ORDINANCE O-24-2019

AN ORDINANCE TO ACCEPT UTILITY AND STREETScape EASEMENTS OF 1.473 ACRES, 2.933 ACRES, AND 0.899 ACRES ALONG JUG STREET AND HARRISON ROAD, AS REQUESTED BY MBJ HOLDINGS, LLC

WHEREAS, the developer, MBJ Holdings, LLC is required to grant utility and streetscape easements to accommodate future development within the area; and

WHEREAS, the City of New Albany will be the recipient (grantee) of the utility and streetscape easements totaling 1.473 acres, 2.933 acres, and 0.899 acres; and

WHEREAS, the city engineer has reviewed the easements and has determined this dedication is appropriate; and

WHEREAS, the city will benefit from this dedication of easements.

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 the utility and streetscapes easements of 1.473 acres, 2.933 acres and 0.899 acres 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 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(B) of the New Albany Charter, this ordinance shall become effective thirty (30) days after adoption.

CERTIFIED AS ADOPTED this ___ day of ___ , 2019.
Approved as to form:

Mitchell H. Banchefsky
Law Director
UTILITY AND STREETSCAPE EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that MBJ HOLDINGS, LLC, a Delaware limited liability company ("Grantor"), for good and valuable consideration received from THE CITY OF NEW ALBANY, OHIO, an Ohio municipal corporation with its address at 99 W. Main Street, New Albany, Ohio 43054 ("Grantee"), the receipt and sufficiency of which is hereby acknowledged, does hereby grant to Grantee and its successors and assigns forever, all right, title, and interest in and to a perpetual, non-exclusive easement in, over, under, across, and through the following described tracts of real property (collectively, the "Easement Area"), for the purposes of constructing, installing, operating, maintaining, repairing, and replacing (i) sanitary sewer lines and related appurtenances, (ii) water lines and related appurtenances, (iii) underground electrical lines, fiber optic or other communication lines, or empty ducts and conduits in which electric, fiber optic and other communication lines may be installed, (iv) gas lines, (v) storm drainage lines, structures, ditches, and swales, (vi) bicycle and pedestrian trails and pathways for use by the general public, (vii) landscaping, and (viii) such above-ground cabinets, boxes, pull stations, valves, switches, controls, pads, signage, and other ground-mounted equipment reasonably necessary to operate any of the foregoing (collectively, the "Improvements"):

See description and depiction of Easement Area in Exhibit A, Exhibit B and Exhibit C attached hereto and incorporated herein by reference.

The Easement Area burdens a portion of the real property (the "Property") identified as follows:

Licking County Auditor
Parcel Numbers:

Portions of 095-112074-00.000, 095-112074-00.001, 095-112074-00.003, 095-112422-00.000, 095-112056-00.002, 095-112056-00.000, 095-112074-00.004, 095-112632-00.000, 095-112626-00.000, 093-106422-00.000 and 093-106422-00.001.
Prior Instrument References: Instrument Numbers 201506300013332, 201506300013333, 201508210017779, 201508210017780, 2016012000001024, 2016011200000601, 201510300023659, 201604050006496, 201602110002644, 201508210017779 and 201708150017139, all of the Recorder’s Office, Licking County, Ohio.

Grantee and its agents, contractors, and assigns, at no cost or expense to Grantor, shall be permitted to install and construct the Improvements within the Easement Area. Grantee shall be permitted to assign any portion of the rights granted under this Utility and Streetscape Easement (each assignment being a “Subsequent Easement”) to relevant utility service providers to allow it or them (in addition to Grantee) to install, operate, maintain, repair and replace any Improvement(s) without further consent by Grantor or its successors and assigns, provided, however, that any Subsequent Easement shall be (i) set forth in a written instrument which is recorded and a copy of which is provided to Grantor, and (ii) specifically subject to the terms of this Utility and Streetscape Easement. The Improvements shall be designed in accordance with appropriate engineering standards and practices and shall be installed in accordance with plans and specifications approved by Grantee. The Improvements shall be installed and constructed in accordance with all applicable legal requirements and specifications of the City of New Albany, Ohio, and any other applicable local, state, or federal government requirements and specifications. Grantee shall be solely responsible, at Grantee’s cost and expense, for obtaining any wetlands permits or environmental permits required to install the Improvements. Once installed and constructed, the Improvements shall be the property of Grantee or Grantee’s assignee under any Subsequent Easement.

Grantee shall be solely responsible for operating, maintaining, repairing, and replacing the Improvements from time-to-time as Grantee deems necessary in its sole discretion, with the costs of such operation, maintenance, repair, and replacement also to be the sole responsibility of Grantee. Grantee agrees that it shall restore any real property that is damaged by the exercise of any rights being provided in its favor under this Easement. Such restoration shall occur within a reasonable amount of time after such damage occurs and shall be undertaken so as to return the damaged real property to the same or substantially similar condition as existed prior to the occurrence of the damage. Grantee shall be required to obtain, and keep in full force and effect during all times while this Utility and Streetscape Easement is effective, liability insurance covering all acts and omissions of Grantee or those acting for or through Grantee in amounts that are customary for Grantee to obtain and retain for other similar easement rights that Grantee enjoys. Grantee agrees to hold Grantor harmless up to the extent of Grantee’s liability insurance coverage in the event that Grantee and/or its employees, agents or contractors are found to be liable in connection with their acts or omissions under this Utility and Streetscape Easement. It is expressly acknowledged by Grantor that Grantee is not pledging any funds other than available insurance proceeds with respect to the indemnification provided hereunder. All references to “Grantee” in this paragraph shall include each assignee of Grantee under any Subsequent Easement and each such assignee shall be deemed to have made to Grantor the same
commitments, covenants, agreements, and obligations with respect to its easement rights under as Subsequent Easement as Grantee has made to Grantor under this paragraph.

The easement granted hereunder shall run with and be appurtenant to the real property to which it applies and shall be binding upon Grantor and Grantee and their respective successors and assigns in interest. Grantor reserves the right to utilize the Easement Area for any and all purposes that do not unreasonably interfere with the rights granted to Grantee hereunder, as determined by Grantee in its reasonable discretion; provided, however, that no structures shall be constructed within the Easement Area. Such rights of Grantor shall include, but not be limited to, the right to install fencing and landscaping and the right to grant easements for the installation of other private or public utilities within the Easement Area, including but not limited to electric, gas, fiber optics, telephone, telecommunications, and cable. The location of any fencing, landscaping or utility easements shall be reasonably agreed upon between Grantor and Grantee. During all times in which this Utility and Streetscape Easement is effective, Grantor shall maintain liability insurance, or reasonable evidence of adequate self-insurance, covering all acts and omissions of Grantor or those acting for or through Grantor in connection with this Utility and Streetscape Easement.

Grantor hereby covenants with Grantee that Grantor is the true and lawful owner of the Easement Area and that Grantor has the good, right, and full power to grant the easement described herein as it relates to such real property. This Easement shall not be modified or amended except in a writing signed by both parties hereto.

[Signature pages follow]
IN WITNESS WHEREOF, Grantor, by its duly authorized signatory, has caused this Utility and Streetscape Easement to be executed this ___ day of ________________, 2019.

