7.34, and 5.49 acre tracts conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201807270100579, all of that 109.456 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201808010103027, and all of that 50.663 and 99.571 acre tracts conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201807310015615 (all references refer to the records of the Recorder's Office, Franklin County, Ohio, and Licking County, Ohio) and more particularly bounded and described as follows:

BEGINNING at the intersection of the centerline of Morse Road with the common County line of Franklin and Licking Counties;

Thence North 86° 23' 36" West, with said centerline, a distance of 499.31 feet to a point in the southwesterly corner of said 109.456 acre tract, in a southeasterly corner the remainder of that tract conveyed as First Parcel to David L. Haegle, Trustee of the David L. Haegle Trust dated August 1, 2007, an undivided one-half (1/2) interest and Deborah S. Haegle, Trustee of the Deborah S. Haegle Trust dated August 1, 2007, an undivided one-half (1/2) interest by deed of record in Instrument Number 200708070138359;

Thence with the line common to said 109.456 acre tract and said Haegle tract the following courses and distances:

North 03° 36' 24" East, a distance of 60.61 feet to a point;

North 35° 38' 02" West, a distance of 37.65 feet to a point;

North 53° 40' 14" West, a distance of 363.05 feet to a point;

North 35° 59' 56" West, a distance of 264.34 feet to a point;

North 23° 21' 40" West, a distance of 97.77 feet to a point;

North 43° 09' 04" East, a distance of 411.13 feet to a point; and

North 86° 23' 36" West, a distance of 1412.59 feet to the westerly line of said 109.456 acre tract, the easterly line of that 2.500 acre tract conveyed to Russel D. Gorsuch and Yun Cha Gorsuch by deed of record in Instrument Number 201312130204967;

Thence North 03° 38' 08" East, with the easterly lines of said 2.500 acre tract, those tracts conveyed to Dong Hwa Hong and Rhea Y. Chung by deed of record in Instrument Number 200202130041108, and that 4.50 acre tract conveyed to Samuel S. Chang and Jung Sil Chang by deed of record in Instrument Number 200402250039781, a distance of 800.68 feet to the northeasterly corner of said 4.50 acre tract;

Thence North 86° 33' 03" West, with the northerly line of said 4.50 acre tract, a distance of 263.09 feet to the southeasterly corner of that 2.0 acre tract conveyed to Donald Eugene Smith by deed of record in Instrument Number 201104210052461;

Thence North 04° 06' 06" East, with the easterly lines of said 2.0 acre tract and that 0.548 acre tract conveyed to David Spencer and Margret J. Spencer by deed of record in Instrument Number 199902010025609, a distance of 431.43 feet to the northeasterly corner of said 0.548 acre tract;

Thence North 85° 57' 29" West, with the northerly line of said 0.548 acre tract, a distance of 204.97 feet to a point in the easterly right of way line of Babbitt Road;

RECEIVED

AUG 03 2018

Franklin County Planning Department
Franklin County, OH

ANX- EXP1-19-18

PROPOSED ANNEXATION
374.2± ACRES

-2-

Thence North 04° 02' 31" East, with said easterly right of way line, a distance of 60.00 feet to a southwesterly corner of that 0.550 acre tract conveyed to Monica Beltran by deed of record in Instrument Number 201609290132455;

Thence South 85° 57' 29" East, with the southerly line of said 0.550 acre tract, a distance of 197.78 feet to the southeasterly corner of said 0.550 acre tract;

Thence North 04° 02' 31" East, with the easterly lines of said 0.550 acre tract and that 0.549 acre tract conveyed to Jordan M. King by deed of record in Instrument Number 200710220183530, a distance of 212.32 feet to the northeasterly corner of said 0.549 acre tract;

Thence North 86° 34' 40" West, with the northerly line of said 0.549 acre tract, a distance of 257.79 feet to a point in the centerline of Babbitt Road;

Thence North 04° 02' 31" East, with said centerline, a distance of 986.70 feet to a point;

Thence North 03° 47' 20" East, continuing with said centerline, a distance of 854.13 feet to the southwesterly corner of that 34.262 acre tract conveyed to James L. Doran, II and Michele Gutridge Doran by deed of record in Official Record 31033F14;

Thence South 86° 07' 46" East, with the southerly line of said 34.262 acre tract, a distance of 2048.59 feet to the southeasterly corner of the remainder said 34.262 acre tract;

Thence North 02° 10' 25" East, with the easterly lines of said 34.262 acre tract, that 11.959 acre tract conveyed to Perry W. Doran and Kim M. Colbert by deed of record in Instrument Number 201004010039375, and that 29.898 acre tract conveyed to Grace W. Doran by deeds of record in Instrument Numbers 200104180081300 and 199912010296460, a distance of 857.17 feet to the southwesterly corner of that 177.497 acre tract conveyed to WH Holdings, LLC by deed of record in Instrument Number 200706010095487, in the City of New Albany corporation line, established by Ordinance Number O-27-2015, of record in Instrument Number 201510300154555;

Thence South 85° 01' 43" East, with the southerly line of said 177.497 acre tract and said City of New Albany corporation line, a distance of 673.06 feet to the southeasterly corner of said 177.497 acre tract, the southeasterly corner of said corporation line, in the westerly line of said 99.571 acre tract (Licking County), in the common county line of Franklin and Licking Counties;

Thence North 03° 44' 01" East, with said common county line, said corporation line, and the easterly line of said 177.497 acre tract, with the westerly line of said 99.571 acre tract, with the westerly line of said 50.663 acre tract, a distance of 1484.89 feet to a southwesterly corner of that 57.212 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200505200015068, a southwesterly corner of the City of New Albany corporation line, established by Ordinance Number O-30-2002, of record in Instrument Number 200210280040677;

Thence South 86° 27' 58" East, with a southerly line of said 57.212 acre tract and corporation line, a distance of 1653.65 feet to a corner thereof;

Thence South 03° 17' 57" West, with said corporation line, the City of New Albany corporation line, established by Ordinance Number O-15-2015, of record Instrument Number 201506090011435, the City of New Albany corporation line, established by Ordinance Number O-27-2016, of record in Instrument Number 201612050026926, the westerly line of said 57.212 acre tract, the westerly line of that 9.378 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201509140019689, a westerly line of that 7.284 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201407280014231, and the westerly line of that 7.266 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201407310014405, a distance of 1328.36 feet to the northwesterly corner of that 13.973 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200201170002294;

Thence South 03° 39' 34" West, with said City of New Albany corporation line (Instrument Number 201506090011435), with the westerly line of said 13.973 acre tract, the westerly line of that 14.000 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201301240002113, the westerly line of that 40.024 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201009130017863, and the westerly line of that 30.204 acre tract conveyed

PROPOSED ANNEXATION

374.2± ACRES

-3-

to MBJ Holdings, LLC by deed of record in Instrument Number 200201170002294, a distance of 2619.35 feet to the northeasterly corner of that 98.756 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200107200026097, the northwesterly corner of that 90.389 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200002020003279;

Thence North 86° 05' 37" West, with said City of New Albany corporation line (Instrument Number 201506090011435), and the northerly line of said 98.756 acre tract, a distance of 1663.89 feet to a northwesterly corner of said corporation line, in said common county line, the easterly line of said 109.456 acre tract;

Thence South 03° 28' 23" West, with the westerly line of said 98.756 acre tract, with said County line, and with said corporation line, a distance of 2616.99 feet to the POINT OF BEGINNING, containing approximately 374.2 acres of land, more or less.

This description is for annexation purposes only and is not for transfer.



JMM: jps
374_2 ac 20170652-VS-EXHB-ANX-04

EVANS, MECHWART, HAMBLETON & TILTON, INC.

J.M.M. 6-2-2018

Joshua M. Meyer
Professional Surveyor No. 8485

Date

Exhibit B

EXHIBIT B - O-21-2018

PROPOSED ANNEXATION OF 374.2± ACRES

224.0± AC. TO THE CITY OF NEW ALBANY FROM PLAIN TOWNSHIP

LOTS 1, 2 AND 3, QUARTER TOWNSHIP 4, TOWNSHIP 2, RANGE 16

UNITED STATES MILITARY LANDS

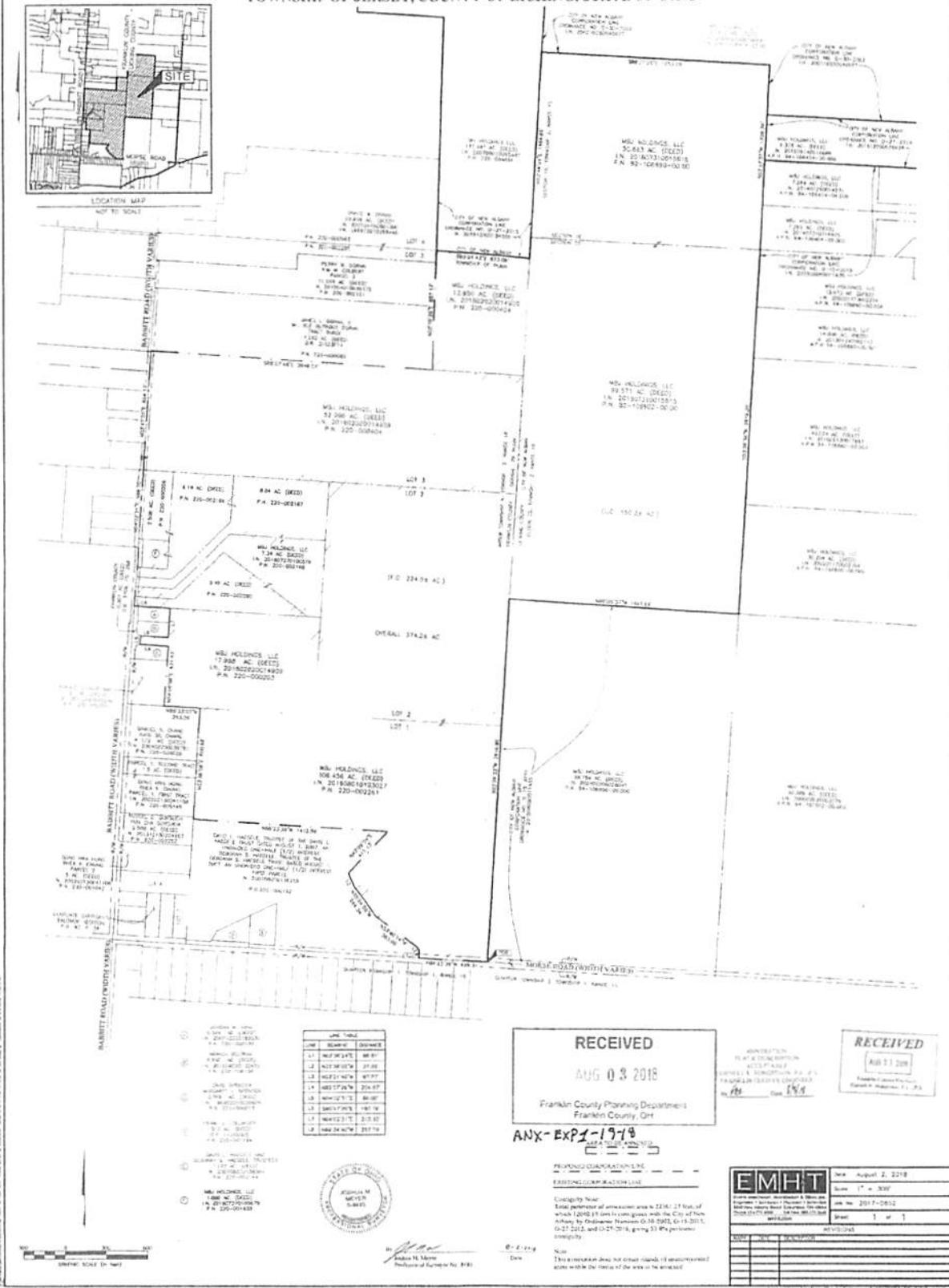
TOWNSHIP OF PLAIN, COUNTY OF FRANKLIN, STATE OF OHIO

150.2± AC. TO THE CITY OF NEW ALBANY FROM JERSEY TOWNSHIP

SECTIONS 16 & 25, TOWNSHIP 2, RANGE 15

UNITED STATES MILITARY LANDS

TOWNSHIP OF JERSEY, COUNTY OF LICKING, STATE OF OHIO





Prepared: 09/07/2018
Introduced: 10/23/2018
Revised:
Adopted: 11/06/2018
Effective: 12/07/2018

ORDINANCE O-22-2018

AN ORDINANCE TO DECLARE THE IMPROVEMENT TO CERTAIN PARCELS OF REAL PROPERTY TO BE A PUBLIC PURPOSE, EXEMPT 100% OF THAT IMPROVEMENT FROM REAL PROPERTY TAXATION, REQUIRE THE OWNERS OF THOSE PARCELS TO MAKE SERVICE PAYMENTS IN LIEU OF TAXES, PROVIDE FOR THE DISTRIBUTION OF THE APPLICABLE PORTION OF THOSE SERVICE PAYMENTS TO THE LICKING HEIGHTS LOCAL SCHOOL DISTRICT AND THE CAREER AND TECHNOLOGY EDUCATION CENTERS OF LICKING COUNTY, THE NEW ALBANY PLAIN LOCAL SCHOOL DISTRICT AND THE EASTLAND-FAIRFIELD CAREER & TECHNICAL SCHOOLS OF FRANKLIN COUNTY, ESTABLISH A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND FOR THE DEPOSIT OF THE REMAINDER OF THOSE SERVICE PAYMENTS, SPECIFY THE PUBLIC INFRASTRUCTURE IMPROVEMENTS THAT DIRECTLY BENEFIT THOSE PARCELS, AND APPROVE AND AUTHORIZE THE EXECUTION OF ONE OR MORE TAX INCREMENT FINANCING AGREEMENTS

WHEREAS, Sections 5709.40, 5709.42 and 5709.43 of the Ohio Revised Code (collectively, the "TIF Statutes") authorize this Council to declare the improvement to certain parcels of real property located within the City of New Albany, Ohio (the "City") to be a public purpose and exempt from taxation, require the owner of those parcels to make service payments in lieu of taxes, provide for the distribution of the applicable portion of those service payments to the Licking Heights Local School District, the Career and Technology Education Centers of Licking County, the New Albany Plain Local School District and the Eastland-Fairfield Career & Technical School (each, a "School District"), establish a municipal public improvement tax increment equivalent fund for the deposit of the remainder of those service payments and specify public infrastructure improvements made, to be made or in the process of being made that directly benefit, or that once made will directly benefit, those parcels; and

WHEREAS, the parcels of real property identified and depicted in Exhibit A attached hereto (each, as now or hereafter configured on the tax list and duplicate of real and public utility property, a "Parcel", and collectively, the "Parcels") are located in the City, and this Council has determined to declare the Improvement (as defined in Section 1 of this Ordinance) to each Parcel to be a public purpose; and

WHEREAS, this Council has determined that it is necessary and appropriate and in the best interest of the City to exempt from taxation one hundred percent (100%) of the Improvement to each Parcel as permitted and provided in Section 5709.40(B) of the Ohio Revised Code for thirty (30) years and to simultaneously direct and require the current and future owner of each Parcel (each such owner individually, an "Owner," and collectively, the "Owners") to make annual Service Payments (as defined in Section 2 of this Ordinance); and

WHEREAS, the City has determined that a portion of the Service Payments shall be paid directly to each School District in an amount equal to the real property taxes that the School District would have received if the Improvement to the Parcels had not been exempted from taxation pursuant to this Ordinance; and

WHEREAS, pursuant to Section 5709.43(A) of the Ohio Revised Code, this Council has determined to establish a municipal public improvement tax increment equivalent fund in which there shall be deposited the remaining Service Payments distributed to the City; and

WHEREAS, this Council has determined to designate the public infrastructure improvements described in Exhibit B attached hereto (the "*Public Infrastructure Improvements*") as public infrastructure improvements made, to be made or in the process of being made that directly benefit, or that once made will directly benefit, the Parcels; and

WHEREAS, this Council has determined to provide for the execution and delivery of one or more Tax Increment Financing Agreements (each, a "*TIF Agreement*"), which will more fully provide for the collection of Service Payments; and

WHEREAS, notice of this proposed Ordinance has been delivered to the Board of Education of the Licking Heights Local School District and the Board of Education of the New Albany Plain Local School District in accordance with, and within the time periods prescribed by, Sections 5709.40 and 5709.83 of the Ohio Revised Code and in furtherance of the commitment made by the City in the Compensation Agreement entered into between the Board of Education of the Licking Heights Local School District, the Board of Education of the New Albany Plain Local School District, and the City; and

WHEREAS, notice of this proposed Ordinance has been delivered to the Board of Education of Career and Technology Education Centers of Licking County (C-TEC) and the Board of Education of Eastland-Fairfield Career & Technical Schools in accordance with, and within the time periods prescribed by, Section 5709.83 of the Ohio Revised Code;

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

Section 1. Authorization of Tax Exemption. Pursuant to and in accordance with the provisions of Section 5709.40(B) of the Ohio Revised Code, one hundred percent (100%) of the increase in assessed value of each Parcel that is used or to be used for non-residential purposes and that would first appear on the tax list and duplicate of real and public utility property after the effective date of this Ordinance (which increase in assessed value is hereinafter referred to as the "*Improvement*", as further defined in Section 5709.40(A) of the Ohio Revised Code) is hereby declared to be a public purpose and shall be exempt from taxation for a period commencing with the first tax year that begins after the effective date of this Ordinance and in which an Improvement attributable to a new structure on that Parcel first appears on the tax list and duplicate of real and public utility property for that Parcel and ending on the earlier of (a) thirty (30) years after such commencement or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Statutes. The real property tax exemption granted pursuant to this Section and the payment obligation established pursuant to Section 2 are subject and subordinate to any real property tax exemption granted pursuant to Sections 3735.65 to 3735.70 or Sections 5709.61 to 5709.69 of the Ohio Revised Code.

Section 2. Service Payments and Property Tax Rollback Payments. Pursuant to Section 5709.42 of the Ohio Revised Code, this Council hereby directs and requires the Owner of each Parcel to make annual service payments in lieu of taxes with respect to the Improvement allocable thereto to the Treasurer of Licking County, Ohio and to the Treasurer of Franklin County, Ohio (the "County Treasurer") on or before the final dates for payment of real property taxes. The service payment in lieu of taxes for each Parcel, including any penalties and interest at the then current rate established under Sections 323.121(B)(1) and 5703.47 of the Ohio Revised Code, as the same may be amended or supplemented from time to time, or any other applicable provisions of the Ohio Revised Code (collectively, the "Service Payments"), shall be charged to each Parcel and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvement to that Parcel if it were not exempt from taxation pursuant to Section 1 of this Ordinance, all in accordance with Section 5709.42 of the Ohio Revised Code. The Service Payments, and any other payments with respect to the Improvement that are received by the County Treasurer in connection with the reduction required by Sections 319.302, 321.24, 323.152 and 323.156 of the Ohio Revised Code, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time, or any other applicable provisions of the Ohio Revised Code (collectively, the "Property Tax Rollback Payments"), shall be allocated and distributed in accordance with Section 4 of this Ordinance.

Section 3. Tax Increment Equivalent Fund. This Council hereby establishes, pursuant to and in accordance with the provisions of Section 5709.43 of the Ohio Revised Code, the Oak Grove II Public Tax Increment Equivalent Fund (the "Fund"). The Fund shall be maintained in the custody of the City and shall receive all distributions to be made to the City pursuant to Section 4 of this Ordinance. Those Service Payments and Property Tax Rollback Payments received by the City with respect to the Improvement to each Parcel and so deposited pursuant to Section 5709.42 of the Ohio Revised Code shall be used solely for the purposes authorized in the TIF Statutes and this Ordinance, as the same may be amended from time to time. The Fund shall remain in existence so long as such Service Payments and Property Tax Rollback Payments are collected and used for the aforesaid purposes, after which time the Fund shall be dissolved and any incidental surplus funds remaining therein transferred to the City's General Fund, all in accordance with Section 5709.43 of the Ohio Revised Code.

Section 4. Distribution of Funds. Pursuant to the TIF Statutes, the County Treasurer is hereby requested and directed to distribute the Service Payments and Property Tax Rollback Payments as follows:

(i) to each School District, an amount equal to the amount the School District would otherwise have received as real property tax payments (including the applicable portion of any Property Tax Rollback Payments) derived from the Improvement to each Parcel if the Improvement had not been exempt from taxation pursuant to this Ordinance; and

(ii) to the City, all remaining amounts for further deposit into the Fund for payment of costs of the Public Infrastructure Improvements upon appropriation for that purpose by this Council. If so appropriated, such costs may but shall not be required to include, without limitation, all debt service payable on debt issued by the City or the New Albany Community Authority (the "Authority") to pay for Public Infrastructure Improvements, all amounts owed to any fund of the City or Authority to reimburse that fund for the costs of any Public Infrastructure Improvements previously paid from that fund, including interest payable on those amounts, and all amounts owed by the City or Authority to any third party for the construction of Public Infrastructure Improvements, including interest payable on those amounts.

Section 5. Public Infrastructure Improvements. This Council hereby designates the Public Infrastructure Improvements described in Exhibit B attached hereto, and any other public infrastructure improvements hereafter designated by ordinance, as public infrastructure improvements made, to be made or in the process of being made by the City that directly benefit, or that once made will directly benefit, the Parcels.

Section 6. Tax Increment Financing Agreement. The form of TIF Agreement presently on file with the Fiscal Officer is hereby approved and authorized with changes therein and amendments thereto not inconsistent with this Ordinance and not substantially adverse to the City and which shall be approved by the City Manager. The City Manager, for and in the name of the City, is hereby authorized to execute and deliver one or more TIF Agreements with one or more owners of a Parcel or Parcels in substantially that form along with any changes therein and amendments thereto, provided that the approval of such changes and amendments by the City Manager, and the character of those changes and amendments as not being substantially adverse to the City or inconsistent with this Ordinance, shall be evidenced conclusively by the City Manager's execution thereof.

Section 7. Further Authorizations. This Council hereby authorizes and directs the City Manager, the City Solicitor, the Fiscal Officer or other appropriate officers of the City to make such arrangements as are necessary and proper for collection of the Service Payments from the Owners, including the preparation and filing of any necessary exemption applications. This Council further hereby authorizes and directs the City Manager, the City Solicitor, the Fiscal Officer or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Ordinance.

Section 8. Filings with Ohio Department of Development. Pursuant to Section 5709.40(I) of the Ohio Revised Code, the City Manager or other appropriate officer of the City is hereby directed to deliver a copy of this Ordinance to the Director of Development of the State of Ohio within fifteen (15) days after its adoption. Further, on or before March 31 of each year that the exemption set forth in Section 1 of this Ordinance remains in effect, the City Manager or other appropriate officer of the City shall prepare and submit to the Director of Development of the State of Ohio the status report required under Section 5709.40(I) of the Ohio Revised Code.

Section 9. Tax Incentive Review Council. This council hereby designates the Tax Incentive Review Council created pursuant to Resolution R-46-2009 as the tax incentive review council responsible for reviewing annually all exemptions from taxation resulting from the declarations set forth in this Ordinance and any other such matters as may properly come before that council, all in accordance with Section 5709.85 of the Ohio Revised Code.

Section 10. Open Meetings. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law, including Section 121.22 of the Ohio Revised Code.

Section 11. Effective Date. Pursuant to Article 6.07(b) of the New Albany Charter, this Ordinance shall become effective thirty (30) days after adoption.

CERTIFIED AS ADOPTED this 6th day of November, 2018.

Attest:



Sloan T. Spalding
Mayor



Jennifer H. Mason
Clerk of Council

Approved as to form:



Mitchell H. Banchefsky
Law Director

EXHIBIT A – O-22-2018

PARCELS (MAP)

The hatched areas on the attached map specifically identify and depict the Parcels and constitutes part of this Exhibit A. The Parcels include, without limitation, the tax parcels set forth on Exhibit A.

