



Prepared: 10/04/2019  
Introduced: 10/15/2019  
Revised:  
Adopted:  
Effective:

## **ORDINANCE O-36-2019**

### **AN ORDINANCE TO ACCEPT THE EXPEDITED TYPE 1 ANNEXATION OF 1.2 +/- ACRES FROM JERSEY TOWNSHIP, LICKING COUNTY TO THE CITY OF NEW ALBANY**

**WHEREAS**, pursuant to the petition filed by Aaron L. Underhill and David Hodge, agent for petitioners, with the Licking County Development and Planning Department, on July 23, 2019, and

**WHEREAS**, the foregoing Resolution #100-267 of the Licking County Commissioners granting the petition was delivered to the City of New Albany on July 30, 2019, 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-48-2018 of the City of New Albany, the New Albany City Manager was authorized to enter into a Roadway Maintenance Agreement with the Township of Jersey for the maintenance of sections of roadways impacted by this annexation.

**WHEREAS**, the real estate is located in Licking County and shall be 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**, 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 1.2+/- 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 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 1.2 +/-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.** Pursuant to Article VI, Section 6.07(B) of the charter of the City of New Albany, this ordinance shall be in effect on and after the earliest period allowed by law.

**CERTIFIED AS ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**Attest:**

\_\_\_\_\_  
Sloan T. Spalding  
Mayor

\_\_\_\_\_  
Jennifer H. Mason  
Clerk of Council

**Approved as to form:**

\_\_\_\_\_  
Mitchell H. Banchevsky  
Law Director

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

I certify that copies of Ordinance **O-36-2019** were posted in accordance with Section 6.12 of the Charter, for 30 days starting on \_\_\_\_\_, 2019.

\_\_\_\_\_  
Jennifer Mason, Clerk of Council

\_\_\_\_\_  
Date

**PROPOSED ANNEXATION  
1.2 ± ACRES**

**TO: VILLAGE OF NEW ALBANY**

**FROM: JERSEY TOWNSHIP**

Situated in the State of Ohio, County of Licking, Township of Jersey, lying in Farm Lot 29, Quarter Township 2, Township 2, Range 15, United States Military Lands, and being all of that 1.171 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201904010005879 (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 Jug Street Road and Beech Road, being an angle point in the City of New Albany Corporation Line established in Ordinance Number O-33-2010, of record in Instrument Number 201011040022449 and established in Ordinance Number O-12-2019, of record in Instrument Number 201906210012317;

Thence North 03° 18' 15" East, with said centerline of Beech Road, said existing corporation line (Ordinance Number O-12-2019), a distance of 2302.49 feet to a point at the common corner of said 1.171 acre tract and that 10.936 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201901070000272, the TRUE POINT OF BEGINNING;

Thence North 03° 18' 15" East, with the centerline of said Beech Road, the westerly line of said 1.171 acre tract, a distance of 149.83 feet to a point at the common corner of said 1.171 acre tract and that 1.171 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201901160000962, being an angle point in said existing corporation line (Ordinance Number O-12-2019);

Thence South 86° 14' 47" East, with the line common to said 1.171 acre tracts, said existing corporation line, a distance of 340.00 feet to a point in a westerly line of said 10.963 acre tract;

Thence South 03° 18' 15" West, with the line common to said 1.171 acre and 10.963 acre tracts, said existing corporation line, a distance of 150.00 feet to a point;

Thence North 86° 13' 05" West, with said common line, said existing corporation line, a distance of 340.00 feet to the TRUE POINT OF BEGINNING, containing 1.2 acres, more or less.

The above description and corresponding map were prepared from Licking County Auditor's GIS information, and said description is not intended for transfer.



EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Heather L. King*  
Heather L. King  
Professional Surveyor No. 8307

*6/27/19*  
Date

HLK: sy  
I\_2 ac 20180623-VS-ANNX-03.doc

PRE-APPROVAL	
LICKING COUNTY ENGINEER	
APPROVED	CONDITIONAL
<input checked="checked" type="checkbox"/>	<input type="checkbox"/>
APPROVED BY:	<i>HLK</i>
DATE:	<i>6/27/19</i>

**PROPOSED ANNEXATION OF 1.2± ACRES  
TO THE CITY OF NEW ALBANY FROM JERSEY TOWNSHIP**  
FARM LOT 29, QUARTER TOWNSHIP 2, TOWNSHIP 2, RANGE 15  
UNITED STATES MILITARY LANDS  
TOWNSHIP OF JERSEY, COUNTY OF LICKING, STATE OF OHIO

45000 L SUPER M40  
M40 P 3000  
100 AC (DEED)  
24 576 P 318  
4 037-1226-20 000



LOCATION MAP AND BACKGROUND DRAWING

Proposed Annexation  
of 1.2 +/- acres to the Village of New Athens

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 704 of the Ohio Revised Code.

### Agenda for Parliament

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 hereon and having given due consideration to the prayer of said petition, do hereby grant the same.

Board of Licking County Commissioners

Petition Received \_\_\_\_\_, 20\_\_\_\_

### Conclusions

Human Rights 39

## CONTINUING

**1. Introduction**

Transferred this day of                     , 20      , upon the duplicates of this office.

Continuing 325

**Licheno County Ambulance**

Received for Record \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ (AM-PM) and recorded \_\_\_\_\_  
20\_\_ in plat ordinance, petition, etc. in Plat Book Volume \_\_\_\_\_, Page \_\_\_\_\_

Mat 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 shown hereon for annexation in the City of New Albany, Ohio, a municipal corporation.

Attest \_\_\_\_\_  
 Clerk, City of New Albany



By Heather L. King 6/27/11  
Heather L. King Date  
Professional Surveyor No. 8307

[illegible]

Project X North Surveying Services / 20180623-VS-ARMY-03

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
DATE 08-11-2010 BY 60322 UCBAW/SJS/STP





Prepared: 10/01/2019  
Introduced: 10/15/2019  
Revised:  
Adopted:  
Effective:

## ORDINANCE O-37-2019

**AN ORDINANCE TO APPROVE THE FINAL PLAT FOR 37 AGE RESTRICTED SINGLE FAMILY LOTS ON 10.332 +/- ACRES AND ACCEPT RESERVES "I," "J," "K," AND "L," FOR PHASE 2 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 Courtyards at New Albany phase 2 final plat 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 September 16, 2019, recommended approval of this final plat (FPL-69-2019); and

**WHEREAS**, The Courtyards at New Albany phase 2 final plat includes approximately 10.332 +/- acres of land to be subdivided into 37 residential lots in addition to the public streets; and

**WHEREAS**, the 10.332 acre The Courtyards at New Albany phase 2 final plat includes approximately 2.541 +/- acres of parkland and open space;

**WHEREAS**, The Courtyards at New Albany phase 2 final plat includes the commitment to dedicate reserves I, J, K and L 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 Courtyards at New Albany phase 2 final plat 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 ORDAINED** by Council for the city of New Albany, Counties of Franklin and Licking, State of Ohio, that:

**Section 1.** The said The Courtyards at New Albany phase 2 final plat 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(B) of the New Albany Charter, this ordinance shall become effective thirty (30) days after adoption.

**CERTIFIED AS ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

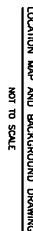
**Attest:**

\_\_\_\_\_  
Sloan T. Spalding  
Mayor

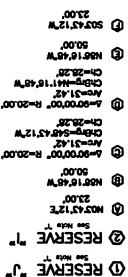
\_\_\_\_\_  
Jennifer H. Mason  
Clerk of Council

**Approved as to form:**

\_\_\_\_\_  
Mitchell H. Banchefsky  
Law Director



## PHASE 2



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10/10/2020					

[illegible]



Prepared: 10/24/2019  
Introduced: 11/05/2019  
Revised:  
Adopted:  
Effective:

## ORDINANCE O-38-2019

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF NEW ALBANY BY AMENDING THE ZONING MAP TO REZONE 16.62 +/- ACRES OF LAND GENERALLY LOCATED NORTH OF STATE ROUTE 161, WEST OF BEECH ROAD AND SOUTH OF SMITH'S MILL ROAD FOR AN AREA TO BE KNOWN AS THE "NORTHWEST BEECH INTERCHANGE ZONING DISTRICT" FROM ITS CURRENT ZONING OF "I-PUD" INFILL PLANNED UNIT DEVELOPMENT TO "I-PUD" INFILL PLANNED UNIT DEVELOPMENT AS REQUESTED BY THE NEW ALBANY COMPANY 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 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 The New Albany Company LLC c/o Aaron Underhill, the Planning Commission of the City of New Albany has 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.** 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 16.62 ± acre area of land general located north of State Route 161, west of Beech Road and south Smith's Mill Road for an area to be known as the "Northwest Beech Interchange Zoning District" from its current zoning of "IPUD" Infill Planned Unit Development to "I-PUD" Infill Planned Unit Development.
- B. The zoning district's zoning 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.