GRANTOR:

MBJ HOLDINGS, LLC,
a Delaware limited liability company

By: ________________________________

Print Name: ________________________

Title: ______________________________

STATE OF OHIO )
COUNTY OF FRANKLIN ) SS:

BE IT REMEMBERED, that on this ___ day of ________________, 2019, before me, the subscriber, a Notary Public in and for said county and state, personally came _________________, the _______________ of MBJ HOLDINGS, LLC, a Delaware limited liability company, who acknowledged the signing thereof to be his free act and deed for and on behalf of the limited liability company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

________________________
Notary Public
IN WITNESS WHEREOF, Grantee, by its duly authorized signatory, has caused this Utility and Streetscape Easement to be executed this ___ day of ______________, 2019.

GRANTEEE:

THE CITY OF NEW ALBANY, OHIO
an Ohio municipal corporation

By: ________________________________

Print Name: _________________________

Title: ______________________________

Approved as to Form:

By: ________________________________
   Mitchell Banchefsky, Law Director

STATE OF OHIO )
COUNTY OF FRANKLIN ) SS:

BE IT REMEMBERED, that on this ___ day of ______________, 2019, before me, the subscriber, a Notary Public in and for said county and state, personally came ____________________________, the ___________ of The City of New Albany, Ohio, an Ohio municipal corporation, who acknowledged the signing thereof to be his free act and deed for and on behalf of the municipal corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

______________________________
Notary Public

This instrument prepared by
and after recording return to:
MBJ Holdings, LLC
8000 Walton Parkway, Suite 120
New Albany, Ohio 43054
(614) 939-8000
Exhibit A

EASEMENT
1.473 ACRES

Situated in the State of Ohio, County of Licking, Township of Jersey, lying in Farm Lot 15, Quarter Township 2, Township 2, Range 15, United States Military Lands, and being part of the remainder of that 162.114 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201508210017779, that 3.150 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201601200001024, that 3.00 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 2016011200000601, that 2.008 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201510300023659, that 12.961 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201604050006495 and that 22.024 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201602110002644, (all references are to the records of the Recorder’s Office, Licking County, Ohio) being more particularly described as follows:

Beginning, for reference, at the centerline intersection of Jug Street Road with Harrison Road, being the northwesterly corner of that 1.156 acre tract conveyed to City of New Albany, Ohio by deed of record in Instrument Number ____________, and the common corner of said Farm Lot 15 and Farm Lots 14, 18 and 19 of said Quarter Township 2, Township 2, Range 15;

Thence South 86° 36' 02" East, with the centerline of said Jug Street Road, the line common to said Farm Lots 14 and 15, the northerly line of said 1.156 acre tract and that 1.803 acre tract conveyed to the City of New Albany, Ohio by deed of record in Instrument Number ____________, a distance of 80.00 feet to a point;

Thence South 03° 19' 26" West, across said Jug Street Road and said 1.803 acre tract, a distance of 30.00 feet to the northeasterly corner of that existing 50 foot utility easement of record in Instrument Number ____________, being in the northerly line of the remainder of said 162.114 acre tract, the southerly right-of-way said Jug Street Road, being the TRUE POINT OF BEGINNING;

Thence South 86° 36' 02" East, with the southerly right-of-way line of said Jug Street Road and said 1.803 acre tract, the northerly line of the remainder of said 162.114, 3.150, 3.00, 2.008, 12.961 and 22.024 acre tracts, a distance of 2567.26 feet to the common corner of the remainder of said 22.024 acre tract and said 1.803 acre tract, in the westerly line of that 22.453 acre tract conveyed to Nine Properties, Limited by deed of record in Instrument Number 200505250015574;

Thence South 04° 24' 16" West, with the line common to said 22.024 acre tract and said 22.453 acre tract, a distance of 25.00 feet to a point;

Thence North 86° 36' 02" West, across the remainder of said 22.024, 12.961, 2.008, 3.00, 3.150 and 162.114 acre tracts, a distance of 2566.79 feet to a point in the easterly line of said existing 50 foot utility easement;

Thence North 03° 19' 26" East, across the remainder of said 162.114, with the easterly line of said existing 50 foot utility easement, a distance of 25.00 feet to the TRUE POINT OF BEGINNING, containing 1.473 acres, more or less.

EVANS. MECHWART. HAMBLETON & TILTON, INC.

Heather L. King
Professional Surveyor No. 8307

Date
Exhibit B

EASEMENT
2.933 ACRES

Situated in the State of Ohio, County of Licking, Township of Jersey, lying in Farm Lots 15 and 16, Quarter Township 2, Township 2, Range 15, United States Military Lands, and being part of the remainder of that 162.114 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201508210017779, part of that 7.494 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201508210017780, that 1 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201506300013333, and that 1.028 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201506300013332, (all references are to the records of the Recorder's Office, Licking County, Ohio) being more particularly described as follows:

Beginning, for reference, at the centerline intersection of Jug Street Road with Harrison Road, the northwesterly corner of that 1.156 acre tract conveyed to City of New Albany, Ohio by deed of record in Instrument Number , being the common corner of said Farm Lot 15 and Farm Lots 14, 18 and 19 of said Quarter Township 2, Township 2, Range 15;

Thence South 86° 36' 02" East, with the centerline of said Jug Street Road, the line common to said Farm Lots 14 and 15, the northerly line of said 1.156 acre tract, a distance of 30.00 feet to the common corner of said 1.156 and that 1.803 acre tract conveyed to the City of New Albany, Ohio by deed of record in Instrument Number ;

Thence South 03° 19' 26" West, across said Jug Street Road, with the line common to said 1.156 and 1.803 acre tracts, a distance of 30.00 feet to the northwesterly corner of a remainder of said 162.114 acre tract, the intersection of the southerly right-of-way line of said Jug Street Road with the easterly right-of-way line of Harrison Road, being the TRUE POINT OF BEGINNING;

Thence South 86° 36' 02" East, with the southerly right-of-way line of said Jug Street Road, the line common to a remainder of said 162.114 acre tract and said 1.803 acre tract, a distance of 50.00 feet to a point;

Thence South 03° 19' 26" West, across a remainder of said 162.114, 7.494, 1 and 1.028 acre tracts, a distance of 2558.24 feet to a point in the northerly right-of-way line of Innovation Campus Way, as dedicated in Instrument Number 201609200020361, the southerly line of a remainder of said 162.114 acre tract;

Thence North 86° 40' 21" West, with the northerly right-of-way line of said Innovation Campus Way, the southerly line of a remainder of said 162.114 acre tract, a distance of 24.00 feet to a point of curvature;

Thence continuing with the northerly right-of-way line of said Innovation Campus Way, the southerly line of a remainder of said 162.114 acre tract, with the arc of a curve to the right, having a central angle of 89° 59' 46", a radius of 26.00 feet, an arc length of 40.84 feet, a chord bearing of North 41° 40' 28" West and chord distance of 36.77 feet to a point of tangency in the easterly right-of-way line of Harrison Road, as dedicated in Instrument Number 201609200020361, the westerly line of a remainder of said 162.114 acre tract;