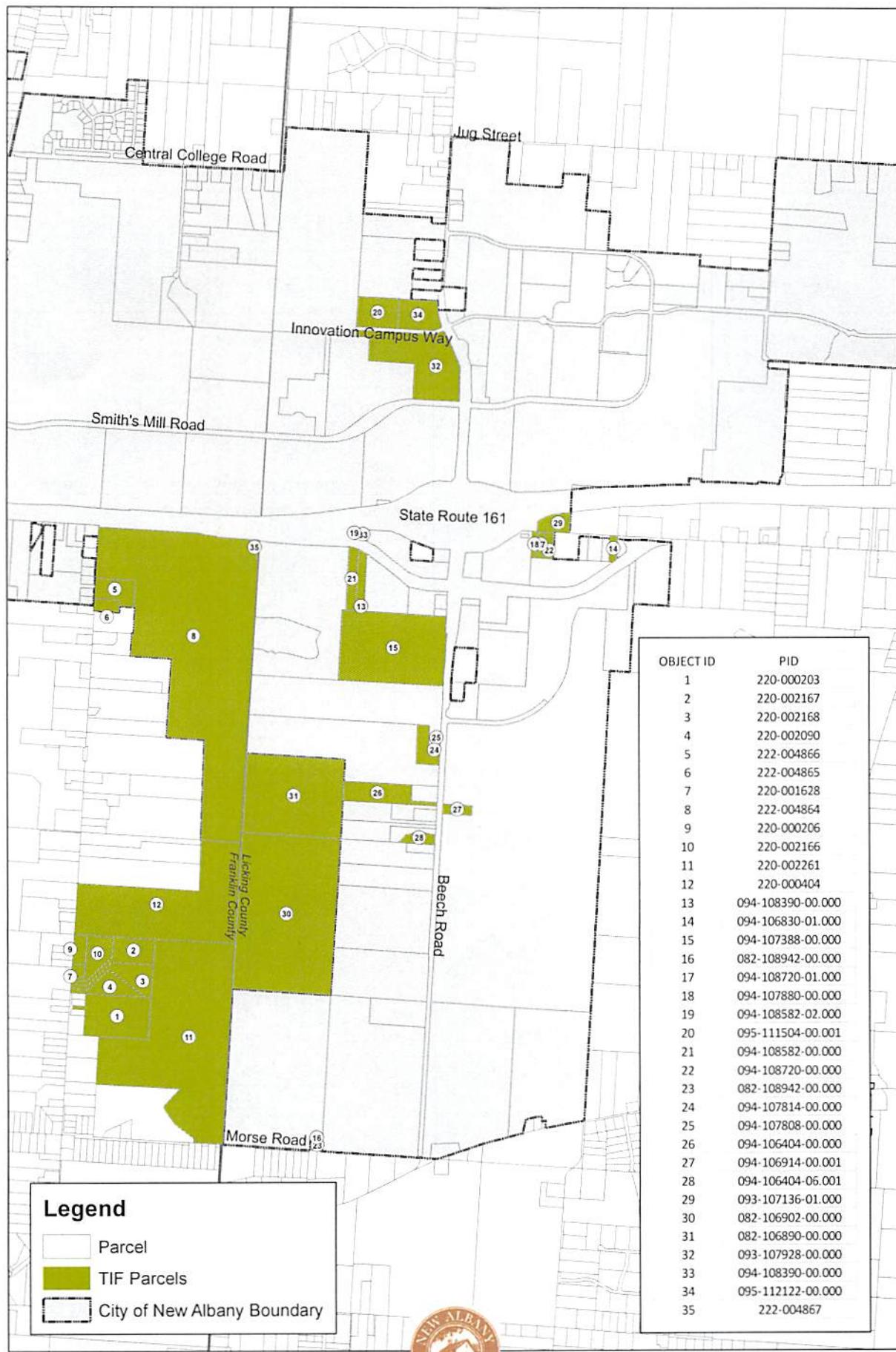


EXHIBIT A - O-22-2018



September 7, 2018

New Albany TIF Parcels - Business Park South Amendment
City of New Albany, Ohio

EXHIBIT B – O-22-2018

PUBLIC INFRASTRUCTURE IMPROVEMENTS

The Public Infrastructure Improvements include the construction of the following improvements that will directly benefit the Parcels and all related costs of permanent improvements (including, but not limited to, those costs listed in Section 133.15(B) of the Ohio Revised Code), along with any other improvements subsequently designated by City Council:

- public roads and highways (including street realignments);
- water and sewer lines;
- leisure trails and connections;
- parks and public facilities;
- environmental remediation projects;
- stormwater and flood remediation projects, including such projects on private property when determined to be necessary for public health, safety and welfare;
- gas, electric and communications services facilities, including fiber optics;
- land acquisition, including acquisition in aid of industry, commerce, distribution, or research;
- demolition, including demolition on private property when determined to be necessary for economic development purposes;
- landscaping and signage, including brick retaining walls at roadway intersections; including in each case, design and other related costs (including traffic studies); any rights-of-way or real estate acquisition; curbs and gutters, medians, sidewalks, bikeways, and landscaping (including scenic fencing and irrigation); traffic signs and signalization (including overhead street signage); street lighting and signs; burial of utility lines (including fiber optics); erosion and sediment control measures; grading, drainage and other related work; survey work, soil engineering, inspection fees and construction staking; and all other costs and improvements necessary and appurtenant thereto.



Prepared: 10/17/2018
Introduced: 11/06/2018
Revised:
Adopted: 11/06/2018
Effective: 11/06/2018

RESOLUTION R-40-2018

A RESOLUTION TO APPROVE THE FINAL PLAT FOR 68 AGE RESTRICTED SINGLE FAMILY LOTS ON 24.656 +/- ACRES AND ACCEPT RESERVES "A," "D," "E," "F," "G," and "H" FOR PHASE 1 OF THE "COURTYARDS AT NEW ALBANY" SUBDIVISION LOCATED EAST OF STATE ROUTE 605, WEST OF THE WENTWORTH CROSSING SUBDIVISION, AND GENERALLY SOUTH OF NEW ALBANY ROAD EAST, AS REQUESTED BY EPCON COMMUNITIES

WHEREAS, an application to approve the Final Plat for phase 1 of the Courtyards at New Albany subdivision has been submitted; and

WHEREAS, Codified Ordinance Chapter 1187 requires approval of the final plat by Council; and

WHEREAS, the New Albany Planning Commission, after review during a public meeting on June 18, 2018, recommended approval of this Final Plat (FP-38-2018); and

WHEREAS, the phase 1 Final Plat for The Courtyards at New Albany includes approximately 24.656 +/- acres of land to be subdivided into 68 residential lots in addition to the public streets; and

WHEREAS, the 24.656 acre phase 1 Final Plat for The Courtyards at New Albany final plat includes approximately 8.049 +/- acres of parkland; and open space;

WHEREAS, the final plat for The Courtyards at New Albany includes the commitment to dedicate reserves A, D, E, F, G, and H to the City for public parkland and open space; and

WHEREAS, New Albany City Council has agreed to the terms and conditions by which this parkland will be donated; and

WHEREAS, the city engineer certifies the phase 1 Final Plat for The Courtyards at New Albany meets all the requirements of Chapter 1187 of the Codified Ordinances, stormwater management, design requirements and will meet all other requirements of the City.

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 said phase 1 Final Plat for The Courtyards at New Albany is attached to this resolution as Exhibit A and made a part herein is approved.

Section 2. City Council hereby accepts the lands shown on the map attached hereto as Exhibit A, under the terms and conditions outlined and the covenants and restrictions stipulated in the deed and final plat.

Section 3. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this resolution 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 6th day of November, 2018.

Attest:



Sloan T. Spalding
Mayor



Jennifer H. Mason
Clerk of Council

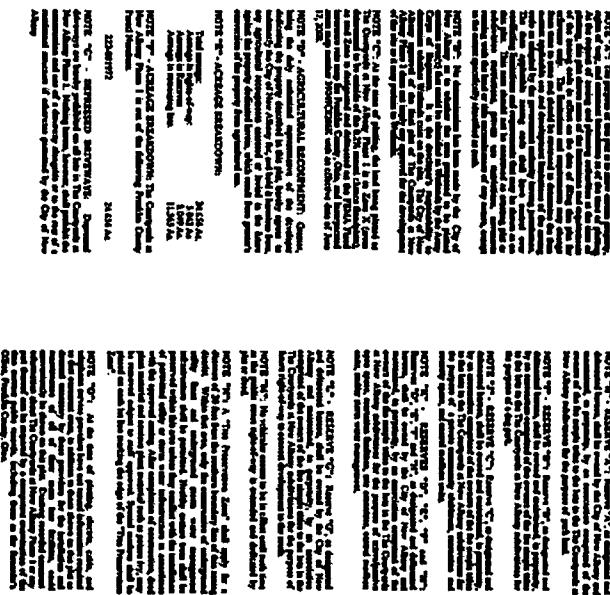
Approved as to form:



Mitchell H. Banchefsky
Law Director

THE COURTYARDS AT NEW ALBANY

PHASE 1





Prepared: 10/22/2018
Introduced: 11/06/2018
Revised:
Adopted: 11/06/2018
Effective: 11/06/2018

RESOLUTION R-41-2018

A RESOLUTION TO AMEND THE OAK GROVE II COMMUNITY REINVESTMENT AREA TO ADD APPROXIMATELY 416.615 +/- ACRES TO THAT AREA, CONFIRMING THE DESIGNATION OF A HOUSING OFFICER AND THE CREATION OF A COMMUNITY REINVESTMENT AREA HOUSING COUNCIL AND TAX INCENTIVE REVIEW COUNCILS, AND TO EXPAND THE OAK GROVE II ECONOMIC OPPORTUNITY ZONE TO ADD THAT AREA

WHEREAS, the Council of the City of New Albany, Ohio (the "City") desires to pursue all reasonable and legitimate incentive measures to assist and encourage development in specific areas of the City that have not enjoyed sufficient reinvestment in new construction; and

WHEREAS, Council, by its Resolution No. R-17-09 adopted March 3, 2009, designated the Oak Grove II Community Reinvestment Area (the "Original Oak Grove II Area"), and by each of its Resolutions No. R-41-2010 adopted July 6, 2010, R-72-2010 adopted November 16, 2010, R-53-2012 adopted October 2, 2012, R-26-2013 adopted August 6, 2013, R-72-2014 adopted September 16, 2014, R-49-2015 adopted November 17, 2015, R-45-16 adopted November 1, 2016, R-02-2017 adopted February 7, 2017, and R-07-2018 adopted July 17, 2018, expanded that Original Oak Grove II Area (as expanded to date, the "Current Oak Grove II Area"), which enabled the City to offer in that Current Oak Grove II Area real property tax exemptions on the construction of certain new structures and the remodeling of certain existing structures as described in Ohio Revised Code ("R.C.") Section 3735.67; and

WHEREAS, the City desires to promote commercial and industrial development in an additional area contiguous to the Current Oak Grove II Area, which contiguous area includes approximately 416.615+/- acres and which is depicted on Exhibit A attached hereto (the "Oak Grove II Expansion Area"); and

WHEREAS, the City believes that the redevelopment of the Oak Grove II Expansion Area would encourage economic stability, maintain real property values and generate new employment opportunities and desires to designate the Oak Grove II Expansion Area as a community reinvestment area pursuant to R.C. Sections 3735.65 to 3735.70; and

WHEREAS, as required by R.C. Section 3735.66, a survey of housing was prepared for the Oak Grove II Expansion Area (the "Survey"); and

WHEREAS, that Survey shows the facts and conditions relating to existing housing and commercial structures and undeveloped land in the Oak Grove II Expansion Area, including, among other things, evidence of deterioration and lack of new construction, or repair or rehabilitation, of structures in that Oak Grove II Expansion Area; and

WHEREAS, the construction of new commercial or industrial structures in the Oak Grove II Expansion Area will serve to encourage economic stability, maintain real property values and generate new employment opportunities; and

WHEREAS, the construction of new commercial or industrial structures in the Oak Grove II Expansion Area constitutes a public purpose for which real property tax exemptions may be granted; and

WHEREAS, the City created an economic opportunity zone (the "Oak Grove II EOZ") to encourage commercial and other business development in the City and now the City, to consistently preserve areas and zones, wishes to expand the Oak Grove II EOZ in conjunction with the expansion of the Oak Grove II CRA so that the two, when mapped, have the same area and boundaries;

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

Section 1. Conditions in the Oak Grove II Expansion Area. Based on the findings in the Survey and on this Council's own knowledge of the facts and conditions existing in the Oak Grove II Expansion Area, this Council hereby finds that the Oak Grove II Expansion Area is one in which housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged.

Section 2. Creation of Oak Grove II Expanded CRA. This Council hereby designates the Oak Grove II Expansion Area as a community reinvestment area (collectively with the Current Oak Grove II Area, the "Oak Grove II CRA") in accordance with R.C. Section 3735.66. Only new commercial and/or industrial structures consistent with the applicable zoning regulations within the Oak Grove II CRA will be eligible for the exemptions provided for in Section 3 of this Resolution, and residential remodeling or new structures, including, but not limited to, multi-family condominium or apartment structures or remodeling thereof, shall not be eligible for the exemptions granted in that Section 3.

Section 3. Tax Exemptions in the Oak Grove II CRA. Within the Oak Grove II CRA, the percentage of the tax exemption on the increase in the assessed valuation resulting from improvements to commercial and industrial real property and the term of those exemptions shall be negotiated in advance of construction occurring according to the rules outlined in R.C. Section 3735.67. The City has the authority to negotiate, approve or deny any request for such a tax exemption. The results of the negotiation as approved by this Council will be set forth in writing in a Community Reinvestment Area Agreement as provided in R.C. Section 3735.671. The maximum exemption that may be negotiated in the Oak Grove II CRA is 15 years for 100% for construction of new commercial or industrial structures. If the newly constructed structure qualifies for an exemption, during the period of the exemption the exempted percentage of the value of the structure shall not be considered to be an improvement on the land on which it is located for the purpose of real property taxation.

The Mayor, the City Manager, and the City Community Development Director, or any one of them, are hereby authorized to give any and all notices on behalf of this Council that may be required by law, including, without limitation, those notices required by R.C. Sections 3735.671, 3537.673 and 5709.83, in connection with the consideration, approval or entering into of any agreements under R.C. Section 3735.671.

Section 4. Designation of Housing Officer. To administer and implement the provisions of this Resolution, the Council hereby confirms the prior designation of the City Manager as the Housing Officer for the Oak Grove II CRA as described in R.C. Sections 3735.65 to 3735.70.

Section 5. Application Fee. All projects are required to comply with the State application fee requirements of R.C. Section 3735.672(C). The City may also require a local annual monitoring fee of one percent of the amount of taxes exempted under an agreement, provided there shall be a minimum local annual monitoring fee of \$500 and a maximum local annual monitoring fee of \$2,500.

Section 6. Housing Council and Tax Incentive Review Councils. This Council hereby confirms the prior creation of a Community Reinvestment Area Housing Council (the "Housing Council") for the Oak Grove II CRA. That Housing Council is composed of two members appointed by the Mayor, two members appointed by this Council and one member appointed by the City's Municipal Planning Commission. A majority of those five members shall appoint two additional members who shall be residents of the City. Terms of the members of the Housing Council shall be three years. An unexpired term resulting from a vacancy in the Housing Council shall be filled in the same manner as the initial appointment was made. The Housing Council shall make an annual inspection of the properties within the Oak Grove II CRA for which an exemption has been granted under R.C. Section 3735.67. The Housing Council also shall also hear appeals under R.C. Section 3735.70.

The "Franklin County Tax Incentive Review Council" and the "Licking County Tax Incentive Review Council" (each a "TIRC") were both previously created pursuant to R.C. Section 5709.85. Each TIRC reviews annually the compliance of each agreement involving the granting of exemptions for commercial or industrial real property improvements under R.C. Section 3735.671 and makes written recommendations to this Council as to continuing, modifying or terminating each agreement based upon the performance of each agreement.

Section 7. Resolution to be Forwarded and Published. The Housing Officer or the Housing Officer's designee is hereby authorized and directed to forward a copy of this Resolution to the Franklin County Auditor and the Licking County Auditor, and to cause to be published a copy of this Resolution in a newspaper of general circulation in the City once per week for two consecutive weeks following its adoption.

Section 8. Authorization to Petition the Director of Development Services. The Housing Officer or the Housing Officer's designee is hereby authorized and directed, on behalf of the City, to petition the State Director of Development Services, in accordance with R.C. Section 3735.66, for confirmation of the Oak Grove II CRA as expanded to include the Oak Grove II Expansion Area.

Section 9. Open Meeting. The Council hereby finds and determines that all formal actions relative to the passage of this Resolution were taken in an open meeting of this Council and any of its committees and that all deliberations of this Council and of its committees that resulted in formal action were taken in meetings open to the public in full compliance with the applicable legal requirements, including R.C. Section 121.22.

Section 10. Effective Date. Pursuant to Article 6.07 of the New Albany Charter, this Resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this 6th day of November, 2018.

Attest:



Sloan T. Spalding
Mayor



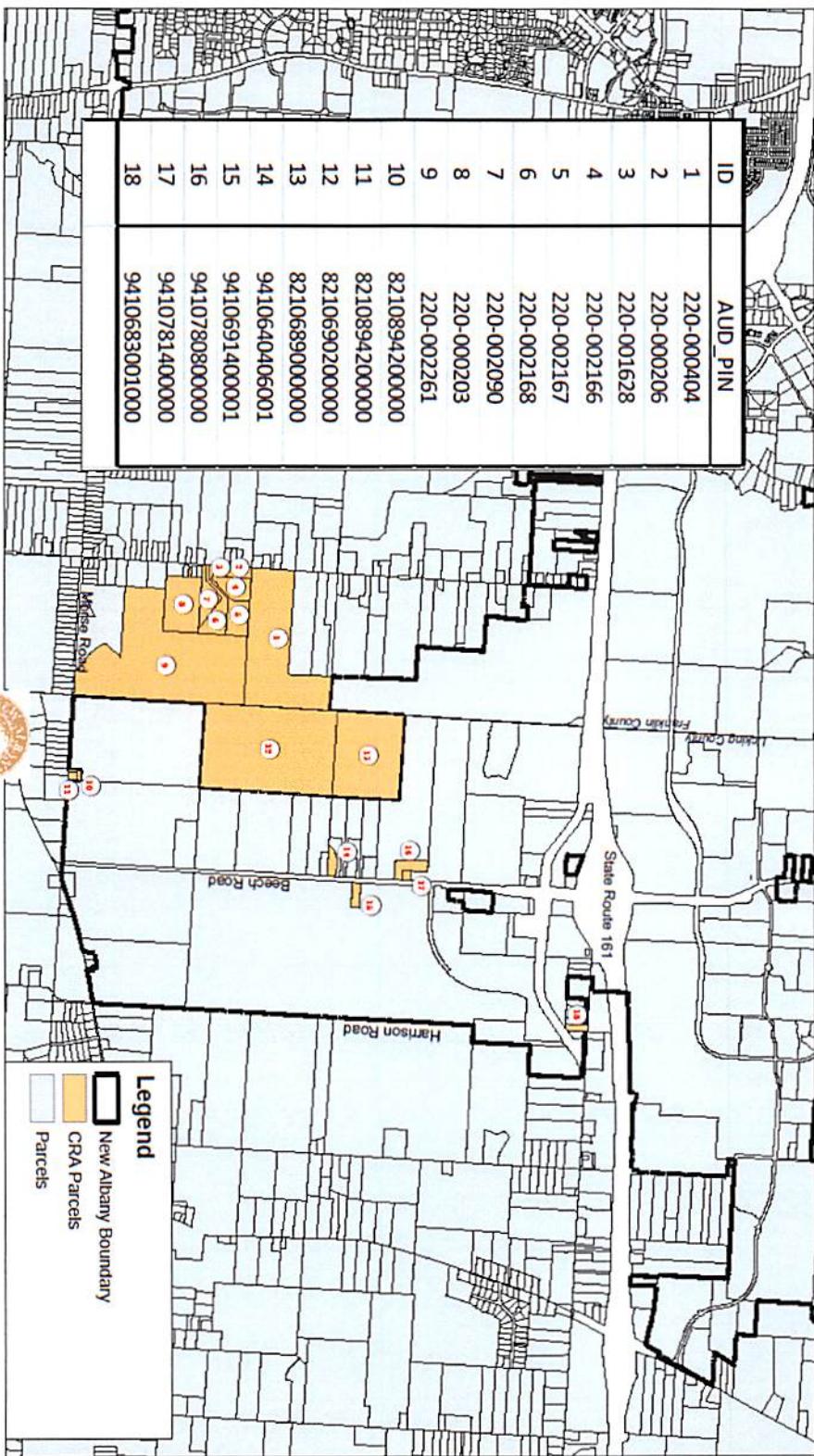
Jennifer H. Mason
Clerk of Council

Approved as to form:



Mitchell H. Banchefsky
Law Director

EXHIBIT A – R-41-2018



New Albany CRA Parcels - Oak Grove II Babbitt Road
City of New Albany, Ohio

October 16, 2018



Prepared: 10/22/2018
Introduced: 11/06/2018
Revised:
Adopted: 11/06/2018
Effective: 11/06/2018

RESOLUTION R-42-2018

A RESOLUTION TO APPROVE AND ADOPT THE HARRISON ROAD AREA PLAN ADDENDUM TO THE 2014 NEW ALBANY STRATEGIC PLAN, AS REQUESTED BY THE CITY OF NEW ALBANY

WHEREAS, Council of the City of New Albany has established a Strategic Plan to guide land use, infrastructure development and economic impact; and to provide a guideline to establish goals, objectives and strategies related to the development of the City of New Albany, and adopted it by Resolution R-11-1998 on March 3, 1998; and

WHEREAS, Council of the City of New Albany adopted an update to the Strategic Plan by Resolution R-38-2014 on May 20, 2014; and

WHEREAS, The New Albany Planning Commission approved and recommended the Harrison Road Area Plan Addendum to the 2014 Strategic Land Use and Transportation Plan at their meeting of October 15, 2018.

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

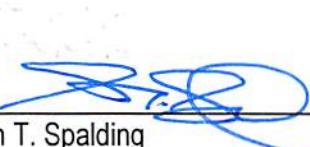
Section 1. City Council hereby adopts the Harrison Road Area Plan Addendum to the 2014 Strategic Land Use and Transportation Plan, as presented to the City Council and which shall be attached hereto as Exhibit A upon adoption.

Section 2. 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 3. Pursuant to Article 6.07(A) of the New Albany Charter, this resolution shall take effect upon adoption.

CERTIFIED AS RESOLVED this 10th day of November, 2018.

Attest:



Sloan T. Spalding
Mayor



Jennifer H. Mason
Clerk of Council

Approved as to form:



Mitchell H. Banchefsky
Law Director



CITY OF NEW ALBANY
HARRISON ROAD AREA PLAN
ADDENDUM TO THE 2014 STRATEGIC PLAN

ACKNOWLEDGEMENTS

CITY OF NEW ALBANY LEADERSHIP

Sloan Spalding, Mayor

Colleen Briscoe, President Pro Tempore

Marlene Brisk

Mike Durik

Chip Fellows

Dr. Glyde Marsh

Matt Shull

CITY OF NEW ALBANY STAFF

Joseph Stefanov, City Manager

Jennifer Chrysler, Community Development, Director

Adrienne Joly, Director of Administrative Services

Stephen Mayer, Development Services Manager

MKSK STAFF

Chris Hermann, Principal

Aron Fraizer, Associate

Sarah Lilly, Planning Intern



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INTRODUCTION

In 2014, the City of New Albany completed the most recent update of its Strategic Plan. The Strategic Plan identifies the desired future land use, development, and transportation recommendations for both the City and its future expansion areas. A Strategic Plan allows the City to identify how areas should be maintained, develop, and grow in a way that best serves the goals of the New Albany community.

Since the completion of the 2014 Strategic Plan, additional agreements with the City of Columbus have extended New Albany's centralized water and sanitary sewer service areas to the east. In order to responsibly plan for the future of the Harrison Road study area and its possible future incorporation into New Albany, it is

necessary to integrate it into the 2014 Strategic Plan. This Harrison Road Area Plan serves as an addendum to the Strategic Plan, applying its strategies and recommendations to the Harrison Road study area.

This document establishes land use, development, and corridor standards. The Area Plan is created prior to proposed development so that it may serve as a tool to help the City guide new development and infrastructure decisions, and ensure that the established character and high standard of design synonymous with New Albany is upheld. The Harrison Road Area Plan Addendum is the second addendum to 2014 Strategic Plan, the first was the 2015 Mink Road Area Plan Addendum.