CERTIFIED AS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**Attest:**

\_\_\_\_\_  
Sloan T. Spalding  
Mayor

\_\_\_\_\_  
Jennifer H. Mason  
Clerk of Council

**Approved as to form:**

\_\_\_\_\_  
Mitchell H. Banchevsky  
Law Director

**NORTHWEST BEECH INTERCHANGE  
ZONING DISTRICT**

**INFILL PLANNED UNIT DEVELOPMENT (I-PUD) TEXT**

**OCTOBER 22, 2019**

**I. Introduction:** The Northwest Beech Interchange Zoning District (hereinafter, the “Zoning District”) seeks to update and replace the zoning requirements for certain real property located to the northwest of the State Route 161/Beech Road interchange. This property includes 16.02+/- acres which, prior to the date of approval of this text, consisted of all of Subarea 1 and a small portion of Subarea 2 of the Beech/161 Northwest Quad Zoning District. Those portions of Subarea 2 of the Beech Northwest Quad Zoning District which are not included in this rezoning shall retain the rights and obligations that are applicable to that zoning district. For purposes of consistency, plans which accompany this text may refer to the property within this Zoning District as “Subarea 1”. Subarea 1 may be further labeled as Subarea 1-A, Subarea 1-B, and Subarea 1-C.

Since the approval of the Beech 161 Northwest Quad Zoning District, the market for outparcel uses at this interchange has solidified, providing further guidance as to the anticipated development pattern along the Beech Road and Smith’s Mill Road frontages and allowing the developer to identify the internal vehicular and pedestrian circulation system that will be needed to serve the outparcels. This rezoning serves to set the location of this circulation route and to update development standards to meet the needs and demands of the market. The internal circulation route will consist of a paved private drive with sidewalks as later described herein within the area that is identified in the accompanying preliminary development plan as the “Private Road”.

**II. Permitted Uses:**

A. C-3 Uses: Permitted and conditional uses within the portion of this Zoning District that is labeled in the preliminary development plan as Subarea 1-A shall include those set forth in the Codified Ordinances of the City of New Albany, Sections 1149.02 and 1149.03, C-3, Highway Business District. Conditional uses must be reviewed in accordance with Chapter 1115, Conditional Uses. A maximum of one gasoline service station is permitted within this Zoning District. In addition, vehicle charging stations shall be deemed to be permitted uses in this subarea. The following uses shall be prohibited:

1. Truck stops, travel centers, or similar uses
2. Self-storage facilities
3. Automobile sales

B. GE Uses: Permitted and conditional uses in Subarea 1-A also shall include those set forth 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. Permitted and conditional uses in Subarea 1-B and Subarea 1-C shall include only those uses described in this Section II.B. The following uses shall be prohibited in all portions of this Zoning District:

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))
4. Radio/television broadcast facilities (See Section 1153.03(c)(1))
5. Sexually-oriented businesses (See Section 1153.03(c)(3))
6. Warehouse and distribution
7. Off-premise signs (unless approved by the Planning Commission as a part of a master sign plan or an approved Final Development Plan)

**III. Development Standards:** Unless otherwise specified in the submitted drawings or in this written text, the development standards of Part Eleven of the Codified Ordinances of the City of New Albany shall apply to this Zoning District. Basic development standards are compiled regarding proposed density, site issues, traffic, circulation, landscape and architectural standards. These component standards ensure consistency and quality throughout the development.

**IV. Setbacks; Lot Coverage:**

A. State Route 161: There shall be a minimum building setback of 125 feet from the State Route 161 right-of-way. The minimum pavement setback from the State Route 161 right-of-way shall be the same as the northern boundary line of the gas line easement that burdens the Zoning District, which is described in that certain Gas Line Easement Amendment With Partial Release which is of record with the Office of the Recorder of Licking County, Ohio (the "Easement Agreement"). The minimum required pavement setback from the State Route 161 right-of-way shall not change in the future merely by the amendment of the Easement Agreement as it relates to this Zoning District.