Thence North 03° 19' 26" East, with the easterly right-of-way line of said Harrison Road, the westerly line of a remainder of said 162.114, 1.028, 1 and 7.494 acre tracts, a distance of 2532.31 feet to the TRUE POINT OF BEGINNING, containing 1.759 acres, more or less.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

Heather L. King
Professional Surveyor No. 8307

HLK sq
2_933 as 20190001-VS-ESMT-UTIL-04.doc
Exhibit C

EASEMENT
0.899 ACRE

Situat[e in the State of Ohio, County of Licking, City of New Albany, lying in Farm Lot 16, Quarter Township 2, Township 2, Range 15, United States Military Lands, being on, over and across that 18.074 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201708150017139, (all references are to the records of the Recorder’s Office, Licking County, Ohio) being more particularly described as follows:

Beginning, for reference, at the centerline intersection of Harrison Road, as dedicated in Instrument Numbers 201508180017452 and 201609200020361, with Innovation Campus Way, as dedicated in Instrument Number 201609200020361;

Thence South 03° 19' 26" West, with the centerline of said Harrison Road, a distance of 55.00 feet to a point;

Thence South 86° 40' 34" East, across the right-of-way of said Harrison Road, a distance of 30.00 feet to a point in the easterly right-of-way line thereof, the westerly line of said 18.074 acre tract, being the westerly terminus of the southerly line of an existing easement, as dedicated in Instrument Number 201609200020361 and the TRUE POINT OF BEGINNING;

Thence across said 18.074 acre tract, the following courses and distances:

South 86° 40' 21" East, with the southerly line of said existing easement, a distance of 35.00 feet to a point;

South 03° 19' 26" West, a distance of 618.84 feet to a point;

South 41° 29' 52" East, a distance of 68.34 feet to a point;

South 86° 29' 32" East, a distance of 371.94 feet to a point; and

South 03° 10' 18" West, a distance of 65.39 feet to a point in the northerly line of that 7,000 acre tract conveyed to Carl E. Morris, Jr., by deed of record in Instrument Number 20081217026581;

Thence North 86° 08' 47" West, with the line common to said 18.074 and 7,000 acre tracts, a distance of 35.00 feet to a point in the easterly right-of-way line of said Harrison Road;

Thence with said easterly right-of-way line, the westerly line of said 18.074 acre tract, the following courses and distances:

North 03° 10' 18" East, a distance of 30.18 feet to a point;

North 86° 29' 32" West, a distance of 351.64 feet to a point;

North 41° 29' 52" West, a distance of 97.27 feet to a point; and

North 03° 19' 26" East, a distance of 633.28 feet to the TRUE POINT OF BEGINNING, containing 0.899 acre, more or less.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

Heather L. King
Professional Surveyor No. 8307
ORDINANCE O-25-2019

AN ORDINANCE TO APPROVE THE FINAL PLAT FOR THE NEWTON COURT ROADWAY PROJECT AS REQUESTED BY MBJ HOLDINGS, LLC

WHEREAS, an application to approve the Final Plat for Newton Court has been submitted by MBJ Holdings, LLC; and

WHEREAS, the New Albany Planning Commission reviewed the final plan application in a public meeting on July 15, 2019, and recommend approval to city council; and

WHEREAS, the city engineer certifies that the creation of Newton Court meets all the requirements of Chapter 1187 of the Codified Ordinances, storm water management policies, general utility easements, 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 Final Plat to create Newton Court is attached to this resolution as Exhibit A and made a part herein is approved.

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(B) of the New Albany Charter, this ordinance shall become effective thirty (30) days after adoption.

CERTIFIED AS ADOPTED this __________ day of __________, 2019.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council
Approved as to form:

Mitchell H. Banchefsky
Law Director
ORDINANCE O-26-2019

APPROPRIATION AMENDMENT ORDINANCE

AN ORDINANCE TO AMEND APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES DURING THE FISCAL YEAR ENDING DECEMBER 31, 2019, TO APPROVE THE TRANSFER AND ADVANCE OF AVAILABLE CASH BALANCE, AND TO ISSUE A THEN AND NOW CERTIFICATE

WHEREAS, it is necessary to make adjustments to appropriations and effect certain transfers and advances; and

WHEREAS, it is necessary to create certain funds; and

WHEREAS, it is necessary to issue a Then and Now Certificate for THE NEW ALBANY COMMUNITY FOUNDATION; and

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

Section 1. City Council hereby authorizes an appropriation of the unappropriated balance of the following funds.

<table>
<thead>
<tr>
<th>Fund</th>
<th>Department</th>
<th>Category</th>
<th>Increase/ (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>101 - General</td>
<td>Community Development</td>
<td>Operating and Contractual Services</td>
<td>$ 93,800</td>
</tr>
<tr>
<td>101 - General</td>
<td>Administrative Services</td>
<td>Operating and Contractual Services</td>
<td>22,000</td>
</tr>
<tr>
<td>101 - General</td>
<td>Public Service</td>
<td>Operating and Contractual Services</td>
<td>74,396</td>
</tr>
<tr>
<td>101 - General</td>
<td>Finance</td>
<td>Operating and Contractual Services</td>
<td>225,000</td>
</tr>
<tr>
<td>101 - General</td>
<td>General Administration</td>
<td>Operating and Contractual Services</td>
<td>45,000</td>
</tr>
<tr>
<td>101 - General</td>
<td>N/A</td>
<td>Transfers &amp; Other Financing Uses</td>
<td>275,000</td>
</tr>
<tr>
<td>201 - Street CMR</td>
<td>Public Service</td>
<td>Operating and Contractual Services</td>
<td>45,750</td>
</tr>
<tr>
<td>203 - Permissive Tax Fund</td>
<td>N/A</td>
<td>Transfers &amp; Other Financing Uses</td>
<td>280,000</td>
</tr>
<tr>
<td>221 - Economic Development - NAEC</td>
<td>N/A</td>
<td>Transfers &amp; Other Financing Uses</td>
<td>253,074</td>
</tr>
<tr>
<td>222 - Economic Development - NACA</td>
<td>Community Development</td>
<td>Operating and Contractual Services</td>
<td>1,490,000</td>
</tr>
<tr>
<td>232 - Enclave TIF</td>
<td>General Administration</td>
<td>Operating and Contractual Services</td>
<td>2,500</td>
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<tr>
<td>233 - Saunton TIF</td>
<td>General Administration</td>
<td>Operating and Contractual Services</td>
<td>3,000</td>
</tr>
<tr>
<td>234 - Richmond Square TIF</td>
<td>General Administration</td>
<td>Operating and Contractual Services</td>
<td>15,000</td>
</tr>
<tr>
<td>235 - Tidewater TIF</td>
<td>General Administration</td>
<td>Operating and Contractual Services</td>
<td>2,000</td>
</tr>
<tr>
<td>236 - Ealy Crossing TIF</td>
<td>General Administration</td>
<td>Operating and Contractual Services</td>
<td>41,000</td>
</tr>
<tr>
<td>237 - Upper Clarendon TIF</td>
<td>General Administration</td>
<td>Operating and Contractual Services</td>
<td>10,000</td>
</tr>
<tr>
<td>239 - Straits Farm TIF</td>
<td>General Administration</td>
<td>Operating and Contractual Services</td>
<td>6,500</td>
</tr>
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</table>
Section 2. City Council hereby authorizes Budget Transfers as follows:

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<tr>
<th>Fund</th>
<th>Department</th>
<th>Category</th>
<th>Increase/Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td>101 - General</td>
<td>Finance</td>
<td>Operating and Contractual Services</td>
<td>$ (40,000)</td>
</tr>
<tr>
<td>250 - Blackdick TIF</td>
<td>N/A</td>
<td>Operating and Contractual Services</td>
<td>$ 40,000</td>
</tr>
<tr>
<td>250 - Blackdick TIF</td>
<td>General Administration</td>
<td>Operating and Contractual Services</td>
<td>$ 680,000</td>
</tr>
<tr>
<td>250 - Blackdick TIF</td>
<td>General Administration</td>
<td>Operating and Contractual Services</td>
<td>$ (186,025)</td>
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<tr>
<td>252 - Village Center TIF</td>
<td>N/A</td>
<td>Transfers &amp; Other Financing Uses</td>
<td>$ (186,025)</td>
</tr>
<tr>
<td>251 - Healthy New Albany</td>
<td>N/A</td>
<td>Capital</td>
<td>$ 2,500,000</td>
</tr>
<tr>
<td>251 - Healthy New Albany</td>
<td>N/A</td>
<td>Capital</td>
<td>$ 1,115,000</td>
</tr>
</tbody>
</table>

Total Appropriation Amendments $ 7,688,069

Section 3. City Council hereby authorizes a transfer from the Economic Development – NAECA Fund to the Debt Service Fund in the amount of $253,074.

Section 4. City Council hereby authorizes a transfer from the Healthy New Albany Fund to the Debt Service Fund in the amount of $196,025.

Section 5. City Council hereby authorizes an advance from the General Fund to the Healthy New Albany Fund in the amount of $275,000.

Section 6. City Council hereby authorizes a transfer from the Permissive Tax Fund to the Capital Improvement Fund in the amount of $280,000.

Section 7. Council hereby authorizes a Then and Now Certificate to the New Albany Community Foundation in an amount not to exceed $41,656.

Section 8. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this ordinance 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

Section 9. Pursuant to the Article VI, § 6.07(a) of the charter of the City of New Albany, this Ordinance shall take effect upon passage.
CERTIFIED AS ADOPTED this 6th day of August, 2019.

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-26-2019 were posted in accordance with Section 6.12 of the Charter, for 30 days starting on August 7th, 2019.

Jennifer Mason, Clerk of Council

Date 8/7/19
RESOLUTION R-36-2019


WHEREAS, the Ohio Public Works Commission (OPWC) administers financial assistance for roadway improvements; and

WHEREAS, the City of New Albany was successful in its efforts to obtain a grant and loan of Ohio Public Works Commission (OPWC) funds for the improvement of the US62/SR161 Interchange; and

WHEREAS, the City was asked to commit to its acceptance of the OPWC grant and loan on July 1, 2019; and

WHEREAS, Internal Revenue Service tax regulations establish clear guidelines for disbursement of funds to local subdivisions for project costs already incurred and paid for by local subdivisions; and

WHEREAS, the city has or will directly pay construction-related project costs for this project; and

WHEREAS, the city may desire to seek reimbursement from OPWC funds for the agreed upon percentage of the project related engineering, inspection and other construction project costs paid directly by the city, consistent with the terms of the OPWC Project Grant Agreement.

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

Section 1: The City of New Albany reasonably expects to receive a reimbursement for the Project named US 62 @ SR 161 Interchange Improvement as set forth in Appendix A of the Project Agreement with the proceeds of bonds to be issued by the State of Ohio.

Section 2. The maximum aggregate principal amount of bonds, other than for costs of issuance, expected to be issued by the State of Ohio for reimbursement to the local subdivision is $1,519,000.

Section 3: The Clerk of Council of the City of New Albany is hereby directed to maintain a copy of this Resolution for inspection and examination of all persons interested therein and to deliver a copy of this Resolution to the Ohio Public Works Commission.
Section 4: The City of New Albany finds and determines that all formal actions of this city concerning and relating to the adoption of this Resolution were taken in an open meeting of the City of New Albany and that all deliberations of this city and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

Section 5: Pursuant to Article 6.07(a) of the New Albany Charter, this resolution shall be in full force and effect from and immediately upon its adoption.

CERTIFIED AS ADOPTED this [blank] day of [blank], 2019.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director
RESOLUTION R-37-2019

A RESOLUTION TO AMEND THE OAK GROVE II COMMUNITY REINVESTMENT AREA TO ADD APPROXIMATELY 484 ±/-. 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, 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 357.02 ±/- 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 5708.85. 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 16th day of August, 2019.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director
New Albany CRA Parcels - Jug Street North Oak Grove II Amendment
City of New Albany, Ohio
RESOLUTION R-38-2019

A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH THE NEW ALBANY PLAIN LOCAL SCHOOL DISTRICT TO FACILITATE THE CONSTRUCTION OF AN AMPHITHEATER

WHEREAS, the New Albany Community Foundation has been raising money to fund the construction of an amphitheater to facilitate the expansion of the community’s performing arts programs; and

WHEREAS, the New Albany Community Foundation intends to contract with the New Albany Community Authority to manage the construction of the amphitheater; and

WHEREAS, when the amphitheater is constructed, the Community Foundation and Community Authority will give ownership of the amphitheater to the City of New Albany in exchange for the city's commitment to manage the facility; and

WHEREAS, the City of New Albany, the New Albany Community Foundation, and the New Albany Plain Local School District wish to maximize the amphitheater's benefit to the community by locating it adjacent to the Jeanne B. McCoy Center for the Arts, and within the community events corridor that is being created by virtue of the improvements to the Rose Run Park and Dublin Granville Road; and

WHEREAS, the city and the school district have a history of entering into lease agreements for the benefit of the community, including the Safety Town site and the Swickard Woods sports fields.

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: The city manager is hereby authorized to enter into a lease agreement with the New Albany Plain Local School District for the purpose of acquiring a site for the proposed community amphitheater.

Section 2: The lease agreement shall be as set forth, or substantially similar to, the document attached hereto as Exhibit A.

Section 3. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this ordinance 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 August, 2019.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director
GROUND LEASE

LANDLORD:

BOARD OF EDUCATION OF THE NEW ALBANY PLAIN LOCAL SCHOOL DISTRICT
55 North High Street
New Albany, Ohio 43054

TENANT:

CITY OF NEW ALBANY
P.O. Box 188
99 W. Main Street
New Albany, OH 43054

PREMISES:

Needs Identification
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GROUND LEASE

THIS GROUND LEASE (this “Lease”), made this ____ day of ____, 2019, (the Commencement Date”) by and between the Board Of Education Of New Albany – Plain Local School District {fka Board of Education of New Albany Village School District; fka Board of Education of Plain Township, Franklin County, Ohio; fka Board of Education of the Plain Local School District; and The Board of Education of the Plain Local School District], (hereinafter referred to as “Landlord” or “District”), with offices at 55 North High Street, New Albany Ohio 43054 and the City of New Albany, an Ohio municipal corporation (hereinafter referred to as “Tenant” or “City”), with offices at 99 W. Main Street, New Albany, Ohio 43054.