HARRISON ROAD AREA PLAN STUDY AREA



Plan Components & Uses

The Harrison Road Area Plan serves as an addendum to the 2014 Strategic Plan. As such, the recommendations presented in this document build upon the land use, transportation, and corridor recommendations in the Strategic Plan, which should be consulted for additional details and background on these matters.

The Harrison Road Area Plan covers five topics:

- Land Use: which identifies the desired land uses for the Harrison Road study area should it be incorporated into the City.
- Thoroughfare Plan: which identifies potential road connections to appropriately support development and integrate the study area into New Albany's street network.
- Bicycle Facilities: which identifies the appropriate types of on-street and off-street bicycle, leisure trail, and sidewalk facilities within the study area. This section also identifies important regional bike connections.
- Natural Features: which speaks to New Albany's tradition of incorporating existing natural features to enhance site design, preserve character, and integrate future development.
- Corridor Strategies: which identify strategies to enhance the Harrison Road study area road corridors to fit with the character, identity, and high quality of design present in New Albany.

Together, these recommendations establish preferred future land patterns and identify appropriate roadway corridor networks that will serve as the backbone of future development in the Harrison Road study area.

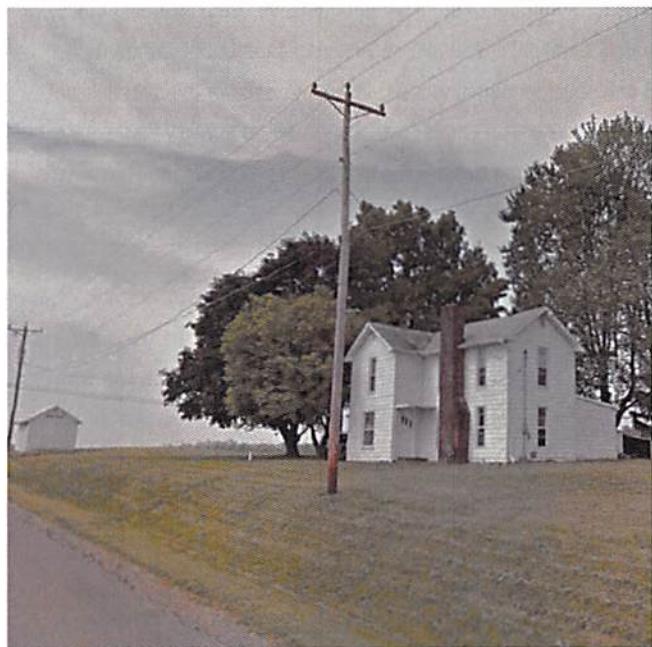
Existing Conditions

Today, the Harrison Road study area consists of mostly low-density rural residential and agricultural uses. The majority of the land is used for agricultural production, though tree stands exist along several tributaries that run through the site. Located in Jersey Township in Licking County, the roads are rural, two-lane township roads with no curbs.

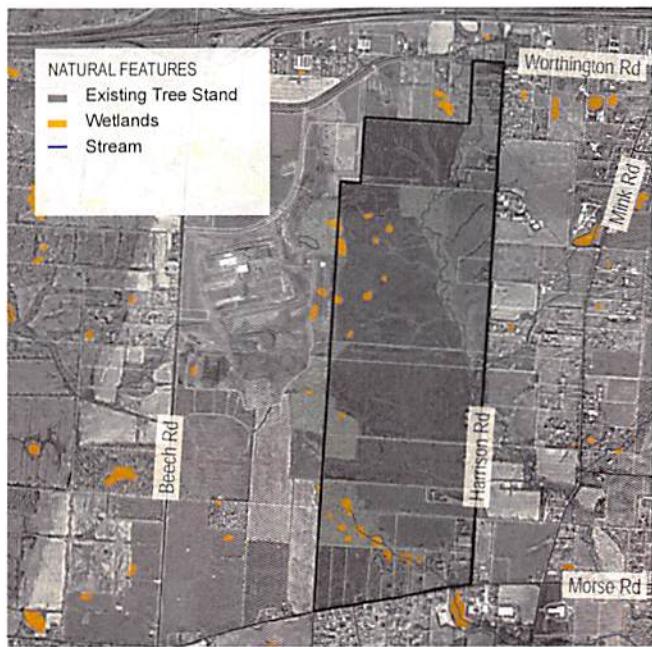
The Harrison Road area's rural character includes several natural features. Two tributary streams are located in the area, the most significant being the South Fork Licking River that primarily runs north to south on the west side of Harrison Road and a smaller unnamed stream on the southern end of the study area just north of

Morse Road. The soils in these areas contribute to existing wetlands in the study area. In addition to the tree stands, a number of the parcels in this study area are separated by trees rows.

An important component of the Harrison Road Area Plan's study area is its location proximate to Business Park South and its adjacency to the Facebook Data Center which is currently under construction on Beech Road.



EXISTING RURAL CHARACTER



THERE ARE SEVERAL IDENTIFIED WETLANDS WITHIN THE STUDY AREA

LAND USE

The Future Land Use Map (see pages 14-15) identifies desired future land use patterns for the city of New Albany and its future expansion areas, as well as development strategies for each type of land use. Because of the Harrison Road study area's location within the Beech Road South Corridor, the Office District land use is identified as the appropriate future land use for this area.

The Strategic Plan's Office District land use category is intended to provide for a number of employment-intensive uses, including office, research, and light industrial uses. Having an adequate amount of land and development in this district is important for the overall fiscal health of the city. The Office District is designed to allow for flexibility and diversification of businesses that seek to locate in the New Albany Business Park.

This area plan adheres to the planning principles of connectivity and context sensitive development already practiced throughout the community. Office and employment-related uses within the Harrison Road study area should comply with the Office Development Standards outlined in the 2014 Strategic Plan, and should promote the high standards of design established in the New Albany Business Park, which include:

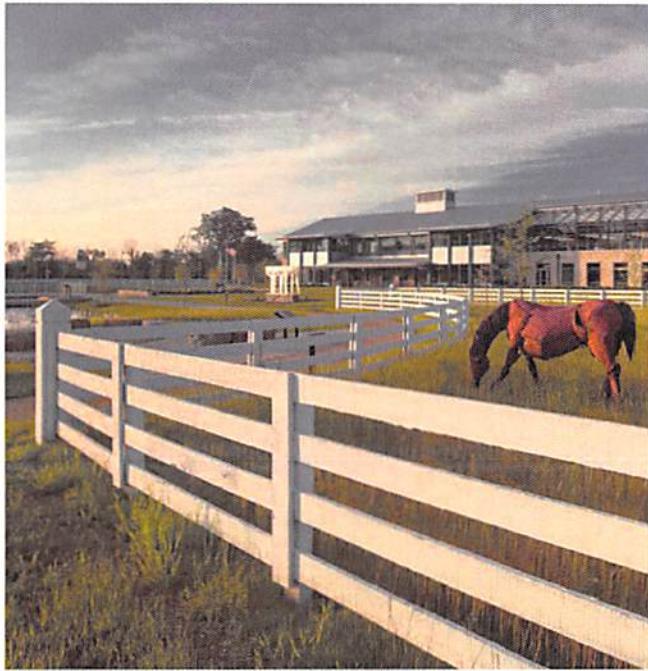
- Creating campus-style office developments that are walkable and allow for the integration of the leisure trail system;
- Strategically locating parking to create shared-parking opportunities where applicable;
- Identifying opportunities for combined stormwater services; and
- Creating centralized, common open spaces that unify office developments.

This will ensure development is consistent with existing office and business uses in the New Albany Business Park South, and uphold the high standard of office development the Park has established.

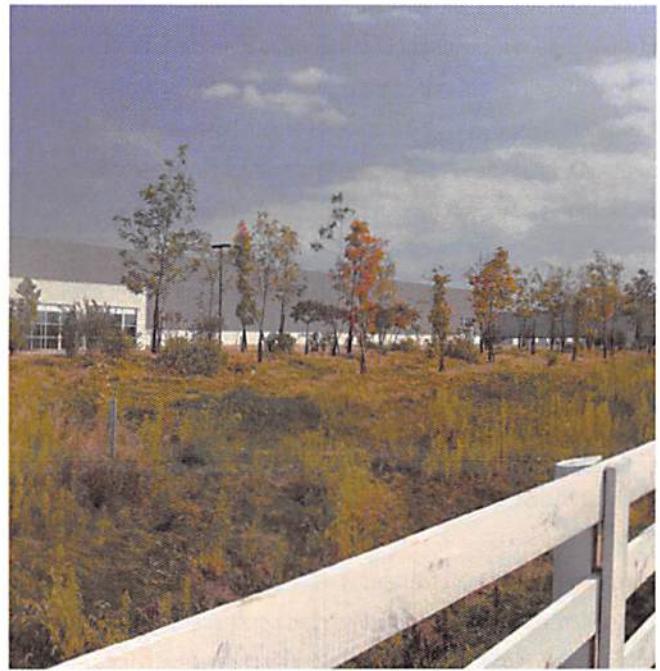
OFFICE DEVELOPMENT STANDARDS

- All development standards of the Office District shall apply.
- Common open spaces or greens are encouraged and should be framed by buildings to create a "campus like" environment.
- Appropriate screening should be installed as a buffer between the office district and adjacent residential districts as well as non-commercial uses. If mounding is necessary to achieve this screening, the "reverse slope" type with the gradual slope side toward the right-of-way is preferred.
- No freeway/pole signs are allowed.
- Heavy landscaping is necessary to buffer these uses from adjacent residential areas.
- Loading areas should be designed so they are not visible from the public right-of-way, or adjacent properties.
- A 200-foot buffer between right-of-way and buildings should be provided along S.R. 161.

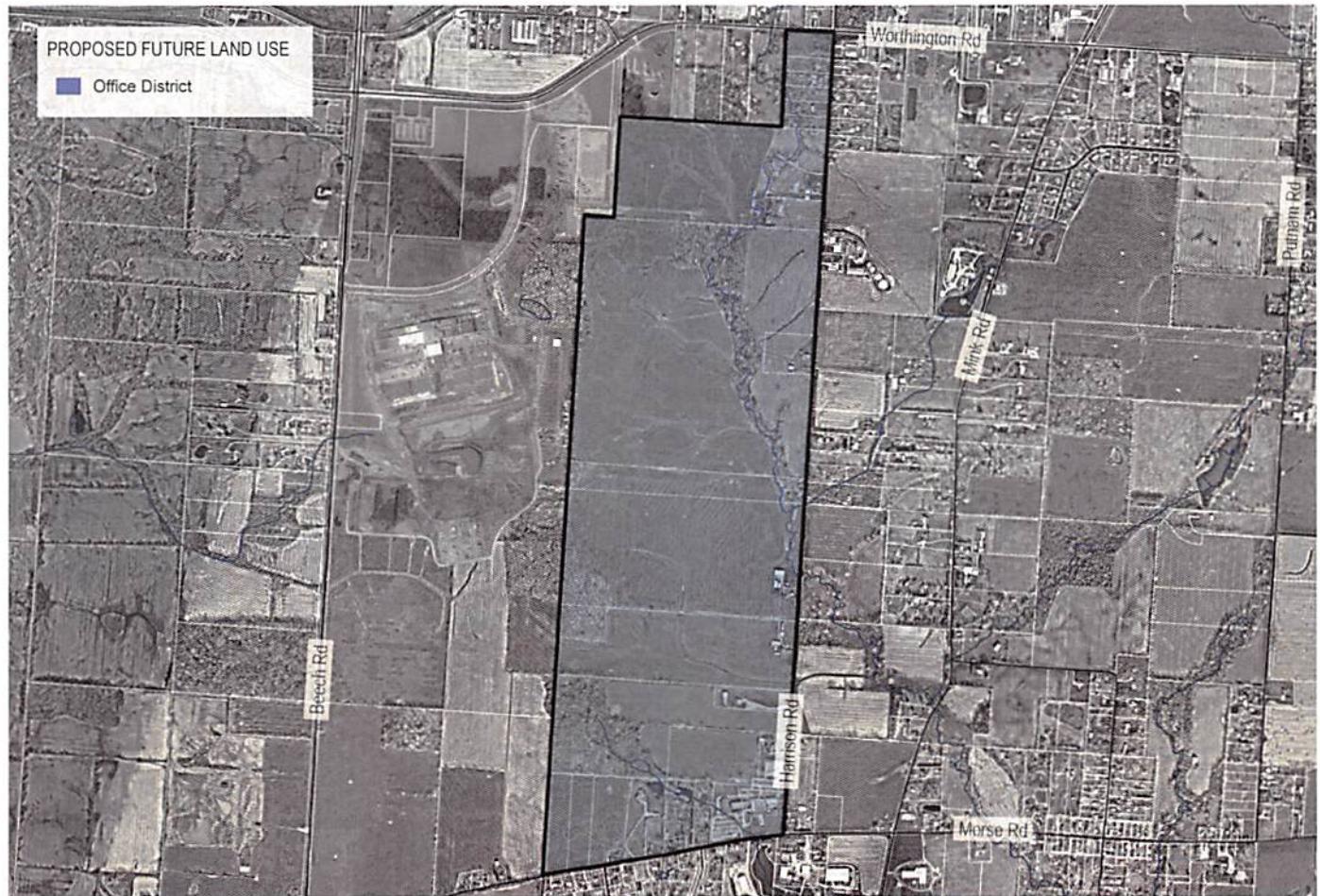
Standards related to residential and non-commercial adjacencies and site design are of particular importance to ensure compatibility between new development and the existing rural character of the Harrison Road area. This is particularly important along the Harrison Road and Morse Road corridors, where existing residential uses are located. Appropriate landscaping, buffering, and setbacks should be applied between office/industrial and residential uses located along these corridors in order to preserve the quality of life for residents living there.



EXISTING DEVELOPMENT ELSEWHERE IN EW ALBANY'S OFFICE DISTRICT



EXISTING DEVELOPMENT ELSEWHERE IN NEW ALBANY'S OFFICE DISTRICT



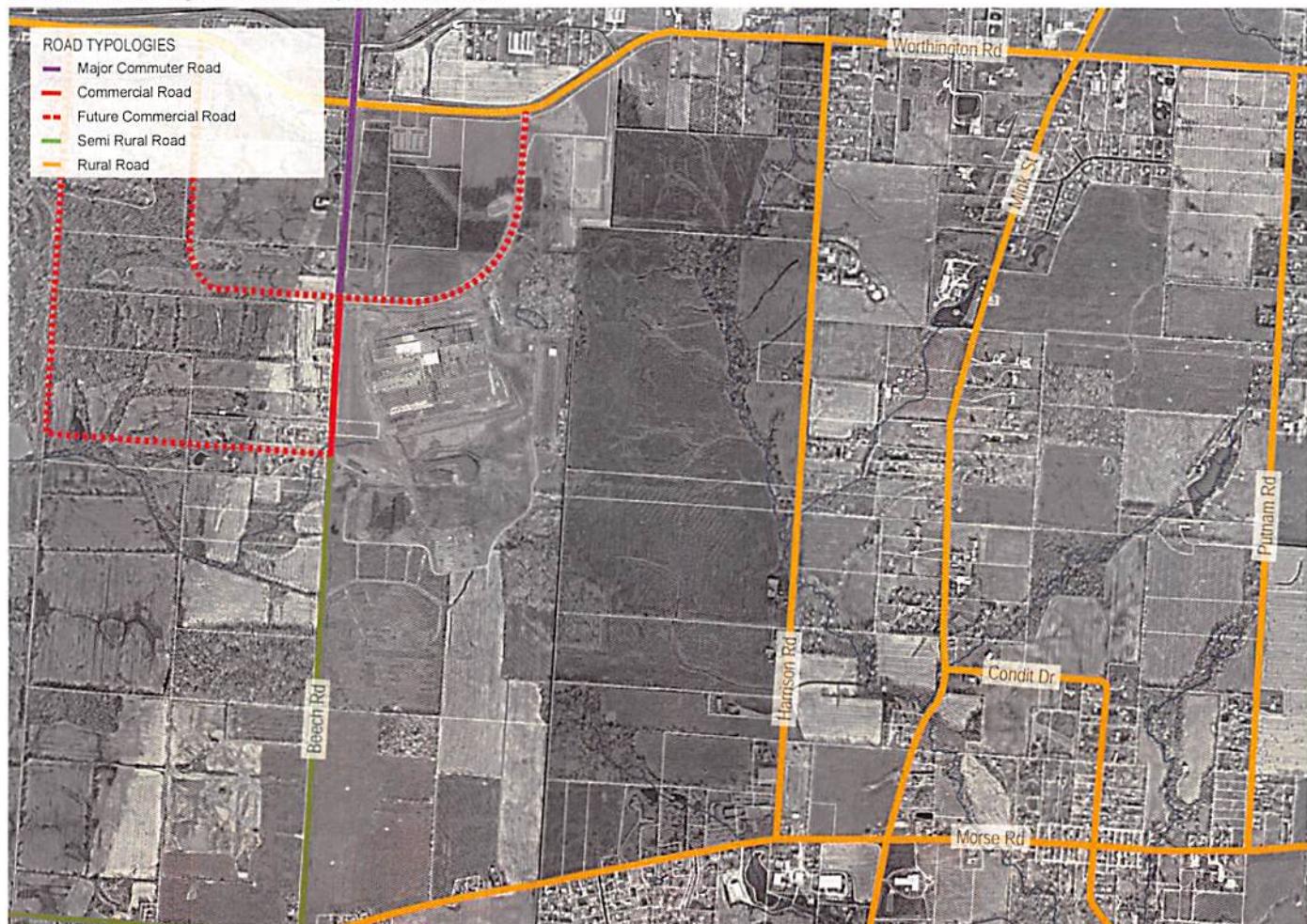
FUTURE LAND USE MAP FOR HARRISON ROAD STUDY AREA

THOROUGHFARE PLAN UPDATE

In addition to identifying the desired future land use for the Harrison Road study area, it is important to plan for a road network that will support development in this area. The existing and proposed road corridors must handle the increased amount of traffic that will be created by future development, while preserving the pastoral character that is synonymous with New Albany's road corridors.

Because there are plans to update the entire Strategic Plan for New Albany in 2019, a more in-depth and holistic examination of the city's street network and connectivity needs will be undertaken at that time. In the event that this area develops prior to completion of an updated Thoroughfare Plan, the street typologies included in this section should be followed.

The Thoroughfare Plan map excerpt below from the existing Strategic Plan identifies needed future road connections as well as classifies the existing roads and their planned character.



EXCERPT FROM THOROUGHFARE PLAN

Street Typologies

The typologies assigned to each road corridor within the Harrison Road study area are based upon the Strategic Plan's Thoroughfare Plan - Street Typologies Map. This guides the design and character of any future corridors so that they complement the existing New Albany street network and character.

All three roadways within the study area — Worthington, Harrison, and Morse — are rural roads and should follow the Rural Roadway Typology as this area develops. The ultimate build-out of this area may necessitate additional road connections to handle and distribute future traffic generated by the employment centers. Any future street connections or enhancements should follow the defined commercial roadway typologies.

More detailed information on each of these road typologies can be found on pages 9 and 10 of this report.

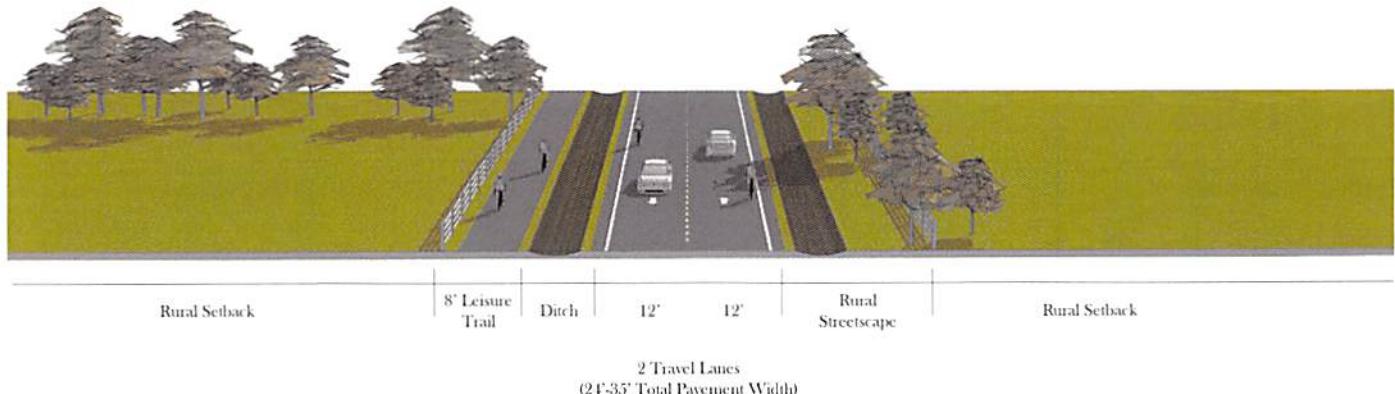


Rural Roadway

One of the aesthetic objectives of New Albany is the preservation of the rural corridor character in and around the city. Defining characteristics of rural road corridors include a narrow road width, two-lanes, the use of planted swales (drainage ditches) rather than curbs, and naturally placed (irregularly-spaced) trees. Together with New Albany's signature white horse fence, leisure trails, and scenic setbacks, this creates a rural corridor character. On-street bicycle

facilities should be limited to shared road conditions in order to preserve the narrow nature of the corridors.

Rural Roadway

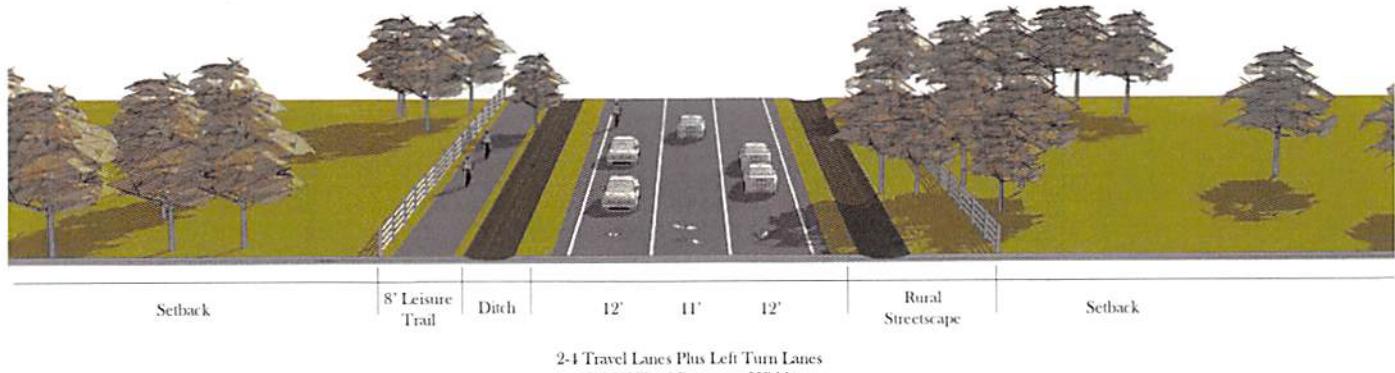


Semi-Rural Roadway

Semi-rural road corridors provide a transition from the developed areas of New Albany into the more rural areas. These corridors are also important because they help preserve the rural character of the area, while also accommodating increased traffic volumes. Semi-rural road corridors have two (or four) travel lanes with a center turn lane as needed. The presence of swales and natural tree clustering within the streetscape creates a more rural aesthetic. Leisure trails should be included along these corridors and on-street bicycle

facilities or shared road conditions may be appropriate, depending on traffic volumes. In this area south of SR 161, the southern two-thirds of Beech Road and Morse Road west of Beech are classified as semi-rural corridors. This will provide a transition from the more developed areas off SR 161 into the more rural areas south of Morse Road. If the character of the corridor changes over time, the City should consider a median for aesthetic and access management purposes.

Semi Rural Roadway

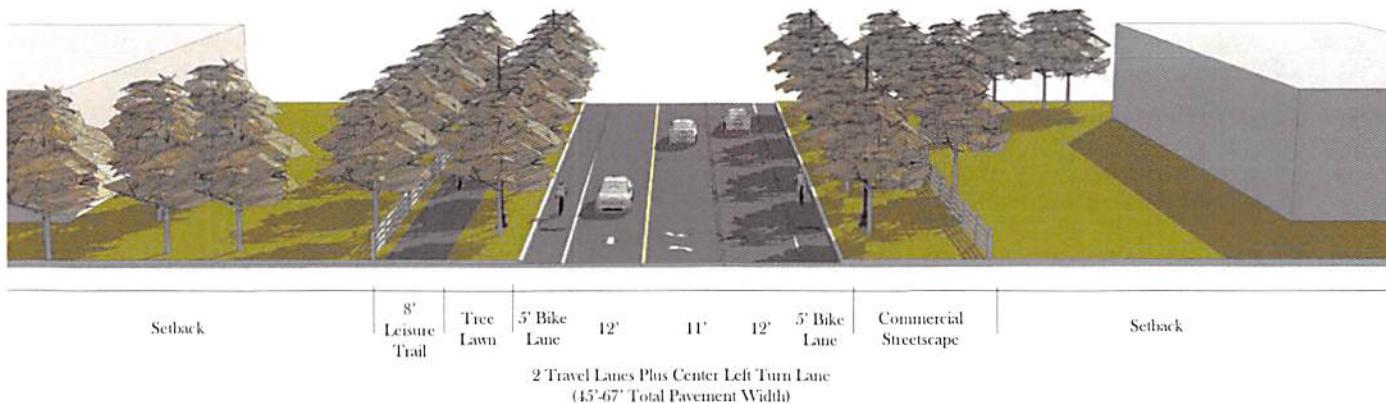


Interior Commercial Roads

Although newly identified, the interior commercial road typology has already been implemented in portions of the Personal Care and Beauty Campus, particularly along Innovation Campus Way. Interior commercial roads are similar to the commercial typology, however they are smaller in scale because their primary purpose is to provide interior connections within the Business Park. An important difference between commercial roads and semi-rural roads is the use of curbs and regularly spaced street trees in a tree lawn.

Interior commercial streets includes two travel lanes with a center turn lane (as needed), a semi-rural streetscape, and a 50-foot building setback. Because of truck use, it is important to balance this function with the recommended design aesthetic of the corridor.

Interior Commercial Roadway



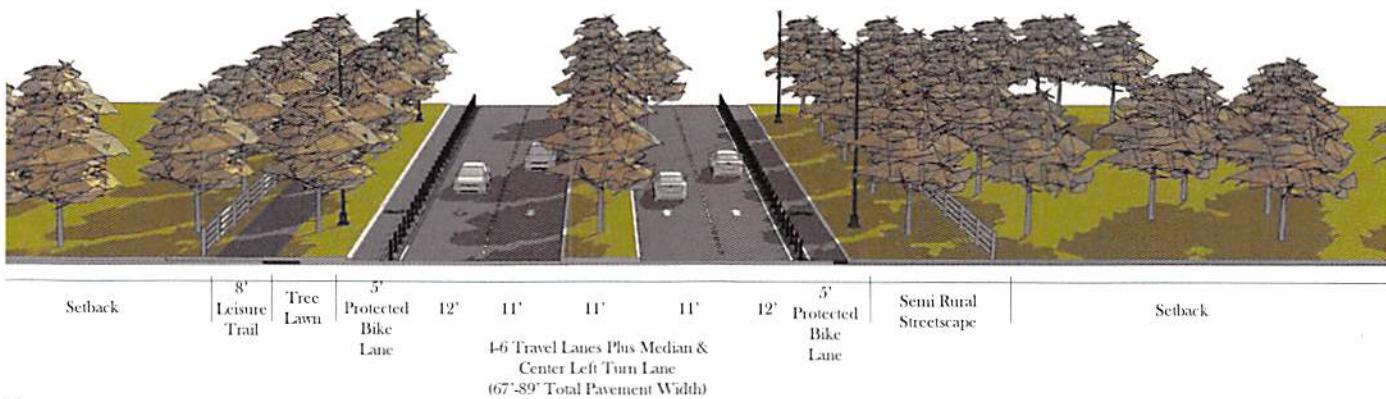
Major Roadway

Major roadways carry significant traffic volumes and are found in segments of New Albany's road corridors which pass under State Route 161. These street sections are wider to accommodate the increased amount of traffic exiting and entering the interstate. Near this study area, this road typology applies to the portion of Beech Road which passes under State Route 161.

Major roadways include four to six lanes of traffic with a center turn lane. They are curbed and include tree lawns. Bicycle

accommodations include a potential leisure trail and/or protected bike lanes. Street trees can be regularly spaced or grouped in naturalized plantings depending on the character of the surrounding area. An important design component is the use of a landscaped median where possible to reduce the scale and width of the road and create an identifiable gateway into the area. Additional information can be found in the 2014 Strategic Plan.

Major Roadway with protected bike lane



LEISURE TRAILS/BIKE FACILITIES



As development occurs, bike facilities should be incorporated in the Harrison Road study area through both on-street and off-street facilities. Leisure trails should be included along Harrison Road, Morse Road and any future road connection that may be developed in this area. This will help continue to extend and connect New Albany's existing trail system while strengthening connections between the more developed areas of New Albany and this new addition to the Business Park. It will also encourage increased bicycle commuting and provide employees with an exercise/healthy living amenity. The trails should be eight (8) feet wide and conform to the recommendations for each street typology, as established in the 2014 Strategic Plan.

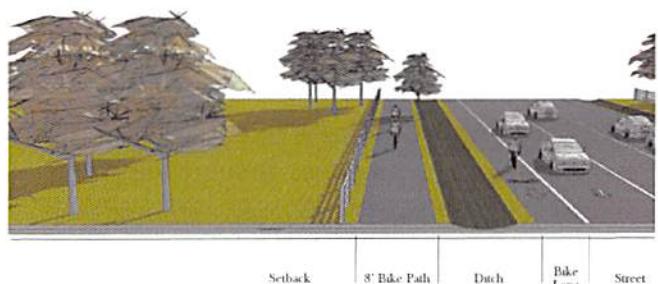
Leisure trails should also be considered for the South Fork Licking River. Future development along major stream corridors should include a greenway trail. The 2014 Strategic Plan identified stream corridors such as this as opportunities for new green corridor trails that connect residents and employees to the natural features within New Albany. In addition, the City is currently in the process of updating the Leisure Trail Master Plan and any additional recommendations from that process should be incorporated into future development.

Additionally, on-street bike facilities should be integrated into the existing and future roads within the Harrison Road study area. The increased development in the area will increase traffic volumes along these corridors. This will necessitate designated bicycle facilities to make these roads safe, comfortable, and inviting for cyclists. The street typologies identify the appropriate type of on-street bicycle facility that should be considered for new and improved roadways. These recommendations are based on the expected vehicular traffic volumes and speeds. Incorporating on-street bicycle facilities in the Harrison Road area will promote the goal of creating a city-wide bicycle network. Future traffic engineering studies will help to determine the best design for bike lanes along these corridors.

Rural Corridor



Semi Rural Corridor



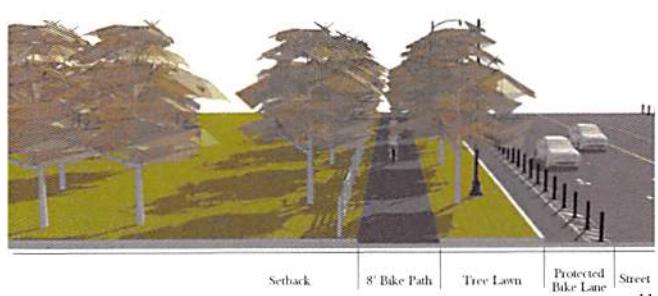
Interior Commercial Corridor



Greenways Trail



Major Corridor



NATURAL FEATURES & CORRIDOR STRATEGIES

Natural Features

The majority of the significant natural features of this area are adjacent to the South Fork Licking River. These features include tree cover and some small wetlands. This is also true for the unnamed creek on the southern end of the study area (see map below). Other significant natural features within the study area include tree rows between some of the existing farm fields.

Preservation of these areas — wooded stream corridors, tree rows, and green spaces — provides several benefits for the future development of the Harrison Road study area. First, it acts as an organizational greenspace for the orientation and layout of future development sites in this area. Preserving this area creates a stationary point around which development sites can be identified. The preservation of mature trees has had a positive impact on the overall character of the Business Campus South and should be continued in the Harrison Road area.

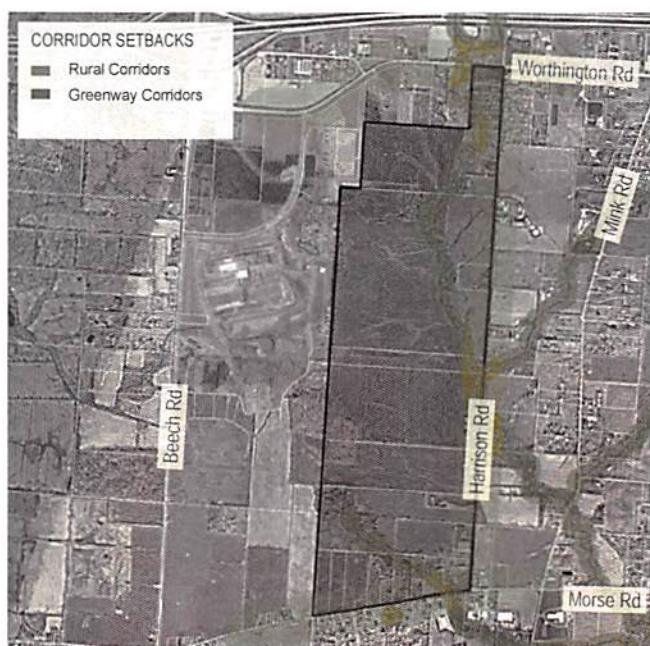
Second, these features can serve as unique amenities for employees in the Business Campus South. Introducing walking paths and pedestrian and bicycle connections through the Harrison Road study area, with an emphasis on creating connections to the natural areas, will allow employees to enjoy the rural character of this area. National trends show a growing desire by businesses to provide nearby recreational amenities for their employees. Having walking trails within the natural areas creates a unique feature for the Business Park.

Additionally, the natural features in the Harrison Road area will also serve as buffers between existing residential uses and future development. While the Office District is the desired future land use for the area, it is important to respect the existing residences, the majority of which are located along Harrison Road, Worthington Road, and Morse Road. Promoting the preservation of existing tree stands in this area will help buffer these homes from future office development introduced into the area.

It is important to note that while the preservation of the aforementioned natural features should be prioritized, if this becomes infeasible, mitigation efforts should be implemented. While this addendum identifies the desired future land use for the Harrison Road study area, how exactly the area will develop is unknown.



SOUTH FORK LICKING RIVER



RURAL CORRIDORS AND GREENWAY CORRIDORS



TYPOLOGY	SETBACK REQUIREMENT
MAJOR COMMUTER STREET	185 FEET
COMMERCIAL STREET	185 FEET
INTERIOR COMMERCIAL *From edge of right-of-way	50 FEET
SEMI-RURAL STREET	185 FEET
RURAL STREET	250 FEET
VILLAGE CENTER STREET	0 FEET
STREAM CORRIDOR	150-FOOT MINIMUM PER SIDE

SETBACK REQUIREMENT CHART

Green Corridors

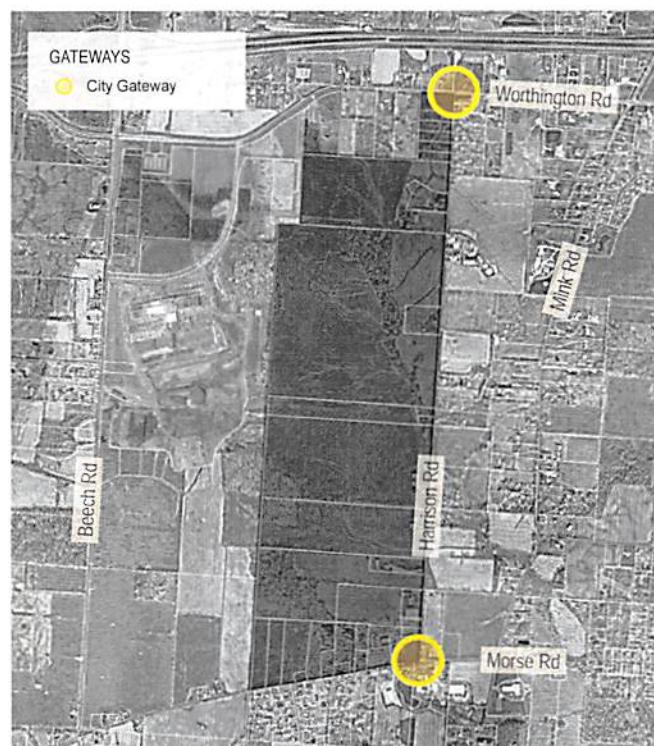
Along with the identified natural features, it is important New Albany continues to prioritize the preservation of the green corridors within the Harrison Road Study Area. This is accomplished in part by applying the city's setback requirements identified in the 2014 Strategic Plan. The Setback Requirement Chart above summarizes these setback recommendations. Note this chart adds Interior Commercial Streets to the original Strategic Plan list. This interior business park road is recommended to have a 50 foot setback, which is consistent with the zoning requirement established for interior roads in the New Albany Business Park.

The setback requirements apply to building (vertical) construction, but may allow pavement. These setbacks are important to preserving the rural character of New Albany's corridors. Introducing buildings closer to the street adds a vertical element that makes the corridor feel more developed than is desired in the areas where setbacks are applied. With the approval of city staff, pavement may be permitted in the setback to allow for uses such as parking. When this occurs, appropriate landscaping and mounding should also be applied to screen parking from the streets and preserve the rural character of the corridors.

Gateways

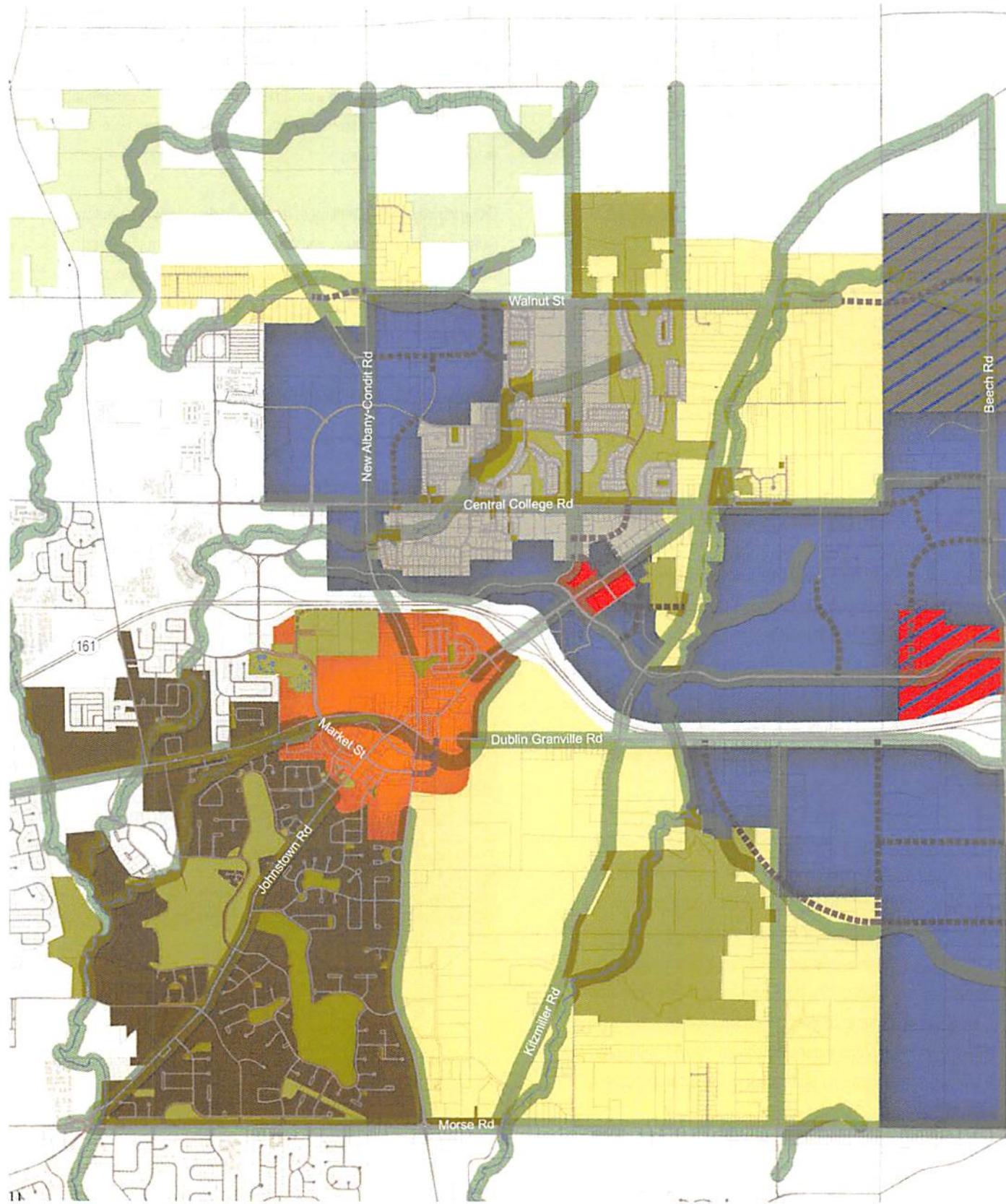
The Harrison Road area will be the point of entry into New Albany for people traveling from the east. As such, visual cues should be provided to indicate the transition into New Albany. The 2014 Strategic Plan identifies these transitions as moments or gateways — experiences that subtly inform a motorist, cyclist, or pedestrian when he or she has entered into New Albany.

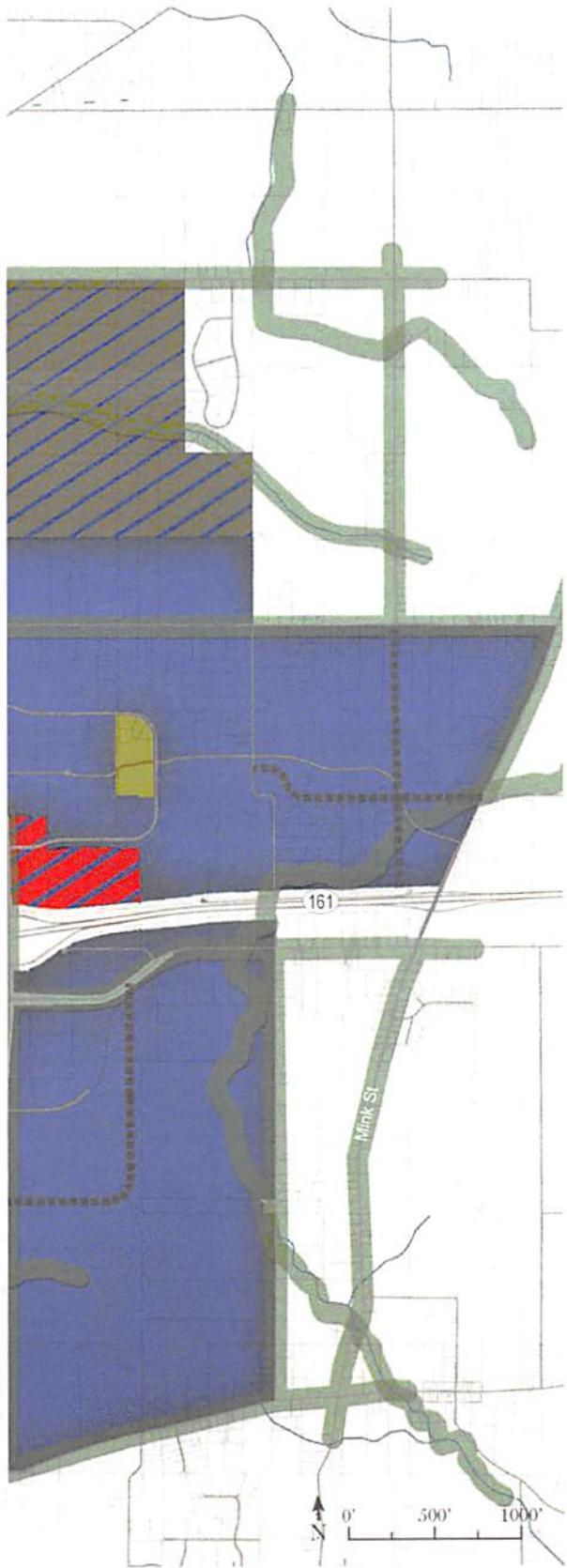
City gateways are identified at the intersections of Worthington Road and Harrison Road and Morse Road and Harrison Road. These gateways should fit with the overall New Albany aesthetic but be designed specifically for their location. Per the Strategic Plan, gateways can be natural spaces and/or contain built features as appropriate for the area.



GATEWAY LOCATIONS

FUTURE LAND USE PLAN
UPDATED TO INCLUDE THE HARRISON ROAD STUDY AREA



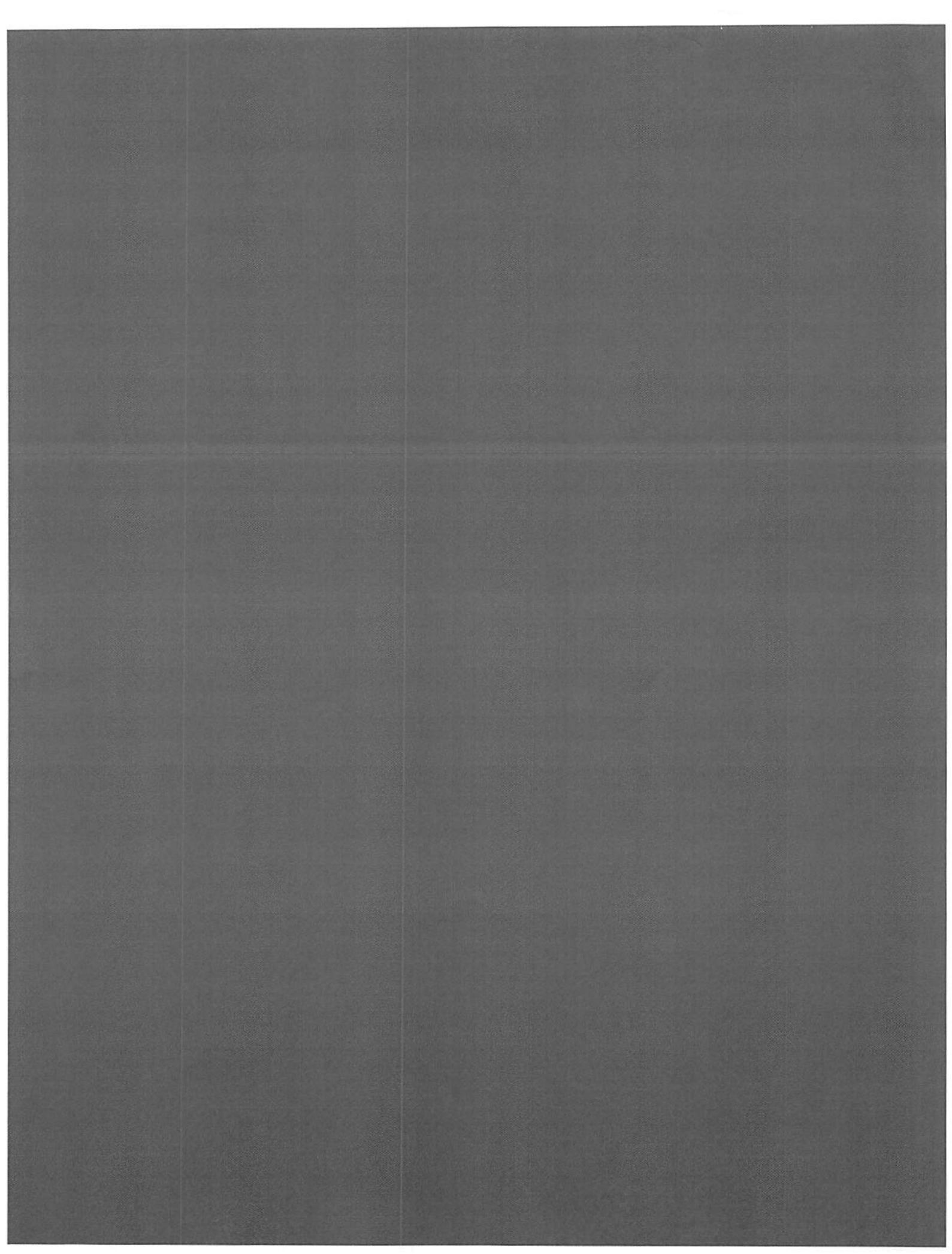


LEGEND

- RURAL RESIDENTIAL
- NEIGHBORHOOD RESIDENTIAL
- TOWN RESIDENTIAL
- VILLAGE CENTER MIXED USE
- OFFICE CAMPUS
- RETAIL COMMERCIAL
- RETAIL/OFFICE MIXED USE
- OFFICE CAMPUS/TRANSITIONAL AGRICULTURE
- TRANSITIONAL AGRICULTURE
- PARK / OPEN SPACE
- RURAL CORRIDOR / TRIBUTARY SETBACK
- ROCKY FORK METRO PARK
- COMMITTED STREET CONNECTION
- FUTURE STREET CONNECTION

PROPOSED LAND USE

DISTRICT	ACRES	% TOTAL
RESIDENTIAL		
RURAL ESTATE	3,965.5	27.5%
NEIGHBORHOOD	1,866.0	12.9%
TOWN	954.7	6.6%
SUBTOTAL	6,786.2	46.9%
OFFICE		
OFFICE	4,710.6	32.6%
OFFICE (HARRISON RD STUDY AREA)	475.5	3.3%
R&I	628.3	4.4%
SUBTOTAL	5,814.4	40.3%
RETAIL		
NEIGHBORHOOD RETAIL	39.7	0.3%
MIXED USE COMMERCIAL	320.6	2.2%
SUBTOTAL	360.3	2.5%
VILLAGE CENTER		
SUBTOTAL	605.0	4.2%
OFFICE CAMPUS/TRANSITIONAL AGRICULTURE		
SUBTOTAL	877.7	6.1%
TOTAL	14,443.6	100.0%





Prepared: 10/22/2018
Introduced: 11/06/2018
Revised:
Adopted:
Effective:
11/06/2018
11/06/2018

RESOLUTION R-43-2018

A RESOLUTION TO APPROVE AND AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AMENDMENT TO AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH UBS FINANCIAL SERVICES INC.