WITNESSETH:

WHEREAS, Landlord is the fee owner of a certain tract of real property containing ____ (__) acres, also known as __________________________ situated in the City of New Albany, County of Franklin, State of Ohio, which real property is more particularly described by the Franklin County Auditor as parcel number __________ as depicted on Exhibit “A”, attached hereto and made a part hereof. Said real property shall hereinafter be referred to as the “Premises”; and

WHEREAS, Tenant desires to lease the Land on which Tenant, and/or its agents and assigns will construct, program, operate and maintain an amphitheater and related amenities which will be open to the public, on the terms and conditions hereinafter set forth; and

WHEREAS, Landlord is authorized to execute this Lease pursuant to District Resolution ______, and Tenant is authorized to execute this Lease pursuant to Resolution R—__-19; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the foregoing and as follows:

SECTION 1. PREMISES

Landlord, in consideration of Tenant’s design, construction, and operation of the improvements (as defined in Sections 4(a) and 4(b), herein) and the covenants and agreements to be performed by Tenant, does hereby lease unto Tenant, and Tenant hereby leases from Landlord the Premises.

SECTION 2. TERM

The initial term of this lease shall be for fifty (50) years from the Commencement Date. The term will be consummated upon Landlords receipt of compensation in the amount of $10.00.
SECTION 3. RENEWAL OPTIONS

Provided Tenant has not substantially defaulted on any of the terms, provisions, or conditions to be performed by Tenant under this Lease, and unless Landlord provides Tenant with notice of non-renewal at least twelve (12) months prior to the expiration of the initial term, or any renewal terms, the terms of this lease shall renew individually for successive five (5) year terms, upon the same covenants and agreements as set forth herein.

SECTION 4. CONSTRUCTION OF IMPROVEMENTS

(a) Plans and Specifications. Tenant its agents and/or assigns shall develop, or cause to be developed at its sole cost and expense, an amphitheater (collectively, the “Improvement”) on the Land, all in accordance with the plans, specifications and a construction/phasing schedule (the “Plans”) approved by the Landlord in advance. All construction and development shall be in accordance with the Tenant’s approved Plans. Construction of the Improvement may occur in phases as set forth in the construction/phasing schedule, and re-approval of plans and specifications for subsequent phases is not required unless Tenant desires to propose material modifications to an approved phase and/or additional improvements. Any such proposed material modifications to the Plans approved by the Landlord, and/or proposed future improvements, shall be subject to the prior written approval of Landlord.

Tenant shall provide Landlord with the Plans for review and approval in a form reasonably acceptable to Landlord at least thirty (30) days in advance of the proposed construction start. Landlord agrees to review expeditiously the Plans and any subsequent proposed changes thereto upon receipt of the same from Tenant, and Landlord shall not unreasonably withhold approval of the Plans or changes, provided that such Plans are consistent with Landlord’s design, and planning standards and philosophy. Landlord reserves the absolute right to terminate this Lease if the Improvements are not developed according to the Plans.

(b) Upon delivery of the Land to Tenant, Tenant shall commence preparing the Plans for the Improvements, seek approval therefore from both from the Landlord and, if mandated by existing covenants and restrictions contained in the chain of title, the New Albany Company and/or its private Architectural Review Committee. Following receipt of all necessary approvals, the Tenant shall diligently and reasonably pursue implementing the Improvements, and shall supply such monies and perform such duties as may be necessary to complete the construction of the Improvements pursuant to and in accordance with the approved Plans. Tenant shall construct the Improvements, and any alterations thereto, in a good and workmanlike manner, in full compliance with all construction, use, building, zoning, health, environmental, and other similar requirements of any governmental entity having jurisdiction.

All such work shall be performed lien free by Tenant. In the event a mechanics’ lien is filed against the Land or the Premises, Tenant shall discharge or bond off same within thirty (30) days from the filing thereof. If Tenant fails to discharge said lien, Landlord may bond off or pay same without inquiring into the validity or merits of such lien, and all sums so advanced shall be paid on demand by Tenant as additional rent.
SECTION 5. USE AND OCCUPANCY

During the term of this Lease, the Premises shall be used by Tenant or its agents and assigns for entertainment, community programming and events, including but not limited to theatrical performances, concerts, private events, etc. Tenant shall seek the prior written consent of Landlord to use the Premises for any other public purpose.

In the event Tenant fails to operate from the Premises in accordance with this Section, then Landlord shall have the right and option, in addition to all other remedies set forth in this Lease, to elect to terminate this Lease.

Tenant shall at all times conduct its operations on the Premises in a lawful manner and shall, at Tenant’s expense, comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of all governmental authorities, now in force or which may hereafter be in force, which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or construction and alteration of the Premises. Tenant shall comply with all requirements of the Americans with Disabilities Act, and shall be solely responsible for all alterations to the Premises in connection therewith.

Tenant shall not suffer or permit the Premises, or any portion thereof, to be used by the public without restriction, or in such manner as might tend to impair or otherwise cloud or encumber Landlord’s title to the Premises, or any portion thereof, or to be used in such manner as may provide a basis for a claim or claims of prescription, adverse usage, or possession by the public or others, as such, or of an implied dedication of the Premises, or any portion thereof.

SECTION 6. NUISANCES

Tenant shall not perform any acts or carry on any practice that may injure the Premises or be a nuisance or menace to the neighbors or the public. Tenant shall have the right to enforce and maintain compliance with District rules and regulations.

SECTION 7. ALTERATIONS

Tenant, at its option, may make non-structural alterations and/or additions to the Improvements. Tenant shall not make any structural alterations or additions to the Improvements without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld by the Landlord provided that such Plans are consistent with Landlord’s design, planning standards and philosophy; provided, however, Landlord agrees not to withhold its consent and approval of such additions depicted as “future additions” on the conceptual drawings, attached hereto as Exhibit B and incorporated herein by reference, if proposed by Tenant.

When seeking the consent of Landlord, Tenant shall submit a written request and the Plans and Specifications for such alterations or additions to the Improvements to Landlord for Landlord’s approval prior to the commencement of such work. To the extent permitted by law, Tenant shall indemnify and save harmless Landlord from and against all mechanics’ liens or
claims by reason of initial construction or subsequent repairs, alterations, or improvements that may be made by Tenant to the Premises.

All such work shall be performed lien free by Tenant. In the event a mechanics’ lien is filed against the Land or the Premises, Tenant shall discharge or bond off same within ten (10) days from the filing thereof. If Tenant fails to discharge said lien, Landlord may bond off or pay same without inquiring into the validity or merits of such lien, and all sums so advanced shall be paid on demand by Tenant as additional rent.

Notwithstanding anything in this Lease to the contrary, Tenant shall have the right, subject to full compliance with all Laws, at any time and from time to time during the Term, to reconstruct and/or replace all Improvements on the Premises and to demolish, raze, or otherwise remove same.

SECTION 8. UTILITIES

Tenant shall be responsible and pay for all public utility services rendered or furnished to the Premises during the term hereof, including, but not limited to, heat, water, gas, electric, telephone service, and sewer services, together with all taxes, levies, or other charges on such utility services when the same become due and payable. Landlord shall not be liable for the quality or quantity of or interference involving such utilities.