WHEREAS, it has been and remains in the best interests of the city to designate certain areas for commercial and other business development and offer economic incentives in those areas; and

WHEREAS, the creation of economic incentives has resulted in more than 11.5 million square feet of commercial development in the New Albany Business Park and 15,000 employment opportunities for the community since 1998; and

WHEREAS, the city's Economic Development Strategic Plan recommends that the city seek to attract a diversity of cluster industries utilizing non-traditional incentive programs; and

WHEREAS, in 2010, UBS Financial Services Inc. ("the Company") leased 11,000 square feet of office space and created an annual payroll of \$5,000,000 and an actual annualized city income tax of at least \$100,000; and after a comprehensive examination of office space requirements and workforce resources within the city, and induced by and in reliance on the economic development incentive agreement executed November 30, 2010, the Company desires to relocate its office within the city, to make a significant capital improvement, and create new employment opportunities within the city; and

WHEREAS, the city has determined to offer certain economic development incentives described herein and more fully set forth in the Economic Development Agreement ("the Agreement") to induce the Company to lease office space within the business park, to attract employees, retain employment opportunities within the city and to improve the economic welfare of the people of the State of Ohio and the City of New Albany, all as authorized in the Ohio Constitution and Revised Code.

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

Section 1. Council hereby approves and authorizes the city manager to extend the economic incentive agreement that expires December 31, 2019 by an additional six years.

Section 2. The general terms of this Agreement are as follows:

- (a) The Company shall make a \$2,200,000 capital investment in office space and/or facilities located in the Village Enter during the period commencing on the date hereof and ending on or before December 31, 2019.
- (b) The Company agrees effective January 1, 2020, the Retention Benchmark shall be \$150,000 in annual collected income tax.

- (c) Effective January 1, 2020, in addition to the Retention Benchmark, the Company shall also meet an annual Growth Benchmark in the amount of \$5,000 in additional annual collected income tax.
- (d) This incentive includes an annual payment for seven (6) years beginning in tax year 2021 in the amount equal to 25% of the Retention Benchmark income tax and 25% of the income taxes over and above the Growth Benchmark. Provided however, that the total amount of any such Incentive Payments paid by the city during any Agreement Year shall not exceed the real estate property tax attributable to the Company's location within the city for that Agreement Year.

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. Effective Date. Pursuant to Article VI, Section 6.07(A) of the Charter of the City of New Albany, this resolution shall be in effect on and after the earliest period allowed by law.

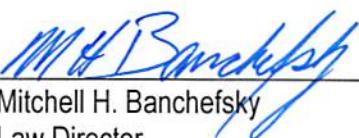
CERTIFIED AS RESOLVED this 6th day of November, 2018.

Attest:


Sloan T. Spalding
Mayor


Jennifer H. Mason
Clerk of Council

Approved as to form:


Mitchell H. Banchefsky
Law Director

**FIRST AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF NEW ALBANY AND UBS FINANCIAL SERVICES INC.**

This First Amendment (the "Amendment") made and entered into by and among the City of New Albany, Ohio (the "City" and formerly known as the "Village of New Albany"), a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio, with its main offices located at 99 West Main Street, New Albany, Ohio, and UBS Financial Services Inc., (the Company), a Delaware corporation, with its main office located in Weehawken New Jersey.

RECITALS:

WHEREAS, the City and the Company have previously entered into an Economic Development Agreement, dated November 30, 2010 (the "Agreement"), a copy of which is attached hereto as "Exhibit A" with respect to the Company's commitment to remain in the City and retain employment.

WHEREAS, the Agreement expires on or about December 31, 2019.

WHEREAS, based on the results of the Company's recent comprehensive re-examination of its office space requirements and workforce assets within the City, and induced by and in reliance on the economic development incentives provided in this Amendment, the Company desires to relocate its office within the City, to make a significant capital improvement, and create new employment opportunities within the City.

WHEREAS, the Company and the City desire to execute an Amendment to the Agreement to extend the Agreement for an additional six years and revise the Agreement to reflect new retention benchmarks.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree that the following provisions shall replace and supplement the corresponding subsections of the Agreement as follows:

1. Company's Agreement to Remain in the City and Retain Employment

(a) Capital Investment.

The Company shall make a \$2,200,000 capital investment in office space and/or facilities located in the Village Center during the period commencing on the date hereof and ending on or before December 31, 2019.

(b) Retention Benchmark.

Effective January 1, 2020, the Retention Benchmark shall be \$150,000 in annual collected income tax.

(c) Growth Benchmark.

Effective January 1, 2020, in addition to the Retention Benchmark, the Company shall also meet an annual growth benchmark in the amount of \$5,000 in additional annual collected income tax.

2. City's Agreement to Provide Financial Incentive.

(b) Six Year Economic Incentive Program. Provided that the Company meets the criteria set forth in Sections 1(a), 1(b) and 1(c) of this Agreement, the City shall pay to the Company, solely from non-tax revenues as defined in Section 2(c) of this Agreement, the amounts set forth below. This Incentive shall commence on January 1, 2020 (the "*Incentive Commencement Date*") and terminate no later than six Agreement Years (as defined below) from such Incentive Commencement Date. However, in the event the City does not have sufficient non-tax revenues to pay the Company annual incentive payments as defined and set forth herein, any such deficiency shall be made up as soon as sufficient non-tax revenues become available in subsequent Agreement Years, regardless of whether the Company is eligible to receive an Incentive Payment, retains employees or leases space in the City during such subsequent Agreement Year or Years. If at the end of this Agreement a deficiency still exists, this Agreement shall be extended for the sole purpose of providing the City more time to accrue additional non-tax revenues for payment of the balance of any unpaid incentive payments which may have accrued on or before December 31, 2025. In no case shall any additional incentive accrue pursuant to this Agreement after December 31, 2025.

(i) Calculation of Actual Company Taxes. Within sixty (60) days from the anniversary of the Incentive Commencement Date in years 2021, 2022, 2023, 2024, 2025 and 2026 the City shall calculate the Actual Company Taxes (as defined in Section 2(b)(ii) below) collected with respect to compensation for services performed by the Company's and its affiliates employees and Contractors working in the Company's location in the preceding calendar twelve (12) month period (each an "*Agreement Year*"). For the purposes of this Agreement, only those individuals employed by the Company or its affiliates or employed by contractors of the Company, and working within the City shall be included in the calculation of the Incentive Payments (as defined below).

(ii) Incentive Payments to the Company. During the term of this Agreement, if on the anniversary of the Incentive Commencement Date in years 2021, 2022, 2023, 2024, 2025 and 2026 the actual income taxes paid to the City meet or exceed the criteria set forth in Sections 1(b) and 1(c), net of refunds ("*Actual Company Taxes*"), the City shall, within ninety (90) days from the Incentive Commencement Date anniversary, pay to the Company an incentive payment (each an "*Incentive Payment*" and collectively the "*Incentive Payments*") in an amount equal to 25% of the Retention Benchmark income tax and 25% of the income taxes over and above the Growth Benchmark, both as set forth in Sections 1(b) and 1(c). Provided however, that the total amount of any such Incentive Payments paid by the City during any Agreement Year

shall not exceed the real estate property tax attributable to the Company's location within the City for that Agreement Year.

(iii) **Forfeiture of Right to Receive Payment.** The Company agrees and acknowledges that the payments set forth herein are being made by the City to the Company in consideration of the Company's agreement to maintain its location in the City and to meet the criteria set forth in Section 1 of this Amendment. The Company further agrees that if the Actual Company Taxes paid to the City fall below the Retention and Growth Benchmarks set forth in Section 1(b) and 1(c) of this agreement for any Agreement Year, the City shall not be obligated to make an annual Incentive Payment to the Company for that Agreement Year. Failure to meet the Minimum Section 1 criteria with respect to any Agreement Year shall not constitute a default under this Agreement or subject the Company to any remedy hereunder, and the Company shall have the right to receive an annual Incentive Payment for any subsequent Agreement Year in accordance with the payment formula set forth in Subsection 2(ii). In amplification and not in limitation of the foregoing, the City agrees that, in the event that the Section 1 criteria amount is not met in any Agreement Year, for any reason, including, without limitation, reduced employment at the Company's location, the closing of the Company's location, or the termination, or non-extension of the lease for the Company's location, the City shall not be entitled to, or seek, the repayment of any sums made to the Company under this Agreement.

All other terms and conditions of the Agreement not amended by this Amendment shall remain in full force and effect.

This Amendment may be executed in one or more counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same document, and shall be binding on the signatories. Each party hereto may rely upon a telecopy (fax) or pdf of a counterpart of this Agreement or detached signature page therefrom that has been executed by any other party hereto, as if the same were the executed original thereof, and the other parties shall be bound thereby

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF NEW ALBANY, OHIO

By: _____

Printed: Joseph Stefanov

Title: City Manager

UBS FINANCIAL SERVICES INC.

By: _____

Printed: _____

Title: _____

By: _____

Printed: _____

Title: _____

Approved as to Form:

By: _____

Printed: Mitchell H. Banchefskey

Title: Director of Law

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DRAFT

FISCAL OFFICER'S CERTIFICATE

The undersigned, Finance Director of the City under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2018

Bethany Staats
Finance Director
City of New Albany

Exhibit A

DRAFT



Prepared: 10/25/2018
Introduced: 11/06/2018
Revised:
Adopted: *11/06/2018*
Effective: *11/06/2018*

RESOLUTION R-44-2018

A RESOLUTION TO ACCEPT A 1.268 ACRE, A 0.573 ACRE, AND 3.791 ACRE TRACT OF LAND FROM MBJ HOLDINGS LLC FOR THE PURPOSE OF PUBLIC RIGHT OF WAY

WHEREAS, the tracts of land are generally located along the east side of Babbitt Road, north of Morse Road; and along north side of Morse Road, west of Beech Road; and

WHEREAS, the land parcels currently extend to the centerline of the Babbitt Road and Morse Road and have historically been served by way of a highway easement. The property owner requests to dedicate the highway easement area to the city as public right-of-way; and

WHEREAS, the city engineer has reviewed the newly created lots and commented this dedication is appropriate; and

WHEREAS, the city will benefit from this dedication of right of way.

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 accept a 1.268 acre, a 0.573 acre, and 3.791 acre donation of land from MBJ Holdings LLC for the purpose of public right of way as depicted on Exhibit A.

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this resolution 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.

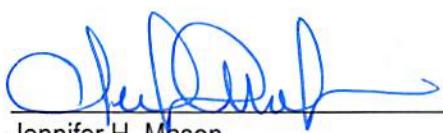
Section 3. Pursuant to Article VI, Section 6.07(A) of the charter of the City of New Albany, this resolution shall be in effect on and after the earliest period allowed by law.

CERTIFIED AS ADOPTED this 6th day of November, 2018.

Attest:



Sloan T. Spalding
Mayor



Jennifer H. Mason
Clerk of Council

Approved as to form:



Mitchell H. Banchefsky
Law Director

EXHIBIT A - R-44-2018

**LIMITED WARRANTY DEED
(O.R.C. 5302.07 - 5302.08)**

KNOW ALL MEN BY THESE PRESENTS that MBJ HOLDINGS, LLC, a Delaware limited liability company (the "GRANTOR"), whose tax mailing address is 8000 Walton Parkway, Suite 120, New Albany, Ohio 43054, for good and valuable consideration paid, grants, with limited warranty covenants, to THE CITY OF NEW ALBANY, OHIO, an Ohio municipal corporation (the "GRANTEE"), whose tax-mailing address is 99 West Main Street, New Albany, Ohio 43054, the following real property, consisting of approximately 1.268 acres, more or less (the "PREMISES"):.

See legal description attached as Exhibit A and depiction attached as Exhibit B.

Prior Instrument References: _____ Office of the Recorder, Franklin County, Ohio
Instrument Nos. _____

Auditor's Parcel No.: _____

**THE PREMISES IS INTENDED BY GRANTEE TO BE HELD FOR USE AS
PUBLIC RIGHT-OF-WAY.**

The conveyance hereunder is made subject to all covenants, conditions, easements, restrictions, reservations, and other matters of record in the Office of the Recorder, Franklin County, Ohio.

[SIGNATURE AND ACKNOWLEDGMENT ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor has caused this Limited Warranty Deed to be executed by its duly authorized signatory this _____ day of _____, 2018.

MBJ HOLDINGS, LLC,
a Delaware limited liability company

By: _____
Brent B. Bradbury, Treasurer

STATE OF OHIO,
COUNTY OF _____, ss:

BE IT REMEMBERED, that on this _____ day of _____, 2018, before me, the subscriber, a Notary Public in and for said county, personally came the above named Brent B. Bradbury, the Treasurer of MBJ HOLDINGS, LLC, a Delaware limited liability company, and acknowledged the signing of the same to be his voluntary act and deed for and as the voluntary act and deed of said company.

Notary Public
My commission expires: _____

This instrument prepared by:
AARON L. UNDERHILL, ESQ.
UNDERHILL & HODGE LLC
8000 WALTON PARKWAY, SUITE 260
NEW ALBANY, OHIO 43054
(614) 335-9320

EXHIBIT A
1.268 ACRES

Situated in the State of Ohio, County of Franklin, City of New Albany, lying in Lots 2 and 3, Quarter Township 4, Township 2, Range 16, United States Military District, and being part of that 52.96 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201802020014909 and part of those 1,000, 2,508, 6,16, 8,04, 7,34, and 5.49 acre tracts conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201807270100579 (all references are to the records of the Recorder's Office, Franklin County, Ohio) and being more particularly described as follows:

BEGINNING at Franklin County Geodetic Survey Monument 1214, at the corner common to said Lots 2 and 3 and Lots 14 and 15, in the centerline of Babbitt Road (Width Varies), at the northwesterly corner of said 2.508 acre tract, at a southwesterly corner of said 52.996 acre tract;

Thence North 03° 47' 20" East, with the line common to said Lots 3 and 14, with said centerline, with the westerly line of said 52.996 acre tract, a distance of 854.13 feet to a magnetic nail set at the corner common to said 52.996 acre tract and that 34.262 acre tract conveyed to James L. Doran, II and Michele Gutridge Doran by deed of record in Official Record 31038F14;

Thence South 85° 07' 46" East, across said Babbitt Road, with the line common to said 52.996 acre and 32.262 acre tracts, a distance of 30.00 feet to an iron pin set;

Thence across said MBJ Holdings, LLC tracts, the following courses and distances:

South 03° 47' 20" West, a distance of 854.15 feet to an iron pin set; and

South 04° 02' 31" West, partially with the easterly line of that un-recorded Easement for Highway Purposes from IVA Smith and Dalton E. Smith to County of Franklin Dated June 10, 1974 on file with the Franklin County Engineers Office, a distance of 986.44 feet to a 3/4 inch iron pipe found in the easterly right-of-way line of said Babbitt Road, in the southerly line of said 5.49 acre tract, at the corner common to that 0.549 acre tract conveyed to Jordan M. King by deed of record in Instrument Number 200710220183530 and that 0.307 acre tract conveyed to Franklin County by deed of record in Deed Book 3109, Page 288;

Thence North 86° 34' 40" West, across said Babbitt Road, with the line common to said 5.49 acre and 0.307 acre tracts, a distance of 30.00 feet to a railroad spike found in the line common to said Lots 2 and 15, in the centerline of said Babbitt Road, at a corner common to said 5.49 acre and 0.307 acre tracts;

Thence North 04° 02' 31" East, with the line common to said Lots 2 and 15, with said centerline, with the westerly line of said 5.49, 7.34, 8.04, 6.16, 1.000, and 2.508 acre tracts, partially with the westerly line of said un-recorded Exemption for Highway Purposes, (passing a 1/2 inch rebar found at 285.39 feet, a railroad spike found at 428.83 feet, and a 1/2 inch rebar found at 485.39 feet) a total distance of 986.70 feet to the POINT OF BEGINNING, containing 1.268 acres, more or less, of which 0.891 acre is located within the road right-of-way.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

The bearings herein are based on the Ohio State Plane Coordinate System, South Zone per NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FRANK 80 and FRANK 180, having a bearing of North 85° 57' 24" West, as established by the Franklin County Engineering Department using Global Positioning System procedures and equipment.

This description was prepared using documents of record, prior plats of survey, and observed evidence located by an actual field survey in 1999, 2001, 2002, 2015, 2017, and 2018.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

DRAFT

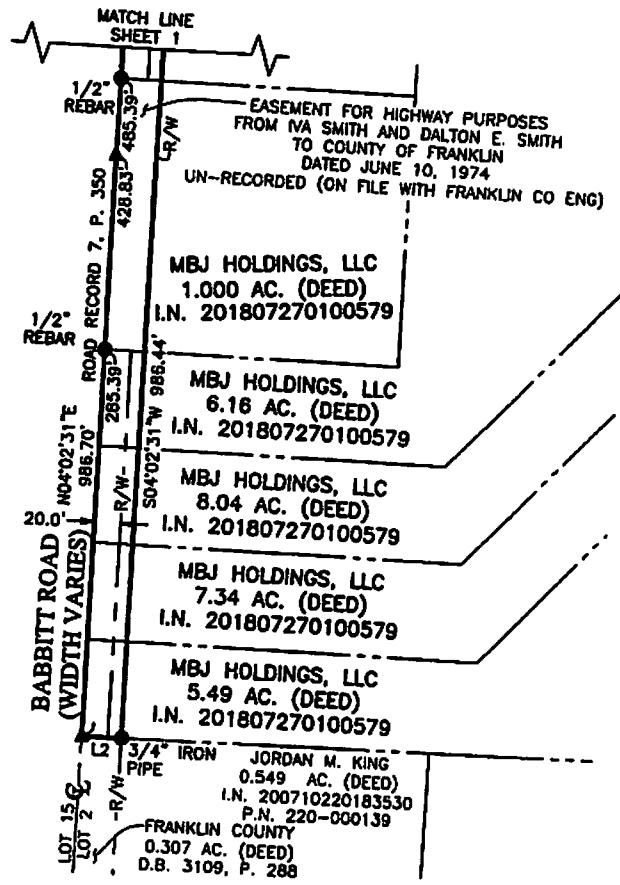
Joshua M. Meyer Date
Professional Surveyor No. 8485

JN04 jpg
1_258 ac 20180043-VB-BNDY-04 doc

Exhibit "B"

 <p>EMHT Evans, Mechwart, Hornbeam & Tillot, Inc. Engineers • Surveyors • Planners • Scientists 5800 New Albany Road, Columbus, OH 43228 Phone: 614.773.4300 Fax: 614.773.3448 emht.com</p>	<p style="text-align: center;">SURVEY OF ACREAGE PARCEL LOTS 2 AND 3, QUARTER TOWNSHIP 4, TOWNSHIP 2, RANGE 16 UNITED STATES MILITARY DISTRICT CITY OF NEW ALBANY, COUNTY OF FRANKLIN, STATE OF OHIO</p>										
<p>Date: October 18, 2018</p>	<p>Job No: 2018-0045</p>	<p>Scale: 1" = 100'</p>									
<p>SURVEY NOTE: This survey was prepared using documents of record, prior plats of survey, and observed evidence located by an actual field survey in 1999, 2001, 2002, 2015, 2017, and 2018.</p> <p>BASIS OF BEARINGS: The bearings shown hereon are based on the Ohio State Plane Coordinate System, South Zone, NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FRANK80 and FRANK180, having a bearing of North 85° 57' 24" West, as established by the Franklin County Engineering Department using Global Positioning System procedures and equipment.</p> <p style="text-align: right;">JAMES L. DORAN, II MICHELE GUTRIDGE DORAN 34.262 AC. (DEED) O.R. 31033F14 P.N. 220-000085</p> <p style="text-align: right;">NO 34° 47' 20"E 854.13' -R/W- SO 34° 47' 20"W 854.15'</p> <p style="text-align: right;">LOT 14 LOT 15 FCGS 1214 POB LOT 15 LOT 2 LOT 3 LOT 2 1.268 GROSS 0.891 P.R.O. 0.377 NET</p> <p style="text-align: right;">MBJ HOLDINGS, LLC PARCEL I, TRACT I 52.996 AC. (DEED) I.N. 201802020014909 P.N. _____</p> <p style="text-align: right;">NO 04° 02' 31"E 986.70' -R/W- SO 04° 02' 31"W 986.44' 30.0' MATCH LINE SHEET 2</p> <p style="text-align: right;">MBJ HOLDINGS, LLC 2.508 AC. (DEED) I.N. 201807270100579 P.N. 220-000206</p>											
<p style="text-align: center;">LINE TABLE</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>LINE</th> <th>BEARING</th> <th>DISTANCE</th> </tr> </thead> <tbody> <tr> <td>L1</td> <td>S86°07'46"E</td> <td>30.00'</td> </tr> <tr> <td>L2</td> <td>N86°34'40"W</td> <td>30.00'</td> </tr> </tbody> </table> <p style="text-align: center;">DRAFT</p> <p>By _____ Date _____</p> <p>Joshua M. Meyer Professional Surveyor No. 8485</p> <p style="text-align: center;">100 0 100 200</p> <p style="text-align: center;">GRAPHIC SCALE (in feet)</p> <p style="text-align: right;">SHEET 1 OF 2</p>			LINE	BEARING	DISTANCE	L1	S86°07'46"E	30.00'	L2	N86°34'40"W	30.00'
LINE	BEARING	DISTANCE									
L1	S86°07'46"E	30.00'									
L2	N86°34'40"W	30.00'									

Exhibit "B"

 <p>EMHT Everts, Mechwart, Henselton & Stover, Inc. Engineers • Surveyors • Planners • Scientists 1520 New Albany Road, Columbus, OH 43228 Phone: (614) 773-4220 Fax: (614) 773-9445 COLUMBUS</p>	<p style="text-align: center;">SURVEY OF ACREAGE PARCEL LOTS 2 AND 3, QUARTER TOWNSHIP 4, TOWNSHIP 2, RANGE 16 UNITED STATES MILITARY DISTRICT CITY OF NEW ALBANY, COUNTY OF FRANKLIN, STATE OF OHIO</p>	
<p>Date: October 18, 2018</p>	<p>Job No: 2018-0045</p>	<p>Scale: 1" = 100'</p>
 <p style="text-align: center;">100 0 100 200</p> <p>GRAPHIC SCALE (in feet)</p> <p style="text-align: right;">SHEET 2 OF 2</p>		

**LIMITED WARRANTY DEED
(O.R.C. 5302.07 - 5302.08)**

KNOW ALL MEN BY THESE PRESENTS that MBJ HOLDINGS, LLC, a Delaware limited liability company (the "GRANTOR"), whose tax mailing address is 8000 Walton Parkway, Suite 120, New Albany, Ohio 43054, for good and valuable consideration paid, grants, with limited warranty covenants, to THE CITY OF NEW ALBANY, OHIO, an Ohio municipal corporation (the "GRANTEE"), whose tax-mailing address is 99 West Main Street, New Albany, Ohio 43054, the following real property, consisting of approximately 0.573 acres, more or less (the "PREMISES"):

See legal description attached as Exhibit A and depiction attached as Exhibit B.