During the term hereof or any renewal or extension period, whether the Premises are occupied or unoccupied, Tenant agrees to maintain amphitheater and its facilities.

SECTION 9. PERSONAL PROPERTY

Tenant further agrees that all personal property, goods, and equipment of every kind or description that may at any time be in or on the Premises shall be at Tenant’s sole risk, or at the risk of those claiming under Tenant, and that Landlord shall not be liable for any damage to said property or loss suffered by the use of the Premises, unless caused by the actions and/or omissions of Landlord, or its agents.

SECTION 10. SUBLEASE OR ASSIGNMENT

Tenant further covenants and agrees not to assign or sublet the Premises or any part of same unless approved by Landlord in writing.

SECTION 11. CONDEMNATION

Notwithstanding the foregoing, if, during the term of this Lease, there shall be taking or condemned for any public or quasi-public use under any governmental law, ordinance, or regulation or by right of eminent domain or by private purchase in lieu thereof ("Taking") of the entire Premises or any part thereof, the rights and obligations of Landlord and Tenant with respect to any condemnation award or consideration for any such transfer (such award or consideration being herein called “Condemnation Award”) pursuant thereto and with respect to the Premises shall be as hereinafter set forth:
(a) In the event of a Taking of the entire Premises or so much of the Premises that, in the opinion of Tenant, it is not feasible to continue possession and operation of the remaining Premises, this Lease shall terminate twenty (20) days after notice from Tenant to Landlord of such election to terminate, and Tenant shall, upon Landlord’s request, if made within thirty (30) days after such notice of termination, demolish all buildings on any part of the Premises not subject to the Taking, and Tenant shall grade the Premises to such condition as is reasonably acceptable to Landlord. The Condemnation Award attributed to the Premises shall be divided and paid as follows:

(i) First, to Landlord in an amount equal to the “fair market value” of the land only, as of the date of Taking, assuming that there were no improvements thereon, the value of any improvements installed by the Landlord prior to or during the lease term, and any matching funding paid by or on behalf of the Landlord related to a grant; and if there is more Condemnation Award;

(ii) Next, if additional funds remain after the payment set forth in Paragraph 11 (a) (i) (herein), to Tenant in the amount of reasonable cost incurred by tenant for improvements made during the lease term,

(iii) Finally, any balance to the Tenant.

(b) In the event of a Taking of a part of the Premises and Landlord or Tenant does not give notice as provided for in paragraph (a) above that it is not economically feasible to continue the same use or uses, this Lease shall continue. The Condemnation Award attributed to the Premises shall be allocated and paid in the following sequence:

(i) First, to Landlord in an amount equal to the fair market value of the land only taken as of the date of Taking, assuming that there were no improvements thereon, and if there is more Condemnation Award;

(ii) Next, to Tenant in the amount of reasonable cost incurred by tenant for improvements made during the lease term; and if there is more Condemnation Award;

(iii) Finally, the balance to Tenant.

(c) Notice of Condemnation. The party receiving any notice of the kinds specified above shall promptly give the other party notice of the receipt, contents, and date of the notice received. Landlord shall have full right and authority to conduct, or to direct the conduct of any such condemnation or settlement proceeding and to settle the same on terms acceptable to Landlord.

SECTION 12. FIRE AND CASUALTY INSURANCE
(a) Tenant, or its agents or assigns per Section 10 (herein), shall at all times during the
term of this Lease carry fire, casualty, and extended coverage insurance on the Improvements in
an amount equal to the full replacement cost thereof. Landlord shall be under no obligation to
maintain insurance on any improvements on the Land.

(b) If the Premises shall be damaged, destroyed, or rendered untenantable, in whole or
in part, by or as the result or consequence of fire or other casualty during the term hereof, Tenant
shall repair and restore all such items that are required to be insured by Tenant hereunder to a good
tenantable condition with reasonable dispatch.

(c) In the event the Premises, because of such damage or destruction, are not repaired
and restored to a tenantable condition with reasonable dispatch within one hundred eighty (180)
days from the date of such damage or destruction, or such additional time period as may be
reasonably required, provided that Tenant exercises due diligence in commencing and completing
such restoration or repair, Landlord may, at its option but without any obligation to do so, either
(i) terminate this Lease within sixty (60) days following such one hundred eighty (180) day period
but prior to the repair and restoration of same by giving prior written notice to Tenant and
thereupon Landlord and Tenant shall be released from all future liabilities and obligations under
this Lease.

SECTION 13. TENANT'S REPAIRS

(a) Tenant shall maintain, repair, and replace (hereinafter collectively referred to in the
noun and verb form as “repair”), at Tenant’s expense, all and every part of the Premises that are
required to be insured hereunder to keep same in good order, condition, and repair.

If Tenant fails to repair and maintain the Premises as required herein, Landlord may
demand in writing that Tenant undertake and complete such repairs and maintenance within thirty
(30) days from Landlord’s notice to Tenant, unless such repairs and/or maintenance constitute an
emergency, in which case such repairs and/or maintenance shall be undertaken and completed
immediately.

(b) Tenant shall pay promptly when due the entire cost of repair in the Premises
undertaken by Tenant so that the Premises shall at all times be free of liens for labor and materials
arising from such work; to procure all necessary permits before undertaking such work; to do all
of such work in a good and workmanlike manner, employing materials of good quality; to comply
with all governmental requirements; and to save Landlord and its agents, officers, employees,
contractors, and invitees harmless and indemnified, up to the maximum coverage amount of
Tenant’s insurance policies, from all liability, injury, loss, cost, damage, and/or expense (including
reasonable attorney fees and expenses) in respect of any injury to, or death of, any person, and/or
damage to, or loss or destruction of, any property occasioned by or growing out of such work
described in this Section 13 (herein).

SECTION 14. COVENANT OF TITLE AND PEACEFUL POSSESSION
Subject to easements, conditions, covenants, restrictions, and reservations of record, zoning ordinances and legal highways, Landlord has good and marketable title to the Premises in fee simple and the right to make this Lease for the term aforesaid. Landlord shall put Tenant into complete possession of the Land in accordance with the provisions hereof, and if Tenant shall perform all the covenants and provisions of this Lease to be performed by Tenant, Tenant shall, during the term hereby demised, freely, peaceably, and quietly enjoy and occupy the full possession of the Premises free from actions by or through Landlord, subject, however, to Landlord’s right to use the Premises set forth herein and to the other terms and conditions of this Lease.

**SECTION 15. INSURANCE**

(a) **Casualty Insurance.** Tenant shall carry such insurance against loss of its property in, on, or about the Premises by fire and such other risks as are covered by all risk and extended coverage property insurance or other hazards as Tenant deems necessary. As the following relates to this Section 15 (herein), Landlord shall not be liable for any damage to Tenant’s property in, on, or about the Premises caused by fire or other insurable hazards regardless of the nature or cause of such fire or other casualty, unless caused by Landlord’s negligence. Tenant expressly releases Landlord of and from all liability for any such damage. Tenant and Landlord agree that insurance policy or policies shall include a mutual waiver of “subrogation” recognizing this release from liability.