Prior Instrument References: _____ Office of the Recorder, Franklin County, Ohio
Instrument Nos. _____

Auditor's Parcel No.: _____

**THE PREMISES IS INTENDED BY GRANTEE TO BE HELD FOR USE AS
PUBLIC RIGHT-OF-WAY.**

The conveyance hereunder is made subject to all covenants, conditions, easements, restrictions, reservations, and other matters of record in the Office of the Recorder, Franklin County, Ohio.

[*SIGNATURE AND ACKNOWLEDGMENT ON THE FOLLOWING PAGE*]

IN WITNESS WHEREOF, Grantor has caused this Limited Warranty Deed to be executed by its duly authorized signatory this _____ day of _____, 2018.

MBJ HOLDINGS, LLC,
a Delaware limited liability company

By: _____
Brent B. Bradbury, Treasurer

STATE OF OHIO,
COUNTY OF _____, ss:

BE IT REMEMBERED, that on this _____ day of _____, 2018, before me, the subscriber, a Notary Public in and for said county, personally came the above named Brent B. Bradbury, the Treasurer of MBJ HOLDINGS, LLC, a Delaware limited liability company, and acknowledged the signing of the same to be his voluntary act and deed for and as the voluntary act and deed of said company.

Notary Public
My commission expires: _____

This instrument prepared by:

AARON L. UNDERHILL, ESQ.
UNDERHILL & HODGE LLC
8000 WALTON PARKWAY, SUITE 260
NEW ALBANY, OHIO 43054
(614) 335-9320

EXHIBIT A

0.573 ACRE

Situated in the State of Ohio, County of Franklin, City of New Albany, lying in Lot 1, Quarter Township 4, Township 2, Range 16, United States Military District, and being part of that 109.456 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201808010103027, (all references are to the records of the Recorder's Office, Franklin County, Ohio, unless otherwise noted) and being more particularly described as follows:

BEGINNING at Franklin County Geodetic Survey Monument 2208, at the intersection of the centerline of Morse Road (width varies) with the common County Line of Franklin and Licking Counties, at the southwest corner of Section 25, Township 2, Range 15, at the northwest corner of Section 5, Quarter Township 2, Township 1, Range 15, at the northeast corner of Quarter Township 1, Township 1, Range 16, at the southeast corner of said Lot 1, at the southwesterly corner of that 98.756 acre tract conveyed to MBJ Holdings, LLC by deed of record in Licking County Instrument Number 200107200026097, at the southeasterly corner of said 109.456 acre tract;

Thence North 86° 23' 36" West, with the centerline of said Morse Road, with the southerly line of said 109.456 acre tract, in the southerly line of said Lot 1, in the northerly line of said Quarter Township 1, a distance of 499.31 feet to an magnetic nail set in at the corner common to said 109.456 acre tract and the remainder of that tract conveyed as First Parcel to David L. Haegle, Trustee of the David L. Haegle Trust dated August 1, 2007, an undivided one-half (1/2) interest and Deborah S. Haegle, Trustee of the Deborah S. Haegle Trust dated August 1, 2007, an undivided one-half (1/2) interest by deed of record in Instrument Number 200708070138359;

Thence North 03° 36' 24" East, with the line common to said 109.456 acre tract and said Haegle tract, a distance of 50.00 feet to an iron pin set;

Thence South 86° 23' 36" East, across said 109.456 acre tract, a distance of 499.20 feet to an iron pin set in said common County Line, in the line common to said Lot 1 and said Section 25, in the line common to said 109.456 acre and 98.756 acre tracts;

Thence South 03° 28' 23" West, with said common lines, a distance of 50.00 feet to the POINT OF BEGINNING, containing 0.573 acre, more or less, of which 0.344 acre is located within the existing road right-of-way.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

The bearings herein are based on the Ohio State Plane Coordinate System, South Zone per NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FRANK 80 and FRANK 180, having a bearing of North 85° 57' 24" West, as established by the Franklin County Engineering Department using Global Positioning System procedures and equipment.

This description was prepared using documents of record, prior plan of survey, and observed evidence located by an actual field survey in 1999, 2001, 2002, 2015, 2017, and 2018.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

DRAFT

Joshua M. Meyer
Professional Surveyor No. 8485

Date

A04.gps
0.573 ac 20180045-VB-BNDY-05.dwg

Exhibit "B"



SURVEY OF ACREAGE PARCEL
LOT 1, QUARTER TOWNSHIP 4, TOWNSHIP 2, RANGE 16
UNITED STATES MILITARY DISTRICT
CITY OF NEW ALBANY, COUNTY OF FRANKLIN, STATE OF OHIO

Date: October 18, 2018

Scale: 1" = 100'

Job No: 2018-0045

DAVID L. HAEGELE, TRUSTEE OF THE
DEBORAH S. HAEGELE, TRUSTEE OF THE
FIRST PARCEL
I.N. 200708070138359

P.N. 220-000192 MBJ HOLDINGS, LLC
0.573 GROSS 109.456 AC. (DEED)
0.344 P.R.O. I.N. 201808010103027
0.229 NEF P.N. _____

FRANKLIN COUNTY
LOT 1, QUARTER TOWNSHIP 4,
TOWNSHIP 2, RANGE 16
SECTION 25, TOWNSHIP 2,
RANGE 15, LUCKING COUNTY
MBJ HOLDINGS, LLC
98.756 AC. (OEDD)
I.N. 200107200026097
A.P.N. 94-106896-00.000
S03°28'23"W
50.00'
POB
FCGS 2208
SECTION 5, QUARTER TOWNSHIP 2,
TOWNSHIP 1, RANGE 15

-R/W- MORSE ROAD (WIDTH VARIES)

- = STONE FND.
- = MON. FND.
- = I.P. FND.
- = I.P. SET
- = MAG. NAIL FND.
- = MAG. NAIL SET
- ▲ = R.R. SPK. FND.
- △ = R.R. SPK. SET
- ◆ = P.K. NAIL FND.

I.P. Set are 13/16" I.D. iron pipes
30" long with cap inscribed EMHT INC.

100 0 100 200

GRAPHIC SCALE (in feet)

J:\20180045\DR01\043HEETS\BOUNDARY\20180045-V2-SHEET-03.DWG plotted by SCHROEDER, JACOB on 10/18/2018 10:20:13 AM last saved by JSCHROEDER on 10/18/2018 10:17:20 AM

DRAFT

By Joshua M. Meyer
Professional Surveyor No. 8485

Date

**LIMITED WARRANTY DEED
(O.R.C. 5302.07 - 5302.08)**

KNOW ALL MEN BY THESE PRESENTS that MBJ HOLDINGS, LLC, a Delaware limited liability company (the "GRANTOR"), whose tax mailing address is 8000 Walton Parkway, Suite 120, New Albany, Ohio 43054, for good and valuable consideration paid, grants, with limited warranty covenants, to THE CITY OF NEW ALBANY, OHIO, an Ohio municipal corporation (the "GRANTEE"), whose tax-mailing address is 99 West Main Street, New Albany, Ohio 43054, the following real property, consisting of approximately 3.791 acres, more or less (the "PREMISES");

See legal description attached as Exhibit A and depiction attached as Exhibit B.

Prior Instrument References: Office of the Recorder, Licking County, Ohio
Instrument Nos.

Auditor's Parcel No.: _____

**THE PREMISES IS INTENDED BY GRANTEE TO BE HELD FOR USE AS
PUBLIC RIGHT-OF-WAY.**

The conveyance hereunder is made subject to all covenants, conditions, easements, restrictions, reservations, and other matters of record in the Office of the Recorder, Licking County, Ohio.

[SIGNATURE AND ACKNOWLEDGMENT ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor has caused this Limited Warranty Deed to be executed by its duly authorized signatory this _____ day of _____, 2018.

MBJ HOLDINGS, LLC,
a Delaware limited liability company

By: _____
Brent B. Bradbury, Treasurer

STATE OF OHIO,
COUNTY OF _____, ss:

BE IT REMEMBERED, that on this _____ day of _____, 2018, before me, the subscriber, a Notary Public in and for said county, personally came the above named Brent B. Bradbury, the Treasurer of MBJ HOLDINGS, LLC, a Delaware limited liability company, and acknowledged the signing of the same to be his voluntary act and deed for and as the voluntary act and deed of said company.

Notary Public
My commission expires: _____

This instrument prepared by:
AARON L. UNDERHILL, ESQ.
UNDERHILL & HODGE LLC
8000 WALTON PARKWAY, SUITE 260
NEW ALBANY, OHIO 43054
(614) 335-9320

EXHIBIT A
3.791 ACRES

Situated in the State of Ohio, County of Licking, City of New Albany, lying in Section 25, Township 2, Range 15, United States Military District, and being part of that 98.756 acre tract conveyed to MBJ Holdings, LLC by deed of record in Licking County Instrument Number 200107200026097, part of that 0.38 acre tract conveyed in Parcel I and that 0.62 acre tract conveyed as Parcel II to MBJ Holdings, LLC by deed of record in Instrument Number 201807310015614, and part of that 90.389 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200002020003279, (all references are to the records of the Recorder's Office, Licking County, Ohio, unless otherwise noted) and being more particularly described as follows:

BEGINNING at Franklin County Geodetic Survey Monument 2208, at the intersection of the centerline of Morse Road (with variey) with the common County Line of Franklin and Licking Counties, at the southwest corner of said Section 25, at the northwest corner of Section 5, Quarter Township 2, Township 1, Range 15, at the northeast corner of Quarter Township 1, Township 1, Range 16, at the southeastern corner of Lot 1, Quarter Township 4, Township 2, Range 16, at the southwesterly corner of said 98.756 acre tract, at the southeasterly corner of that 109.456 acre tract conveyed to MBV Holdings, LLC by deed of record in Franklin County Instrument Number 201808010103027;

Thence North 03° 25' 23" East, with said common County Line, with the line common to said Lot 1 and said Section 25, with the line common to said 109.456 acre and 98.736 acre tracts, a distance of 40.00 feet to an iron pin set.

30.00 feet to an iron pin set.
Thence South 85° 59' 31" East, across said 98.756 acre, 0.38 acre, 0.62 acre, and 90.389 acre tracts, a distance of 3274.12 feet to an iron pin set in an easterly line of said 90.389 acre tract, in the westerly line of that 10.505 acre tract conveyed to The City of New Albany by deed of record in Instrument Number 201801240001484, in the westerly right-of-way line of Beech Road (T.R. 88, 60 feet wide);

Thence South 03° 34' 11" West, with said westerly right-of-way line, with the line common to said 90.389 acre and 10.505 acre tracts, a distance of 20.00 feet to an iron pin set in the northerly right-of-way line of Acid Morse Road, at the corner common to said 90.389 acre and 10.505 acre tracts.

way line of said Beech Road, at the corner common to said 90.389 acre and 10.505 acre tracts,
Thence South 85° 59' 31" East, continuing with the line common to said 90.389 acre and 10.505 acre tracts, a distance of 48.00 feet to a magnetic nail set in the centerline of said Beech Road, at the corner common to said 90.389 acre tract, said 10.505 acre, that 1.787 acre tract conveyed to The City of New Albany by deed of record in Instrument Number 201709290020862, and that 78.359 acre tract conveyed to MBI Holdings, LLC by deed of record in Instrument Number 200001230002500.

Then South 03° 34' 11" West, with the centerline of said Beech Road, with the line common to said 90.389 acre and 78.359 acre tracts, a distance of 30.00 feet to a magnetic nail set in the centerline intersection of said Morse Road and said Beech Road, in the line common to said Section 5 and said Section 25, at a corner common to said 90.389 acre and 78.359 acre tracts;

Section 25, at a point common to said 90.389 acre and 78.595 acre tracts.
Thence North 85° 59' 31" West, from the line common to said Section 5 and said Section 25, with the centerline of said Morse Road, with the southerly line of said 90.389 acre, 0.62 acre, 0.38 acre, and 98.756 acre tracts, a distance of 3322.04 feet to the POINT OF BEGINNING, containing 3.791 acres, more or less, of which 2.288 acres is located within the road right-of-way. Of the total 3.791 acres, 1.693 acres lies within Parcel Number 94-108365-00.000, 0.207 acre lies within Parcel Number 94-108342-00.000, and 1.891 acres lies within Parcel Number 94-107502-00.000.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.
Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, three (30) inches long with a elastic glue placed in the toe bearing the initials EMMETT INC.

The bearings herein are based on the Ohio State Plane Coordinate System, South Zone per NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FRANK 30 and FRANK 180, having a bearing of North 85° 57' 24" West, as established by the Franklin County Engineering Department using Global Positioning System technology and equipment.

This description was prepared using documents of record, prior plots of survey, and observed evidence located by an aerial field survey in 1999, 2001, 2002, 2015, 2017, and 2018.

EVANS MECHWART HAMBLETON & TILTON INC.

DRAFT

Joshua M. Meyer Date
Professional Surveyor No. 8485

JMD4_#3
3-221 ac 20180901-V3-BMDV-06.doc

Exhibit "B"

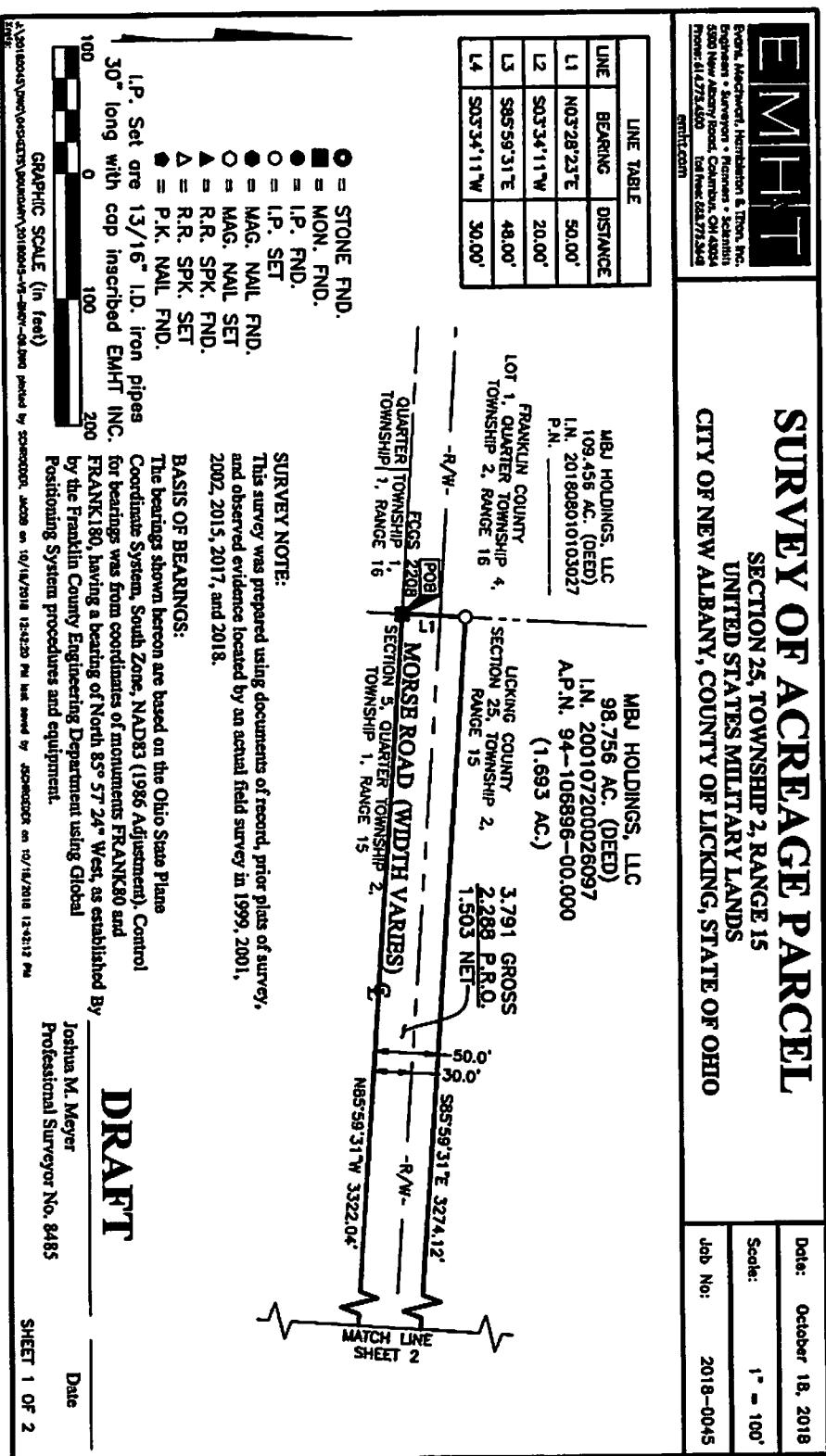


Exhibit "B"



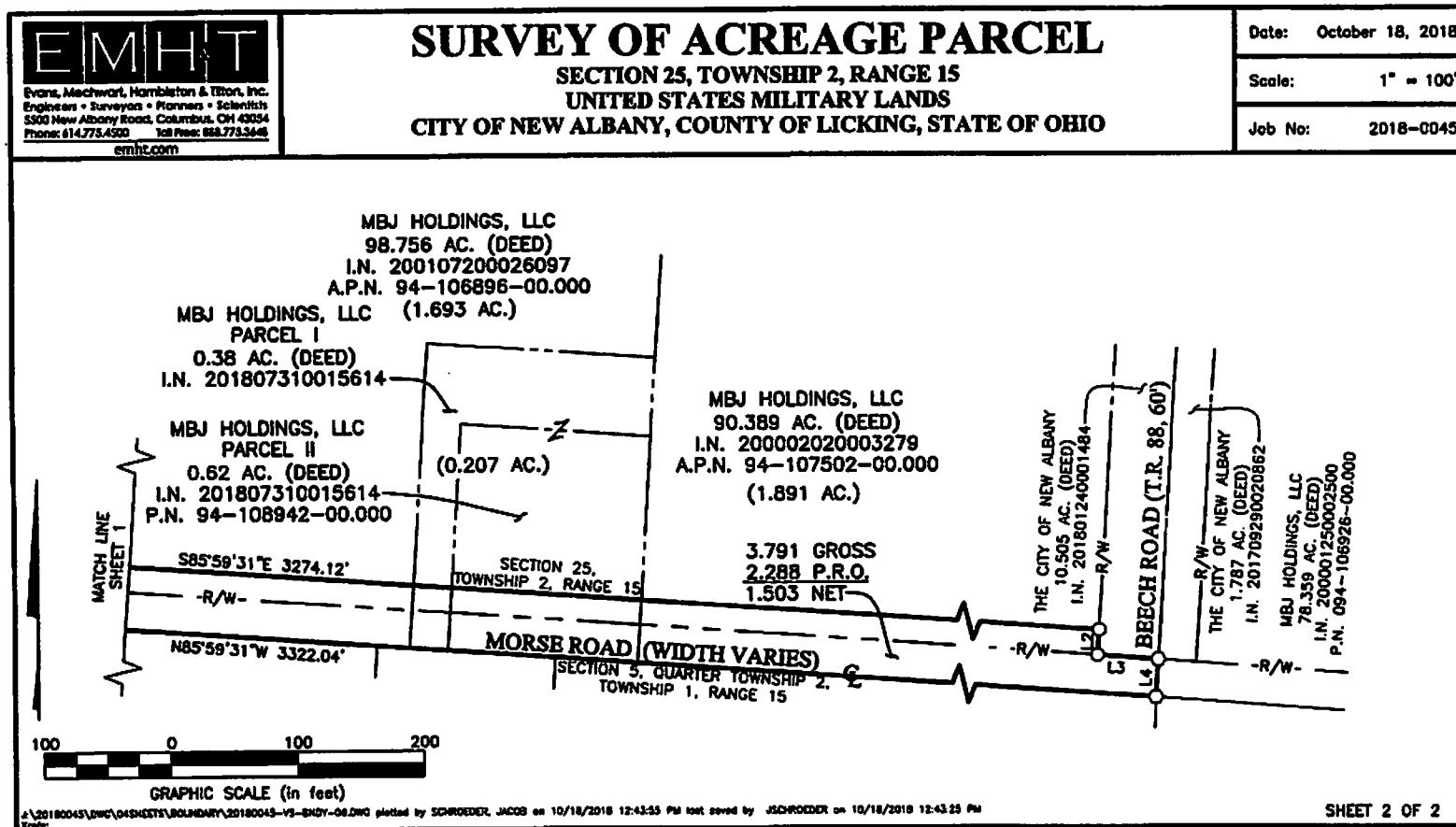
SURVEY OF ACREAGE PARCEL

SECTION 25, TOWNSHIP 2, RANGE 15
UNITED STATES MILITARY LANDS
CITY OF NEW ALBANY, COUNTY OF LICKING, STATE OF OHIO

Date: October 18, 2018

Scale: 1" = 100'

Job No: 2018-0045





Prepared: 10/25/2018
Introduced: 11/06/2018
Revised:
Adopted: 11/06/2018
Effective: 11/06/2018

RESOLUTION R-45-2018

A RESOLUTION TO ACCEPT AN 8.964 AND A 33.957 ACRE CONSERVATION EASEMENT FROM MBJ HOLDINGS LLC, AS REQUESTED BY THE NEW ALBANY COMPANY

WHEREAS, the New Albany Company and MBJ Holdings LLC have obtained permits from the Ohio EPA and U.S. Army Corps of Engineers that require the protection of certain wetlands and watercourses in the general vicinity of the city of New Albany; and

WHEREAS, to protect these environmentally sensitive land areas, the permits require them to be encumbered within a conservation easement; and

WHEREAS, a public entity must be the recipient (grantee) of such easements in order to ensure that the purposes of the easements are fulfilled; and

WHEREAS, the city will be the recipient (grantee) of conservation easements totaling 42.921 acres, and;

WHEREAS, the city will benefit from this dedication of conservation easement.

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 accept an 8.964 acre and a 33.957 acre conservation easement from MBJ Holdings LLC as depicted on Exhibit A and Exhibit B.

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this resolution 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 3. Pursuant to Article VI, Section 6.07(A) of the charter of the City of New Albany, this resolution shall be in effect on and after the earliest period allowed by law.

CERTIFIED AS ADOPTED this 6th day of November, 2018.

Attest:



Sloan T. Spalding
Mayor



Jennifer H. Mason
Clerk of Council

Approved as to form:



Mitchell H. Banchefsky
Law Director

EXHIBIT A - R-45-2018

Exhibit A

STREAM CONSERVATION EASEMENT 8.964 ACRES

Situated in the State of Ohio, County of Licking, Township of Jersey, lying in Sections 16 and 25, Township 2, Range 15, and being on that 50.663 acre tract and that 99.571 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201807310015615, and that 40.024 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201009130017863, (all references are to the records of the Recorder's Office, Licking County, Ohio, unless otherwise noted) and being more particularly described as follows:

BEGINNING at the northwesterly corner of said 99.571 acre tract, in the Licking County line;

Thence North 03° 44' 01" East, with said county line, a distance of 102.30 feet to a point;

Thence across said Grantor's tracts, the following courses and distances:

North 81° 32' 08" East, a distance of 399.53 feet to a point;

North 61° 28' 39" East, a distance of 97.36 feet to a point;

South 83° 19' 02" East, a distance of 74.60 feet to a point;

South 52° 51' 54" East, a distance of 25.64 feet to a point;

South 52° 51' 54" East, a distance of 82.64 feet to a point;

South 75° 27' 06" East, a distance of 129.32 feet to a point;

South 55° 59' 54" East, a distance of 127.60 feet to a point;

South 60° 16' 44" East, a distance of 134.43 feet to a point;

South 73° 32' 17" East, , a distance of 146.74 feet to a point;

South 55° 35' 23" East, a distance of 116.79 feet to a point;

South 11° 38' 42" East, a distance of 108.67 feet to a point;

South 21° 59' 17" East, a distance of 279.89 feet to a point;

South 26° 02' 53" East, a distance of 184.62 feet to a point;

South 38° 12' 55" East, a distance of 265.23 feet to a point;

South 23° 15' 24" East, a distance of 74.95 feet to a point;

South 57° 50' 22" East, a distance of 91.85 feet to a point;

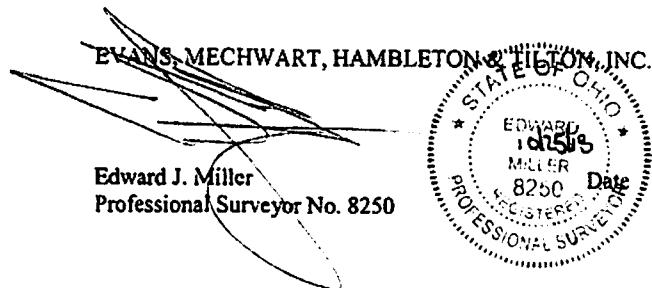
South 71° 18' 21" East, a distance of 1534.35 feet to a point in the westerly right-of-way line of Beech Road;

Thence South 03° 34' 11" West, with said westerly right-of-way line, a distance of 103.59 feet to a point;

Thence across said Grantor's tracts, the following courses and distances:

North 71° 18' 21" West, a distance of 1573.18 feet to a point;

North $57^{\circ} 50' 22''$ West, a distance of 164.73 feet to a point;
North $23^{\circ} 15' 24''$ West, a distance of 131.93 feet to a point;
North $38^{\circ} 12' 55''$ West, a distance of 196.90 feet to a point;
North $26^{\circ} 02' 53''$ West, a distance of 241.19 feet to a point;
North $21^{\circ} 59' 17''$ West, a distance of 233.79 feet to a point;
North $11^{\circ} 38' 42''$ West, a distance of 94.08 feet to a point;
North $55^{\circ} 35' 23''$ West, a distance of 60.65 feet to a point;
North $73^{\circ} 32' 17''$ West, a distance of 157.33 feet to a point;
North $60^{\circ} 16' 44''$ West, a distance of 90.21 feet to a point;
North $55^{\circ} 59' 54''$ West, a distance of 138.66 feet to a point;
North $68^{\circ} 04' 53''$ West, a distance of 54.23 feet to a point;
North $75^{\circ} 27' 06''$ West, a distance of 98.07 feet to a point;
North $52^{\circ} 51' 54''$ West, a distance of 101.04 feet to a point;
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South $61^{\circ} 28' 39''$ West, a distance of 83.29 feet to a point;
South $81^{\circ} 32' 08''$ West, a distance of 438.86 feet to the POINT OF BEGINNING,
containing 8.964 acres, more or less.



EJM: sy
8.964 ac 20180045-VS-ESMT-CONS-01.doc

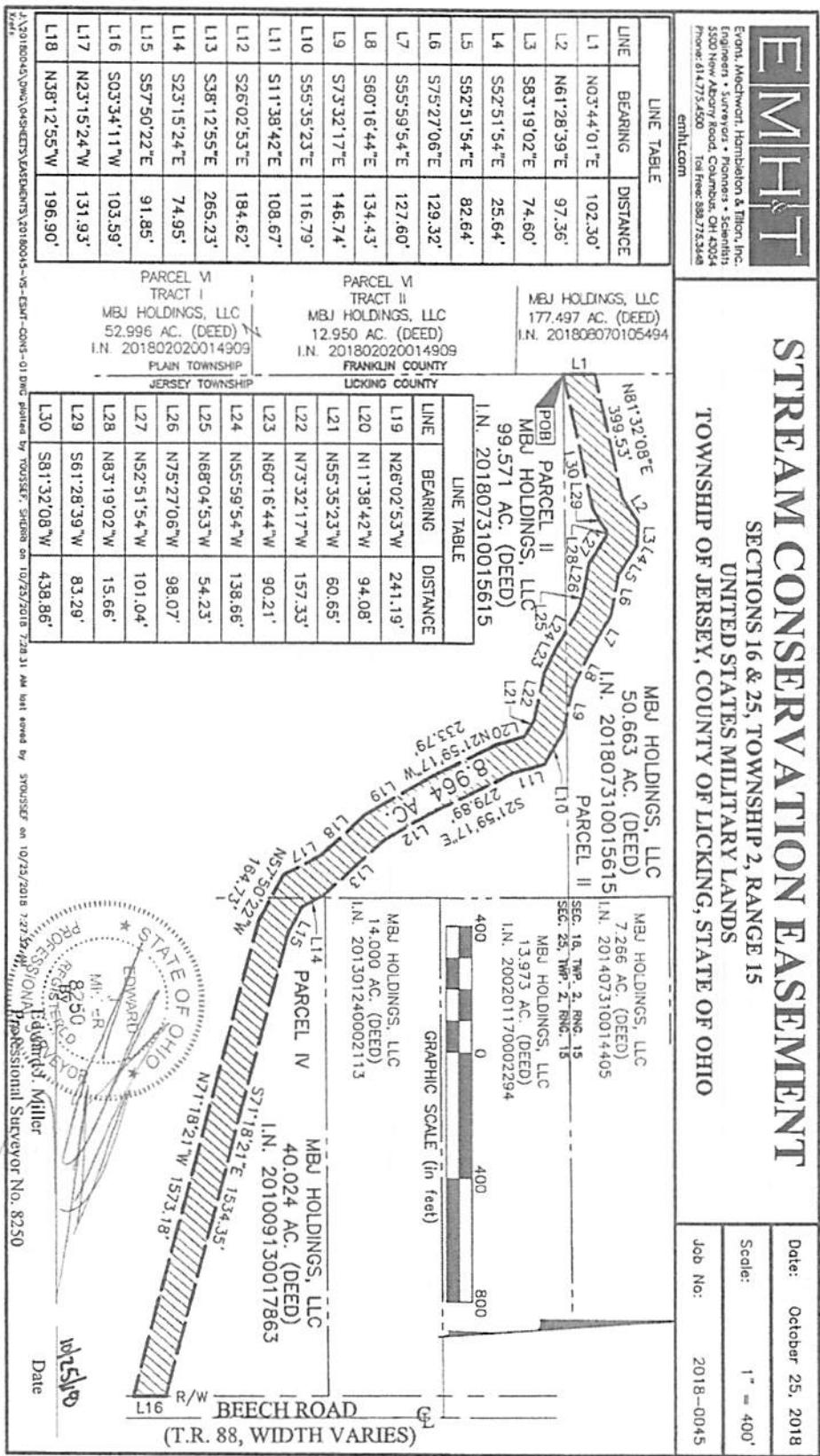


Exhibit A

CONSERVATION EASEMENT AGREEMENT

This Conservation Easement Agreement ("Agreement") is made to be effective on the last date of signature below (the "Effective Date"), by and between **MBJ HOLDINGS, LLC**, a Delaware limited liability company having its address at 8000 Walton Parkway, Suite 120, Columbus, Ohio 43054 ("MBJ"), and the **CITY OF NEW ALBANY, OHIO**, an Ohio charter municipality having its address at 99 W. Main Street, New Albany, Ohio 43054 ("City").

Concerning Parcel Numbers: Licking County Auditor Parcel No.

Prior Instrument

Reference:

Office of the Recorder of Licking County, Ohio Instrument No.

RECITALS:

WHEREAS, MBJ is the sole owner in fee simple of certain real property situated in Licking County, Ohio, which is identified as of the Effective Date as Licking County Auditor's Tax Parcels _____ (the "Property"); and

WHEREAS, MBJ desires to convey to City the right to preserve and protect, in perpetuity, the conservation values of that limited portion of the Property that is generally depicted in Exhibit A (attached hereto and incorporated herein by reference) and is more particularly described in Exhibit B, which is attached hereto and incorporated herein by reference (the "Conservation Easement Area"); and

WHEREAS, this Agreement and the Conservation Easement (as such term is defined below) created hereby is intended to preserve a watercourse and adjacent areas to maintain, subject to the provisions of this Agreement, such area in its natural condition and to further enable the Conservation Easement Area as stream preservation credits applicable to future permits to be obtained by MBJ from the U.S. Army Corps of Engineers and/or the Ohio Environmental Protection Agency (a "Future Permit" or collectively the "Future Permits") relating to the removal, relocation or other impacts on other waterways in the same watershed as the Conservation Easement Area.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained herein, the parties hereto agree as follows:

AGREEMENT:

1. **Grant of Easement:** MBJ hereby grants and conveys to City an estate, interest, and easement in and to the Conservation Easement Area of the nature and character and to the extent hereinafter expressed (the "Conservation Easement"), to be and to constitute a servitude upon that portion of the Property located within the boundaries of the Conservation Easement Area, which estate, interest, and easement will result from the covenants and restrictions set forth herein. To this end and for the purpose of accomplishing the intent of the parties hereto, MBJ covenants with and for the benefit of City on behalf of itself, its heirs, successors and assigns, to do and refrain from doing, severally and collectively, upon the Conservation Easement Area, the various acts hereinafter described.

2. **Term of Easement:** The Conservation Easement granted hereunder shall be perpetual to the extent permitted by law and shall have no expiration date. Notwithstanding the foregoing, future stream crossings for the purpose of extending private access drives, utility crossings and storm water drainage piping (each individually a "Crossing" and collectively the "Crossings") and the areas subject to any Crossing shall not be included in the Conservation Easement. At such time or from time to time as any Crossing is identified the City and the then-owner(s) of the real property on which a Crossing is to be constructed shall execute and record in the office of the Recorder of Licking County, Ohio an amendment to this Conservation Easement terminating this Conservation Easement as to the portion of the Conservation Easement utilized for the Crossing. In no event shall any single stream crossing remove from this Conservation Easement more than one hundred fifty lineal feet (150 LF) of stream and the aggregate of such stream crossings shall not remove more than four hundred fifty lineal feet (450 LF) of stream. All Crossing shall cross the stream in an approximately perpendicular manner in so far as is reasonably practicable

3. **Conservation Values:** The Conservation Easement Area possesses substantial value in conserving and protecting the physical, biological, chemical and overall ecological integrity of the real property that it encompasses and is important in the protection of the existing or designed use of the waters of the State of Ohio pursuant to Section 303 of the Clean Water Act, 33 U.S.C Section 1313 and Section 6111.041 of the Ohio Water Pollution Control Act.

4. **Prohibited Actions:** Any activity on or use of the Conservation Easement Area that is inconsistent with the purposes of the Conservation Easement or detrimental to the conservation values expressed herein is expressly prohibited. By way of example, and not of limitation, the following activities and uses are explicitly prohibited within the Conservation Easement Area, except as permitted or required by the Permits:

- a. **Commercial Activities:** Commercial development or industrial activity;
- b. **Construction:** The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots;

- c. **Cutting Vegetation:** Any cutting of trees, ground cover or vegetation, or destroying by any means of herbicides or pesticides;
- d. **Land Surface Alteration:** The removal of soil, sand, gravel, rock, minerals or other materials, or doing any act that would alter the topography of the Conservation Easement Area;
- e. **Dumping:** The placement of waste, garbage and unsightly or offensive materials;
- f. **Water Courses:** Dredging, straightening, filling, channeling, impeding, diverting, or otherwise altering any natural water courses, streams and adjacent riparian buffers located within the Conservation Easement Area;
- g. **Utilities:** The installation of new transmission lines for electric power, communications, and natural gas or petroleum products, except as contemplated in Section 2 above;
- h. **Other Activities:** Each and every other activity or construction project, which endangers the natural, scenic, biological, or ecological integrity of the Conservation Easement Area.

5. **Rights of City and MBJ:** MBJ confers upon the City and, to the extent required under any Future Permit, reserves unto itself, the following rights to perpetually maintain the conservation values of the Conservation Easement Area:

- a. **Right to Enter:** City and MBJ have the right to enter upon the Conservation Easement Area at reasonable times to monitor or to enforce compliance with this Agreement, provided that such entry shall occur after prior reasonable notice is provided to the owner of the Conservation Easement Area and appropriate consideration is given to the reasonable security requirement of the owner. To the extent reasonably possible entry shall be made from a public right-of-way. City may not enter upon or unreasonably interfere with the quiet enjoyment of the Property by its owner. City or MBJ have no right to permit others to enter the Conservation Easement Area. The general public is not granted access to the Conservation Easement Area or the Property under this Agreement.
- b. **Right to Preserve:** City has the right to prevent any activity on or use of the Conservation Easement Area that is inconsistent with the terms or purposes of the Conservation Easement. However, nothing herein is intended to place any restrictions on the use or development of those portions of the Property located outside of the boundaries of the Conservation Easement Area.

- c. **Right to Require Restoration:** City shall have the right to require the restoration of the areas or features of the Conservation Easement Area which are damaged by any activity inconsistent with the requirements of this Agreement. City's rights under this paragraph shall include, and not be limited to, the right to initiate any proceedings and actions in law or equity as are necessary to enforce the terms of this Agreement or facilitate the restoration of the Conservation Easement Area.
- d. **Signs:** City shall have the right to place signs within the Conservation Easement Area which identify the land as being protected by the Conservation Easement. The number, size and content of any such signs are subject to the prior approval of the owner of the Conservation Easement Area, which shall not be unreasonably delayed or withheld. City reserves the right to post or clearly mark the boundaries of the Conservation Easement Area at locations that are mutually agreed upon with the owner of the Conservation Easement Area.
- e. **Right to Comply with Future Permits:** MBJ shall have the right to take any action within the Conservation Easement Area as may be required to comply with the terms of any Future Permit, including but not limited to installing signs as provided in Section 5.d above, removing dead or diseased trees, removing invasive species, making improvements or modifications to the stream, planting new vegetation, and conducting periodic compliance inspections.

Notwithstanding the removal of any portion of the Conservation Easement Area from this Conservation Easement as contemplated by Section 2 above each of City and MBJ shall have a license to enter upon any Crossing for the limited purpose of accessing any portion of the remaining Conservation Easement Area as may be necessary to the exercise of the rights set forth in this Section 5.

6. **Permitted Uses:** MBJ reserves to itself, and to its successors and assigns, with respect to that portion of the Property that includes that Conservation Easement Area, all rights accruing from its ownership of the Conservation Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Conservation Easement Area that are not expressly prohibited herein and are not inconsistent with the purposes of this Agreement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- a. **Right to Convey:** The right to sell, mortgage, bequeath, donate or otherwise convey any or all portions of the Property, including, without limitation, the Conservation Easement Area. Any conveyance shall remain subject to the terms and conditions of this Agreement and the

subsequent interest holder shall be bound by the terms and conditions hereof.

- b. **Right to Access:** The right to unimpeded access to the Conservation Easement Area over portions of the Property located outside of the Conservation Easement Area so as to provide a means of ingress and egress to and from the Conservation Easement Area and a public street, provided, however, that the route of such access shall be mutually agreed upon by City and the owner of the portion of the Property through which such access is proposed to occur prior to each entry by the City thereupon. In addition, vehicular and pedestrian crossings of the Conservation Easement Area shall be permitted, but only if all relevant permits and permissions are first obtained from the Ohio Environmental Protection Agency and/or the U.S. Army Corps of Engineers.
- c. **Use of Property:** Except as provided in the last paragraph of Section 5 above, the portions of the Property located outside of the boundaries of the Conservation Easement Area are not subject to the restrictions of the Conservation Easement created hereunder. MBJ and its successors and assigns shall be permitted to use and develop all portions of the Property under its ownership which are located outside of the boundaries of the Conservation Easement Area without restriction.

7. **City's Remedies:** In the event of a breach of this Agreement, City shall have the following remedies and shall be subject to the following limitations:

- a. **Delay in Enforcement:** A delay in enforcement shall not be construed as a waiver of City's rights to enforce the terms of this Agreement.
- b. **Acts Beyond Grantor's Control:** City may not bring an action against MBJ or its successors or assigns for modifications to the Conservation Easement Area which result from causes beyond their control. Examples include, without limitation, unintentional fires, storms, natural earth movement, trespassers, or a party's well-intentioned actions in response to an emergency which result in changes to the Conservation Easement Area. MBJ and its successors and assigns shall have no responsibility under this Agreement for such unintended modifications. City may, however, bring an action against another party for modifications that impair the conservation values identified in this Agreement.
- c. **Notice and Demand:** If City determines that a person or entity is in violation of the terms of the Conservation Easement or this Agreement, or that a violation is threatened, then it shall provide written notice via

certified mail to such person or entity. The written notice shall identify the violation and request corrective action to cure the violation or restore the relevant real property.

- d. **Failure to Act:** If, for a thirty (30) day period after the date of written notice provided pursuant to subparagraph c. above, the person or entity continues violating the terms of the Conservation Easement or this Agreement, or if the person or entity does not abate the violation or begin to implement corrective measures within the foregoing thirty (30) day period requested by City, or fails to continue diligently to cure such violation until finally cured, City shall be permitted to bring an action in law or in equity to enforce the terms of the Conservation Easement or this Agreement and recover any damages for the loss of the conservation values protected hereunder. City is also entitled to bring an action to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Conservation Easement Area. If a court determines that the person or entity has failed to comply with the terms of the Conservation Easement or this Agreement, then City may seek an order requiring the person or entity to reimburse all reasonable costs and attorney fees incurred by City in compelling such compliance.
- e. **Unreasonable Litigation:** If City initiates litigation against MBJ or its successors or assigns to enforce this Agreement, and if the court determines that the litigation was without reasonable cause or in bad faith, then City is to reimburse such parties' reasonable costs and attorneys' fees incurred in defending the action.
- f. **Grantor's Absence:** If City determines that the terms of the Conservation Easement or the Agreement is, or is expected to be, violated, then City will make a good faith effort to notify the then-owner of the Conservation Easement Area. If, through reasonable efforts, the owner cannot be notified, and if City determines that emergency circumstances exist that justify prompt action to mitigate or prevent impairment of the Conservation Easement, then City may pursue its lawful remedies without prior notice and without awaiting a response from such owner.
- g. **Cumulative Remedies:** The preceding remedies of City are cumulative. Any or all of the remedies may be invoked by City if there is an actual or threatened violation of this Agreement.

- 8. **Ownership Costs and Liabilities:** Except as otherwise required by this Agreement, in accepting the Conservation Easement City shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Conservation Easement Area. City and its

administrators, officers, employees, and shall have no liability arising from injury or death to any person or from physical damage to any other property located within the Conservation Easement Area or otherwise.

9. **Remediation:** If, at any time, there occurs, or has occurred, a release in, on, or about the Conservation Easement Area of any substance now or hereafter defined, listed, or otherwise classified, and in excess of any amount permitted pursuant to any federal, state, or local law, regulation, or requirement or in an amount that is hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, then each owner (with respect to the portion of the Property that it owns) shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by City, in which case City shall be responsible therefor.

10. **Cessation of Existence:** If City shall cease to be authorized to acquire and hold conservation easements, then this Agreement shall become vested in another qualified entity that is eligible to acquire and hold a conservation easement under Ohio law, upon the consent of the owner of the Conservation Easement Area and the Ohio EPA. MBJ or its successors or assigns shall execute and deliver such documents and instruments as may be necessary to properly reflect the substitution or replacement of the City hereunder.

11. **Termination:** The Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain. If subsequent circumstances render the purposes of the Conservation Easement impossible to fulfill, then the Conservation Easement and this Agreement may be partially or entirely terminated only by judicial proceedings initiated by the owner of the Conservation Easement Area or City.

12. **Recordation:** MBJ shall record this instrument in a timely fashion in the official records of Licking County, Ohio, and City may re-record it at any time as may be required to preserve its rights in this Easement.

13. **Assignment:** This Agreement is transferable, but City may assign its rights and obligations hereunder only to an organization mutually agreed to by the fee simple owners of the Property, Ohio EPA, and the transferee, provided that the organization is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended, (or any successor provision then applicable) and authorized to acquire and hold conservation easements under Ohio law. As a condition of such transfer, City shall require that the transferee organization must agree in writing to assume all of City's obligations and duties hereunder and to carry out the conservation purposes that this grant is intended to advance. City agrees to give written notice to the owner(s) of the Property of a transfer or an assignment at least (20) days prior to the date of such transfer or assignment and to furnish promptly to such owner(s) an executed copy of the assignment and assumption agreement to be recorded by City after the expiration of such 20-day notice period in the official records of Licking County, Ohio. The

failure of City to give such notice shall not affect the validity of this Agreement nor limit its enforceability in any way.

14. **Liberal Construction:** This Agreement shall be liberally construed in favor of maintaining the conservation values of the Conservation Easement Area. The section headings and subheadings identified herein are for reference purposes only and shall not be used to interpret the meaning of any provision hereof.

15. **Notices:** For purposes of this Agreement, notices shall be provided to the parties, by personal delivery or by mailing a written notice via certified mail, return receipt requested, to that party at the address shown at the outset of this Agreement, or with respect to any successors or assigns of MBJ, to the tax mailing address of the relevant party as evidenced in the records of the Office of the Auditor of Licking County, Ohio. Notice is deemed given upon (i) personal delivery or (ii) two days after depositing the properly addressed notice with the U.S. Postal Service.

16. **Severability:** If any portion of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

17. **Successors:** This Agreement and the Conservation Easement created hereunder shall be a covenant running with the land and shall constitute a burden on the Conservation Easement Area and shall run to the benefit of the parties hereto and their respective successors or assigns in interest. All subsequent owners of the Conservation Easement Area shall be bound to all provisions of this Agreement to the same extent as the current parties.

18. **Termination of Rights and Obligations:** MBJ's future rights and obligations under this Agreement shall terminate upon the transfer of its interest in the Conservation Easement Area. Liability for acts or omissions occurring prior to transfer shall survive any such transfer.

19. **Applicable Law:** This Agreement shall be governed by and construed in accordance with the substantive law of the State of Ohio, irrespective of its conflict of law provisions.

20. **"As Is" Condition:** City has examined the Conservation Easement Area and agrees to accept the "as is" condition of the same for purposes of this Agreement.

21. **Site Monitoring:** The Conservation Easement Area shall be inspected by City at a minimum of one time annually.

22. **No Merger:** The Conservation Easement provided under this Agreement is intended to facilitate the perpetual protection of the Conservation Easement Area as provided herein. No easement granted or enjoyed hereunder shall be eliminated through the doctrine of merger as the result of City holding title to and/or having ownership of the Conservation Easement Area.

IN WITNESS WHEREOF, MBJ and City have set their respective hands to this Agreement as of the dates written below, to be effective as of the Effective Date.

MBJ:

MBJ HOLDINGS, LLC,
a Delaware limited liability company

By: _____
Brent B. Bradbury, Treasurer

Date: _____

**STATE OF OHIO
COUNTY OF FRANKLIN**

The foregoing instrument was acknowledged before me this _____ day of December, 2018, by Brent B. Bradbury, the Treasurer of **MBJ Holdings, LLC**, a Delaware limited liability company, on behalf of the company.

Notary Public

CITY:

**CITY OF NEW ALBANY,
an Ohio municipal corporation**

By: _____

Name: _____

Title: _____

Date: _____

**STATE OF OHIO
COUNTY OF FRANKLIN**

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____,
the _____ of the City of New Albany, Ohio, an
Ohio municipal corporation, on behalf of said municipal corporation.