(b) **Public Liability Insurance.** Tenant and/or its successors and assigns set forth in Section 10 (herein) agrees to procure and maintain during the demised term a policy or policies of liability insurance, with blanket contractual coverage, written by a responsible insurance company or companies (which may be written to include the Premises in conjunction with other premises owned or operated by Tenant) insuring Tenant against any and all losses, claims, demands, or actions for injury to or death of any one or more persons, including volunteers working under the direction of Tenant or Landlord or their respective agents or employees, and for damage to property in any one occurrence in the Premises to the limit of not less than $3,000,000 and $5,000,000 general aggregate policy limit arising from Tenant’s conduct and operation of the Premises, $500,000.00 limit for fire and legal liability, and $1,000,000.00 limit for completed operations, or such higher amounts as reasonably designated by Landlord. Tenant shall furnish to Landlord certificates evidencing the continuous existence of such insurance coverage, which must also name Landlord as an additional insured. All insurance companies must be licensed to do business in the State of Ohio and have an “A” rating or better. Certificates of insurance will be provided at the time this Lease is executed and twenty (20) days prior to expiration of the policy. Certificates of insurance are to specify notification to Landlord of cancellation or termination of policy not less than ten (10) days prior to cancellation or termination.
(c) **Miscellaneous Insurance.** Tenant agrees to provide and keep in force at all times workers compensation insurance complying with the law of the State of Ohio, including coverage of volunteers, even if such coverage is voluntary under the laws of the State of Ohio. Tenant agrees to provide a certificate as evidence of proof of workers' compensation coverage.

With respect to any alterations or improvements by Tenant, Tenant shall maintain contingent liability and builder's risk coverage naming Landlord as an additional named insured. If Tenant hires contractors to do any improvements on the Premises, each contractor must provide proof of workers' compensation coverage on its employees and agents to Landlord.

**SECTION 16. REAL ESTATE TAXES**

In the event the Premises is no longer exempt from real estate taxes, then Tenant shall pay any real estate taxes imposed upon the Premises during the term of this Lease, including any extensions or renewals thereof, unless said tax is the direct result of a Landlord Event or the actions of Landlord.

For the purpose of this Lease, the term "real estate taxes" shall include any special and general assessments, water and sewer rents, and other governmental impositions imposed upon or against the Premises of every kind and nature whatsoever, extraordinary as well as ordinary, foreseen and unforeseen, and each and every installment thereof, which shall or may during the lease term be levied, assessed, or imposed upon or against such Premises and of all expenses, including reasonable attorney fees, administrative hearing and court costs incurred in contesting or negotiating the amount, assessment or rate of any such real estate taxes, minus any refund received by Landlord.

The real estate taxes for any lease year shall be the real estate taxes for the tax year terminating during said lease year. If any lease year shall be greater than or less than twelve (12) months, or if the real estate tax year shall be changed, an appropriate adjustment shall be made. If there shall be more than one taxing authority, the real estate taxes for any period shall be the sum of the real estate taxes for said period attributable to each taxing authority. If, upon the assessment day for real estate taxes for any tax year fully or partly included within the term of this Lease, a portion of such assessment shall be attributable to buildings in the process of construction, a fair and reasonable adjustment shall be made to carry out the intent of this section.

Tenant shall pay real estate taxes no later than the due date or, if the tax bill is delivered to Landlord by the taxing authority, thirty (30) days after receipt of a copy of the tax bill from Landlord.

Tenant shall be responsible for applying for and obtaining any available exemptions from real estate taxes, and Landlord shall cooperate with Tenant to obtain the same.

**SECTION 17. SURRENDER**
Except as otherwise set forth herein, tenant covenants and agrees to deliver up and surrender to Landlord the physical possession of the Premises upon the expiration of this Lease or its termination as herein provided that any and all improvements constructed by or on behalf of the Tenant after the Commencement Date shall be usable and in good order and repair as of the date of surrender.

Alternatively, at Landlord’s sole and exclusive option, Tenant will cause the Improvements to be properly demolished and the Premises returned, as nearly as possible, to the condition which existed on the Commencement Date. In the event such requested demolition is not commenced in a reasonable time, the District may undertake such demolition subject to reimbursement of such demolition costs by the Tenant.

SECTION 18. HOLDING OVER

Any holding over after the expiration or termination of this Lease by Tenant shall be from day to day on the same terms and conditions at Landlord’s option; and no act or statement whatsoever on the part of Landlord or his/her duly authorized agent in the absence of a written contract signed by Landlord shall be construed as an extension of the term or as a consent for any further occupancy.

SECTION 19. NOTICE

Whenever under this Lease provisions are made for notice of any kind to Landlord, it shall be deemed sufficient notice and sufficient service thereof if such notice to the Tenant is in writing, addressed to Tenant at P.O. Box 188, New Albany, OH 43054, Attention: City Manager, and deposited in the United States mail by certified mail, return receipt requested, with postage prepaid or Federal Express, Express Mail, or such other nationally recognized expedited mail service as normally results in overnight delivery. Notice to Landlord shall be sent in like manner to; with a copy to 55 North High Street, New Albany Ohio 43054, Attention: Treasurer. All notices shall be effective upon receipt or refusal of receipt. Either party may change the place for service of notice by written notice to the other party.

SECTION 20. DEFAULT

(a) Elements of Default. The occurrence of any one or more of the following events shall constitute a substantial default of this Lease by Tenant:

(i) Tenant fails to maintain at all times all insurance required hereunder to be maintained.

(ii) Tenant fails to perform or observe any other term, condition, covenant, or obligation required to be performed or observed by it under this Lease for a
period of ninety (90) days after notice thereof from Landlord, unless stated otherwise in this Lease.

(iii) Tenant refuses to take possession of the Premises at the delivery of possession date, vacates or abandons the Premises, or substantially ceases to carry on its reasonable community related activities on the Premises.

(iv) A trustee or receiver is appointed to take possession of substantially all of Tenant’s assets in, on, or about the Premises, or of Tenant’s interest in this Lease (and Tenant does not regain possession within sixty (60) days after such appointment); Tenant makes an assignment for the benefit of creditors; or substantially all of Tenant’s assets in, on, or about the Premises or Tenant’s interest in this Lease are attached or levied upon under execution (and Tenant does not discharge the same within sixty (60) days thereafter).

(v) A petition in bankruptcy, insolvency, or for reorganization or arrangement is filed by or against Tenant or any guarantor of Tenant’s obligations under this Lease pursuant to any federal or state statute, and, with respect to any such petition filed against it, Tenant fails to secure a stay or discharge thereof within sixty (60) days after the filing of the same.

(b) Remedies. Upon the occurrence of any event of substantial default after any applicable grace or cure period, Landlord shall have the following rights and remedies, any one or more of which may be exercised without further notice to or demand upon Tenant:

(i) Landlord may re-enter the Premises and cure any substantial default of Tenant, in which event Tenant shall reimburse Landlord for any cost and expenses that Landlord may incur to cure such default plus interest at prime plus one (1%) percent per annum from the date such expense was incurred.

(ii) Landlord may terminate this Lease or Tenant’s right to possession under this Lease as of the date of such substantial default, in which event: (a) neither Tenant nor any person claiming under or through Tenant shall thereafter be entitled to possession of the Premises, and Tenant shall immediately thereafter surrender the Premises to Landlord; and (b) Landlord may re-enter the Premises and dispose Tenant or any other occupants of the Premises by force, summary proceedings, ejectment or otherwise, and may remove their effects, without prejudice to any other remedy that Landlord may have for possession or otherwise in law or at equity. Tenant shall remain liable for payment of all charges and costs imposed on Tenant herein, in the amounts, at the times, and upon the conditions as herein provided.

(iii) Upon termination of this Lease pursuant to this Section 20 (herein), Landlord may recover possession of the Premises under and by virtue of the
provisions of the laws of the State of Ohio, or by such other proceedings, including re-entry and possession, as may be applicable.

(iv) In the event of a breach by either party of any of the covenants or provisions hereof, Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings, and other remedies were not provided for herein. Mention in this Lease of any particular remedy shall not preclude either party from any other remedy, in law or in equity.

(c) Additional Remedies and Waivers. The rights and remedies of Landlord and Tenant set forth herein shall be in addition to any other right and remedy now or hereinafter provided by law and all such rights and remedies shall be cumulative. No action or inaction by Landlord or Tenant shall constitute a waiver of a default and no waiver of default shall be effective unless it is in writing, signed by the party waiving such default.

SECTION 21. WAIVER OF SUBROGATION

Landlord and Tenant, and all parties claiming under each of them, mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard covered or required hereunder to be covered in whole or in part by insurance coverage maintained or required to be maintained by the terms of this Lease on the Premises or in connection with activities conducted with the Premises, and waive any right of subrogation that might otherwise exist in or accrue to any person on account thereof. All policies of insurance maintained or required to be maintained by the parties hereunder shall contain waiver of subrogation provisions so long as the same are available.

SECTION 22. LIABILITY OF LANDLORD: EXCULPATION

Except with respect to any damages resulting from the negligent, reckless, or willful misconduct of Landlord, its agents, or employees, or a breach of this Lease by Landlord, Landlord shall not be liable to Tenant, its Board, agents, employees, or users for any damages, losses, compensation, accidents, or claims whatsoever. Not inconsistent with the terms herein, it is expressly understood and agreed that nothing in this Lease contained shall be construed as creating any liability whatsoever against Landlord personally, and in particular without limiting the generality of the foregoing, there shall be no personal liability to pay any indebtedness accruing hereunder or to perform any covenant, either express or implied, herein contained, or to keep, preserve, or sequester any property of Landlord, and that all personal liability of Landlord, to the extent permitted by law, of every sort, if any, is hereby expressly waived by Tenant, and by every person now or hereafter claiming any right or security hereunder; and that so far as the parties hereto are concerned, the owner of any indebtedness or liability accruing hereunder shall look solely to the Premises for the payment thereof.

SECTION 23. RIGHTS CUMULATIVE
Unless expressly provided to the contrary in this Lease, each and every one of the rights, remedies, and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other of such rights, remedies, and benefits or of any other rights, remedies, and benefits allowed by law.

SECTION 24. MITIGATION OF DAMAGES

Notwithstanding any of the terms and provisions herein contained to the contrary, Landlord and Tenant shall each have the duty and obligation to mitigate, in every reasonable manner, any and all damages that may or shall be caused or suffered by virtue of defaults under or violation of any of the terms and provisions of this Lease committed by the other.

SECTION 25. ENTIRE AGREEMENT AND JOINT PREPARATION

This Lease shall constitute the entire agreement of the parties hereto; all prior agreements between the parties, whether written or oral, are merged herein and shall be of no force and effect. This Lease cannot be changed, modified, or discharged orally but only by an agreement in writing signed by the party against whom enforcement of the change, modification, or discharge is sought. This Lease has been negotiated by and between the parties and shall be deemed to be jointly prepared.

SECTION 26. BINDING UPON SUCCESSORS

The covenants, conditions, and agreements made and entered into by the parties hereto shall be binding upon and inure to the benefit of their respective successor and assigns.

SECTION 27. HAZARDOUS SUBSTANCES

During the term of this Lease, Tenant shall not suffer, allow, permit, or cause the generation, accumulation, storage, possession, release, or threat of release of any hazardous substance or toxic material, as those terms are used in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and any regulations promulgated thereunder, or any other present or future federal, state, or local laws, ordinances, rules, and regulations. Tenant shall indemnify and hold Landlord harmless, up to the maximum coverage amount of Tenant’s insurance policies, from any and all liabilities, penalties, demands, actions, costs and expenses (including without limitation reasonable attorney fees), remediation and response costs incurred or suffered by Landlord directly or indirectly arising due to the breach of Tenant’s obligations set forth in this Section. Such indemnification shall survive expiration or earlier termination of this Lease. At the expiration or sooner termination hereof, Tenant shall return the Land to Landlord in substantially the same condition as existed on the Commencement Date free of any hazardous substances in, on, or from the Premises.

Prior to any renovation or demolition activities containing any asbestos-containing materials or asbestos-containing building materials, as defined by federal, state, or local laws,
ordinances, rules, and regulations, which are the responsibility of Tenant hereunder, or in connection with any renovation or demolition by Tenant, Tenant shall notify Landlord at least thirty (30) days prior to commencing such renovation or demolition. Such notification shall include the scope of work to be performed and the schedule of the renovation or demolition. Tenant shall be responsible for compliance with all applicable asbestos and environmental regulations for its own employees and any other persons under their control or direction, including but not limited to employee training.

SECTION 28. FORCE MAJEURE

If either party hereto shall be delayed or hindered in or prevented from the performance of any obligation required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, military or usurped power, sabotage, unusually severe weather, fire or other casualty, or other reason (but excluding inadequacy of insurance proceeds, financial inability, or the lack of suitable financing) of a like nature beyond the reasonable control of the party delayed in performing its obligations under this Lease, the time for performance of such obligation shall be extended for the period of the delay.

SECTION 29. HEADINGS

The headings are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

Signed and acknowledged in the presence of:

Tennant:

CITY OF NEW ALBANY,
An Ohio Municipal Corporation

By: Joseph F. Stefanov,
City Manager

Print Name: ______________________

Approved as to Form:

Mitchell H. Banchefsky, City Law Director
Signed and acknowledged in the presence of:

Landlord:

BOARD OF EDUCATION OF THE NEW ALBANY-PLAIN LOCAL SCHOOL District

___________________________________________

By: ________________________________

Its: ________________________________

STATE OF OHIO :_____________________
:sss.
COUNTY OF FRANKLIN :_____________________

The foregoing instrument was acknowledged before me this ___ day of ____________, 2019 by Joseph F. Stefanov, City Manager of the City of New Albany, an Ohio Municipal Corporation, for and on behalf of said City

Notary Public

STATE OF OHIO :_____________________
:sss.
COUNTY OF FRANKLIN :_____________________

The foregoing instrument was acknowledged before me this ___ day of ____________, 2019 by ________________________________, ______________________________ of the Board of Education of the New Albany-Plain Local School District, for and on behalf of said District.

Notary Public