Notary Public

Approved as to Form:

Mitchell Banchefsky, City Law Director

This instrument prepared by:

Aaron L. Underhill, Esq.
Underhill & Hodge LLC
8000 Walton Parkway, Suite 260
New Albany, Ohio 43054
(614) 335-9320

Exhibit A – Depiction of Conservation Easement Area

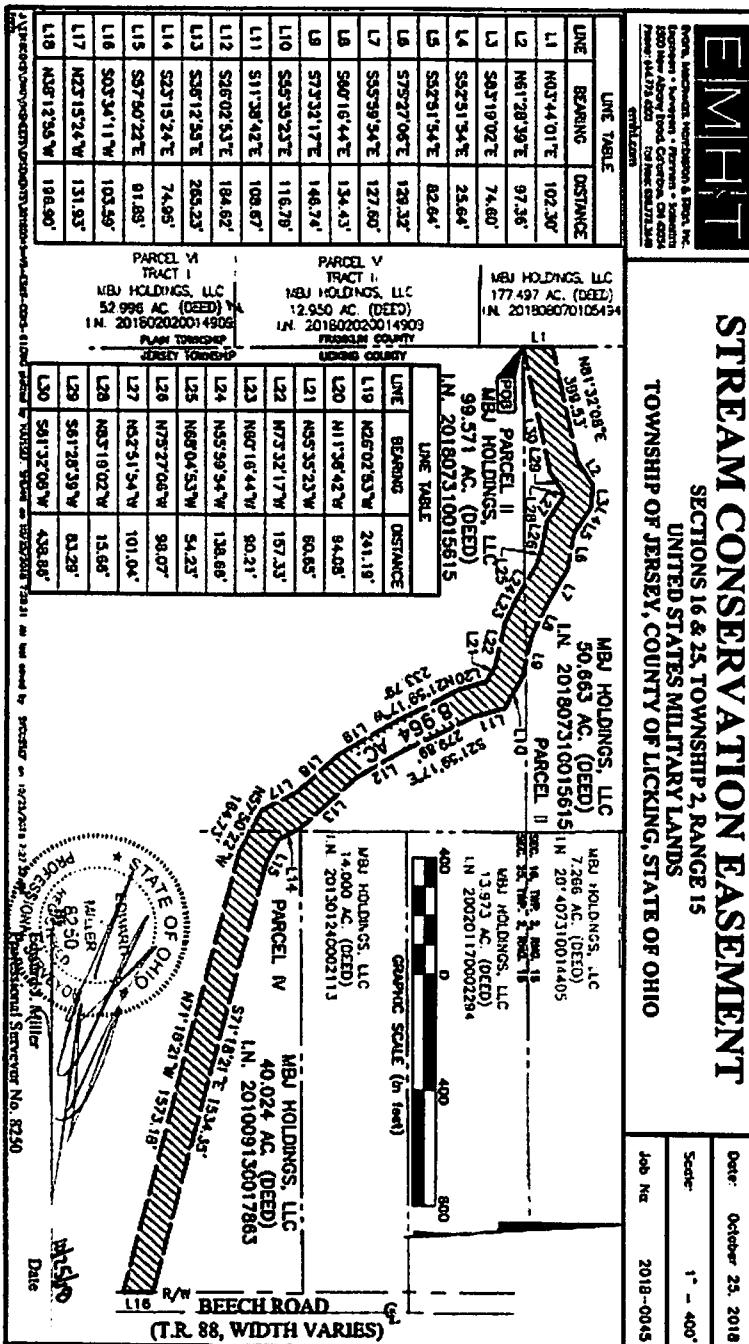


EXHIBIT B - R-45-2018

Exhibit B – Legal Description of Easement Area

STREAM CONSERVATION EASEMENT 8.964 ACRES

Situated in the State of Ohio, County of Licking, Township of Jersey, lying in Sections 16 and 25, Township 2, Range 15, and being on that 50.663 acre tract and that 99.571 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201807310015615, and that 40.024 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201009130017863, (all references are to the records of the Recorder's Office, Licking County, Ohio, unless otherwise noted) and being more particularly described as follows:

BEGINNING at the northwesterly corner of said 99.571 acre tract, in the Licking County line;

Thence North 03° 44' 01" East, with said county line, a distance of 102.30 feet to a point;

Thence across said Grantor's tracts, the following courses and distances:

North 81° 32' 08" East, a distance of 399.53 feet to a point;

North 61° 28' 39" East, a distance of 97.36 feet to a point;

South 83° 19' 02" East, a distance of 74.60 feet to a point;

South 52° 51' 54" East, a distance of 25.64 feet to a point;

South 52° 51' 54" East, a distance of 82.64 feet to a point;

South 75° 27' 06" East, a distance of 129.32 feet to a point;

South 55° 59' 54" East, a distance of 127.60 feet to a point;

South 60° 16' 44" East, a distance of 134.43 feet to a point;

South 73° 32' 17" East, , a distance of 146.74 feet to a point;

South 55° 35' 23" East, a distance of 116.79 feet to a point;

South 11° 38' 42" East, a distance of 108.67 feet to a point;

South 21° 59' 17" East, a distance of 279.89 feet to a point;

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South 38° 12' 55" East, a distance of 265.23 feet to a point;

South 23° 15' 24" East, a distance of 74.95 feet to a point;

South 57° 50' 22" East, a distance of 91.85 feet to a point;

South 71° 18' 21" East, a distance of 1534.35 feet to a point in the westerly right-of-way line of Beech Road;

Thence South 03° 34' 11" West, with said westerly right-of-way line, a distance of 103.59 feet to a point;

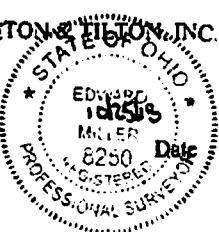
Thence across said Grantor's tracts, the following courses and distances:

North 71° 18' 21" West, a distance of 1573.18 feet to a point;

North 57° 50' 22" West, a distance of 164.73 feet to a point;
North 23° 15' 24" West, a distance of 131.93 feet to a point;
North 38° 12' 55" West, a distance of 196.90 feet to a point;
North 26° 02' 53" West, a distance of 241.19 feet to a point;
North 21° 59' 17" West, a distance of 233.79 feet to a point;
North 11° 38' 42" West, a distance of 94.08 feet to a point;
North 55° 35' 23" West, a distance of 60.65 feet to a point;
North 73° 32' 17" West, a distance of 157.33 feet to a point;
North 60° 16' 44" West, a distance of 90.21 feet to a point;
North 55° 59' 54" West, a distance of 138.66 feet to a point;
North 68° 04' 53" West, a distance of 54.23 feet to a point;
North 75° 27' 06" West, a distance of 98.07 feet to a point;
North 52° 51' 54" West, a distance of 101.04 feet to a point;
North 83° 19' 02" West, a distance of 15.66 feet to a point;
South 61° 28' 39" West, a distance of 83.29 feet to a point;

South 81° 32' 08" West, a distance of 438.86 feet to the POINT OF BEGINNING,
containing 8.964 acres, more or less.

Edward J. Miller
Professional Surveyor No. 8250



EM by
8.964 ac 2018045-V3-ESMT-CONS-01.doc

Exhibit B

CONSERVATION EASEMENT 33.957 ACRES

Situated in the State of Ohio, County of Licking, City of New Albany and Township of Jersey, lying in Section 25, Township 2, Range 15, and being out of that 30.204 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200201170002294, that 99.571 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201807310015615, and that 40.024 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201009130017863, (all references are to the records of the Recorder's Office, Licking County, Ohio, unless otherwise noted) and being more particularly described as follows:

BEGINNING at the southwesterly corner of said 30.204 acre tract;

Thence North 86° 05' 37" West, with the southerly line of said 99.571 acre tract, a distance of 50.00 feet to a point;

Thence across said Grantor's tracts, the following courses and distances:

North 03° 39' 34" East, a distance of 887.67 feet to a point;

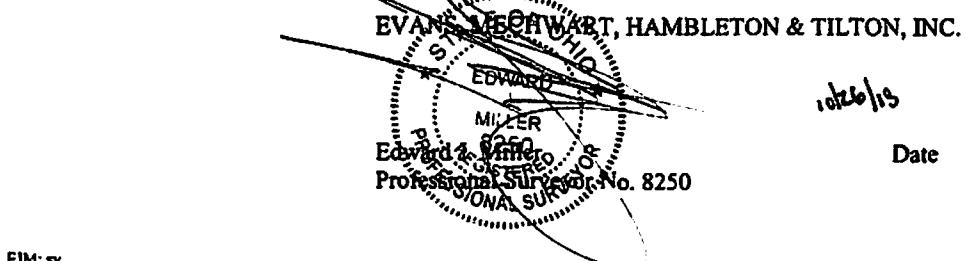
South 86° 25' 30" East, a distance of 1641.33 feet to a point in the westerly right-of-way line of Beech Road;

Thence with said westerly right-of-way line, the following courses and distances:

South 00° 12' 44" West, a distance of 371.72 feet to a point;

South 03° 34' 11" West, a distance of 524.09 feet to a point in the southerly line of said 30.204 acre tract;

Thence North 86° 10' 08" West, with said southerly line, a distance of 1614.51 feet to the POINT OF BEGINNING, containing 33.957 acres, more or less.



EJM: sy
33.957 ac 20180045-VS-ESMT-CONS-02.doc

Exhibit B

CONSERVATION EASEMENT AGREEMENT

This Conservation Easement Agreement ("Agreement") is made to be effective on the last date of signature below (the "Effective Date"), by and between MBJ Holdings, LLC, a Delaware limited liability company ("Grantor"), and the City of New Albany, a municipal corporation existing under the laws of the State of Ohio, having its address at 99 W. Main Street, New Albany, Ohio 43054 ("Grantee").

Parcel Number: Licking County Auditor Parcel Nos. _____
and _____

Prior Instrument References: Instrument Nos. _____ and
_____, Office of the Recorder of
Licking
County, Ohio

RECITALS:

WHEREAS, Grantor is the sole owner in fee simple of certain real property situated in Licking County, Ohio that is more particularly identified and described in Instrument Numbers _____ and _____, which are of record with the Office of the Recorder of Licking County, Ohio (together, the "Property"); and

WHEREAS, Grantor intends, as the owner of the Property, to convey to Grantee the right to preserve and protect, in perpetuity, the conservation values of that limited portion of the Property that is more particularly described and depicted in Exhibit A, which is attached hereto and incorporated herein by reference (the "Conservation Easement Area"); and

WHEREAS, this Agreement and the Conservation Easement (as such term is defined below) created hereby is required by a Level 3 Isolated Wetlands Permit #_____ issued by the Ohio Environmental Protection Agency on _____, 2018 and by a Section 404 Water Quality Certification Permit No. _____ dated _____, 2018, as issued by the U.S. Army Corps of Engineers. As a

condition of these permits, preserved wetland areas must be protected by a conservation easement, and this Agreement is intended to satisfy this condition. In addition, the Conservation Easement Area established under this Agreement may be used to satisfy similar wetlands preservation requirements pursuant to similar permits issued or to be issued in the future to Grantor.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained herein, the parties hereto agree as follows:

AGREEMENT:

1. **Grant of Easement:** Grantor hereby grants and conveys to Grantee, its successors and assigns, an estate, interest, easement and servitude in and to the Conservation Easement Area of the nature and character and to the extent hereinafter expressed (the "Conservation Easement"), to be and to constitute a servitude upon that portion of the Property located within the boundaries of the Conservation Easement Area, which estate, interest, easement and servitude will result from the covenants and restrictions set forth herein. To this end and for the purpose of accomplishing the intent of the parties hereto, Grantor covenants with and for the benefit of Grantee on behalf of itself, its heirs, successors and assigns, to do and refrain from doing, severally and collectively, upon the Conservation Easement Area, the various acts hereinafter described.

2. **Term of Easement:** The Conservation Easement granted hereunder shall be perpetual to the extent permitted by law and shall have no expiration date.

3. **Conservation Values:** The Conservation Easement Area possesses substantial value in conserving and protecting the physical, biological, chemical and overall ecological integrity of the real property that it encompasses and is important in the protection of the existing or designed use of the waters of the State of Ohio pursuant to Section 303 of the Clean Water Act, 33 U.S.C Section 1313 and Section 6111.041 of the Ohio Water Pollution Control Act.

4. **Prohibited Actions:** Any activity on or use of the Conservation Easement Area that is inconsistent with the purposes of the Conservation Easement or detrimental to the conservation values expressed herein is expressly prohibited. By way of example, and not of limitation, the following activities and uses are explicitly prohibited within the Conservation Easement Area:

a. **Commercial Activities:** Commercial development or industrial activity;

- b. **Construction:** The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots;
- c. **Cutting of Vegetation:** Any cutting of trees, ground cover or vegetation, or destroying by any means of herbicides or pesticides, except as allowed under relevant permits;
- d. **Land Surface Alteration:** The removal of soil, sand, gravel, rock, minerals or other materials, or doing any act that would alter the topography of the Conservation Easement Area;
- e. **Dumping:** The placement of waste, garbage and unsightly or offensive materials;
- f. **Water Courses:** Dredging, straightening, filling, channeling, impeding, diverting, or otherwise altering any natural water courses, streams and adjacent riparian buffers located within the Conservation Easement Area, except as allowed under the relevant permits;
- g. **Utilities:** The installation of new transmission lines for electric power, communications, natural gas or petroleum products;
- h. **Other Activities:** Each and every other activity or construction project which endangers the natural, scenic, biological, or ecological integrity of the Conservation Easement Area.

5. **Rights of Grantee:** Grantor confers the following rights upon Grantee to perpetually maintain the conservation values of the Conservation Easement Area:

- a. **Right to Enter:** Grantee has the right to enter upon the Conservation Easement Area at reasonable times to monitor or to enforce compliance with this Agreement, provided that such entry shall occur after prior reasonable notice is provided to Grantor. To the extent reasonably practicable, entry shall be made from a public right-of-way. Grantee may not enter upon or unreasonably interfere with the Grantor's use and quiet enjoyment of the Property. Grantee has no right to permit others to enter the Conservation Easement Area. The general public is not granted access to the Conservation Easement Area or the Property under this Agreement.

- b. **Right to Preserve:** Grantee has the right to prevent any activity on or use of the Conservation Easement Area that is inconsistent with the terms or purposes of the Conservation Easement. However, nothing herein is intended to place any restrictions on the use or development of those portions of the Property located outside of the boundaries of the Conservation Easement Area.
- c. **Right to Require Restoration:** Grantee shall have the right to require the restoration of the areas or features of the Conservation Easement Area which are damaged by any activity inconsistent with the requirements of this Agreement. Grantee's rights under this paragraph shall include, and not be limited to, the right to initiate any proceedings and actions in law or equity as are necessary to enforce the terms of this Agreement or facilitate the restoration of the Conservation Easement Area.
- d. **Signs:** Grantee shall have the right to place signs within the Conservation Easement Area which identify the land as being protected by the Conservation Easement. The number, size and content of any such signs are subject to the Grantor's prior approval, which shall not be unreasonably delayed or withheld. Grantee reserves the right to post or clearly mark the boundaries of the Conservation Easement Area at mutually agreed upon locations within the Conservation Easement Area.

6. **Permitted Uses:** Grantor reserves to itself, and to its successors and assigns, all rights accruing from its ownership of the Conservation Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Conservation Easement Area that are not expressly prohibited herein and are not inconsistent with the purposes of the Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- a. **Right to Convey:** Grantor retains the right to sell, mortgage, bequeath, donate or otherwise convey the Property, including, without limitation, the Conservation Easement Area. Any conveyance shall remain subject to the terms and conditions of this Agreement and the subsequent interest holder shall be bound by the terms and conditions hereof. Notwithstanding any conveyance of all or any portion of the Property, Grantor shall retain the right to enter upon the Conservation Easement Area as otherwise provided herein for the purpose of complying with the provisions of any applicable permits, provided that to the extent reasonably practicable such entry shall be made from other real property owned by Grantor or from a public right-of-way.

- b. **Right to Access:** Grantor shall retain the right to unimpeded access to the Conservation Easement Area, subject to the provisions of Section 6.a above.
- c. **Limited Encroachment:** Grantor may temporarily encroach into the wetland buffer portion of the Conservation Easement Area in order to facilitate the construction of buildings to be located on that portion of the Property that is found outside of the boundaries of the Conservation Easement Area. Limited removal of trees within the Conservation Easement Area shall be permitted in association with such temporary encroachment. Grantor shall replace any trees within the Conservation Easement Area that have been damaged or removed during construction of these buildings and/or during the permitted temporary encroachment, as follows:
 - i. Trees having a trunk diameter of 4 inches up to 18 inches will be replaced on a one-for-one basis;
 - ii. Trees having a trunk diameter of 18 inches up to 30 inches are to be replaced on a three-for-one basis;
 - iii. Trees having a trunk diameter of 30 inches and over are to be replaced on a five-for-one basis; and
 - iv. Trees with a trunk diameter of less than 4 inches are not required to be replaced.

- c. **Use of Property:** The portions of the Property located outside the boundaries of the Conservation Easement Area are not subject to the restrictions of the Conservation Easement created hereunder. Grantor shall be permitted to use and develop all portions of the Property located outside the boundaries of the Conservation Easement Area without restriction.

7. **Grantee's Remedies:** In the event of a breach of this Agreement, Grantee shall have the following remedies and shall be subject to the following limitations:

- a. **Delay in Enforcement:** A delay in enforcement shall not be construed as a waiver of Grantee's rights to enforce the terms of this Agreement.
- b. **Acts Beyond Grantor's Control:** Grantee may not bring an action against Grantor for modifications to the Conservation

Easement Area which result from causes beyond Grantor's control. Examples include, without limitation, unintentional fires, storms, natural earth movement, trespassers or the Grantor's well-intentioned actions in response to an emergency which result in changes to the Conservation Easement Area. Grantor has no responsibility under this Agreement for such unintended modifications. Grantee may, however, bring an action against another party for modifications that impair the conservation values identified in this Agreement.

- c. **Notice and Demand:** If Grantee determines that a person or entity is in violation of the terms of the Conservation Easement or this Agreement, or that a violation is threatened, then it shall provide written notice via certified mail to such person or entity. The written notice shall identify the violation and request corrective action to cure the violation or restore the relevant real property.
- d. **Failure to Act:** If, for a thirty (30) day period after the date of written notice provided pursuant to subparagraph c. above, the person or entity continues violating the terms of the Conservation Easement or this Agreement, or if the person or entity does not abate the violation or begin to implement corrective measures within the foregoing thirty (30) day period requested by Grantee, or fails to continue diligently to cure such violation until finally cured, Grantee shall be permitted to bring an action in law or in equity to enforce the terms of the Conservation Easement or this Agreement and recover any damages for the loss of the conservation values protected hereunder. Grantee is also entitled to bring an action to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Conservation Easement Area. If a court determines that the person or entity has failed to comply with the terms of the Conservation Easement or this Agreement, then Grantee may seek an order requiring the person or entity to reimburse all reasonable costs and attorney fees incurred by Grantee in compelling such compliance.
- e. **Unreasonable Litigation:** If Grantee initiates litigation against the Grantor to enforce this Agreement, and if the court determines that the litigation was without reasonable cause or in bad faith, then Grantee is to reimburse the Grantor's reasonable costs and attorneys' fees incurred in defending the action.

- f. **Grantor's Absence:** If Grantee determines that the terms of the Conservation Easement or the Agreement is, or is expected to be, violated, then Grantee will make a good faith effort to notify Grantor. If, through reasonable efforts, Grantor cannot be notified, and if Grantee determines that emergency circumstances exist that justify prompt action to mitigate or prevent impairment of the Conservation Easement, then Grantee may pursue its lawful remedies without prior notice and without awaiting a response from Grantor.
- g. **Cumulative Remedies:** The preceding remedies of Grantee are cumulative. Any, or all, of the remedies may be invoked by Grantee if there is an actual or threatened violation of this Agreement.

8. **Ownership Costs and Liabilities:** Except as otherwise required by this Agreement, in accepting the Conservation Easement Grantee shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Conservation Easement Area. Grantee and its administrators, officers, employees, and shall have no liability arising from injury or death to any person or from physical damage to any other property located within the Conservation Easement Area or otherwise.

9. **Remediation:** If, at any time, there occurs, or has occurred, a release in, on, or about the Conservation Easement Area of any substance now or hereafter defined, listed, or otherwise classified, and in excess of any amount permitted pursuant to any federal, state, or local law, regulation, or requirement or in an amount that is hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

10. **Cessation of Existence:** If Grantee shall cease to be authorized to acquire and hold conservation easements, then this Agreement shall become vested in another qualified entity that is eligible to acquire and hold a conservation easement under Ohio law, upon the mutual consent of Grantor and the Ohio Environmental Protection Agency ("Ohio EPA"). Grantor agrees to execute and deliver such documents and instruments as may be necessary to properly reflect the substitution of the replacement Grantee hereunder.

11. **Termination:** The Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain. If subsequent circumstances render the purposes of the Conservation Easement impossible to fulfill,

then the Conservation Easement and this Agreement may be partially or entirely terminated only by judicial proceedings initiated by either Grantor or Grantee.

12. **Recordation:** Grantor shall record this instrument in a timely fashion in the official records of Licking County, Ohio, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

13. **Assignment:** This Agreement is transferable, but Grantee may assign its rights and obligations hereunder only to an organization mutually agreed to by the fee simple owner of the Property, Ohio EPA, and the transferee, provided that the organization is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended, (or any successor provision then applicable) and authorized to acquire and hold conservation easements under Ohio law. As a condition of such transfer, Grantee shall require that the transferee organization must agree in writing to assume all of Grantee's obligations and duties hereunder and under and to carry out the conservation purposes that this grant is intended to advance. Grantee agrees to give written notice to Grantor of a transfer or an assignment at least (20) days prior to the date of such transfer or assignment and to furnish promptly to Grantor an executed copy of the assignment and assumption agreement to be recorded by Grantee after the expiration of such 20-day notice period in the official records of Licking County, Ohio. The failure of Grantee to give such notice shall not affect the validity of this Agreement nor limit its enforceability in any way.

14. **Liberal Construction:** This Agreement shall be liberally construed in favor of maintaining the conservation values of the Conservation Easement Area. The section headings and subheadings identified herein are for reference purposes only and shall not be used to interpret the meaning of any provision hereof.

15. **Notices:** For purposes of this Agreement, notices may be provided to either party, by personal delivery or by mailing a written notice via certified mail, return receipt requested, to that party at the address shown at the outset of this Agreement, or at the last known address of a party. Notice is deemed given upon (i) personal delivery or (ii) two days after depositing the properly addressed notice with the U.S. Postal Service.

16. **Severability:** If any portion of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

17. **Successors:** This Agreement and the Conservation Easement created hereunder shall be a covenant running with the land and shall constitute a burden on the Conservation Easement Areas and shall run to the benefit of the parties hereto and their respective successors or assigns in interest. All subsequent owners of the Conservation Easement Areas shall be bound to all provisions of this Agreement to the same extent as the current parties.

18. **Termination of Rights and Obligations:** A party's future rights and obligations under this Agreement shall terminate upon the transfer of that party's interest in the Conservation Easement Area. Liability for acts or omissions occurring prior to transfer shall survive any such transfer.

19. **Applicable Law:** This Agreement shall be governed by and construed in accordance with the substantive law of the State of Ohio, irrespective of its conflict of law provisions.

20. **"As Is" Condition:** Grantee has examined the Conservation Easement Area and agrees to accept the "as is" condition of the Property for purposes of this Agreement.

21. **Site Monitoring:** Grantee shall develop a site-monitoring program to ensure the terms of the easement are being upheld. The Conservation Easement Area shall be inspected by Grantee at a minimum of one time annually.

22. **No Merger:** The conservation easement provided under this Agreement is intended to facilitate the perpetual protection of the Conservation Easement Area as provided herein. No easement granted or enjoyed hereunder shall be eliminated through the doctrine of merger as the result of Grantee holding title and/or having ownership of the Conservation Easement Area.

IN WITNESS WHEREOF, Grantor has set its hand to this Agreement as of the dates written below, to be effective as of the Effective Date.

GRANTOR:

MBJ Holdings, LLC, a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

Date: _____

**STATE OF OHIO
COUNTY OF FRANKLIN**

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, the _____ of **MBJ Holdings, LLC**, a Delaware limited liability company, on behalf of said company.

Notary Public

IN WITNESS WHEREOF, Grantee has set its hand to this Agreement as of the dates written below, to be effective as of the Effective Date.

GRANTEE:

**CITY OF NEW ALBANY, OHIO,
a municipal corporation**

By: _____

Name: _____

Title: _____

Date: _____

**STATE OF OHIO
COUNTY OF FRANKLIN**

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____
the _____ of the **CITY OF NEW ALBANY,
OHIO**, a municipal corporation, on behalf of said municipal corporation.

Notary Public

Approved as to Form:

Mitchell Banchefsky, City Law Director

This instrument prepared by:
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