B. Beech Road: There shall be a minimum building setback of 75 feet and a minimum pavement setback of 40 feet from the Beech Road right-of-way, provided that a canopy over gasoline tanks at a gas station as contemplated under Section II.B may encroach into the minimum building setback.

C. Smith's Mill Road: There shall be a minimum building setback of 75 feet and a minimum pavement setback of 55 feet from the Smith's Mill Road right-of-way.

D. Private Road: There shall be a minimum building and pavement setback of 15 feet from the boundary of the Private Road, as measured from the back of the curb of the Private Road.

E. Internal Parcel Lines: There shall be a minimum building and pavement setback of 10 feet for any parcel line that is not contiguous with the rights-of-way Beech Road or Smith's Mill Road or with the boundary of the Private Road.

F. 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 shall no longer apply with respect to these parcels.

G. Lot Coverage: There shall be a maximum lot coverage of 80% in this subarea, measured on a parcel-by-parcel basis. The Private Road and its associated improvements shall be exempt from this requirement.

**V. Architectural Standards:**

A. Non-Retail Uses: The following architectural standards shall apply to any building distinctively located outside of a retail development which does not contain a retail use as a primary use:

1. Building Height: The maximum building height for structures shall not exceed 65 feet.
2. Service and Loading Areas: Service and loading areas shall be screened in accordance with City Code.
3. Mechanical Equipment: The following standards shall be required and shall be scaled according to the size of the individual building or tenant. These features may be scaled to a group of smaller side-by-side tenants within the same building when architecturally appropriate:
  - a. 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 sound generated by such equipment; and
  - b. Complete screening shall be required of all ground-mounted mechanical and other equipment at ground level by walls, fencing, or landscaping that is consistent and harmonious with the materials on and character of the nearest primary building.
4. Building Design: 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 the appropriate design. In recognition of this fact, the standards set forth herein provide guidelines and suggestions for design 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 and 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 that is not subject to or governed by the DGRs, 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 1144.04(q) 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:

- a. 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.
- b. Uninterrupted blank wall facades shall be prohibited to the extent that they are visible from a public right-of-way. Design variation 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.
- c. 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.
- d. 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.

5. Materials:

- a. Cementitious products such as Hardi Plank or its equivalent, brick, wood siding, stone, cultured stone and composition material may be used as exterior wall finish materials. Exterior wall finish materials must be used to complete massing elements.
- b. Prefabricated metal buildings, untreated masonry block structures, and buildings featuring poured concrete exterior walls are prohibited.
- c. Generally, the quantity of materials selected for a building shall be minimized.
- 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.

B. Architectural Standards for C-3 Uses: For purposes of this text, “C-3 Uses” shall mean any permitted or conditional use that is referred to in Section II.A above. Any structure

containing any of the C-3 Uses as its primary use shall be subject to the following architectural standards:

1. Style: The architectural details, materials and colors of all outparcel buildings shall be compatible with the standards for the primary retail structure in the same subarea in which the outparcel is located. Buildings shall be designed with a comparable level of detail on all sides.
2. Service and Loading Areas: Service and loading areas shall be screened in accordance with the City Code.
3. Height: Buildings shall be a minimum of one (1) story and a maximum of two (2) stories. Hotels may exceed two stories in height and are permitted to be a maximum of 65 feet in height. Architectural elements such as parapets, cupolas, mechanical screening or similar features may exceed these maximum building heights.
4. Mechanical Equipment: The following standards shall be required and shall be scaled according to the size of the individual building or tenant. These features may be scaled to a group of smaller side-by-side tenants within the same building when architecturally appropriate:
  - a. complete screening shall be required of all roof-mounted equipment and appurtenances from the view of any public roadway with materials that are consistent and harmonious with the building's façade and character; and
  - b. complete screening shall be required of all ground-mounted mechanical and other equipment at ground level by walls, fencing, or landscaping that is consistent and harmonious with the materials on and character of the nearest primary building. Such screening shall be provided in order to screen the equipment from off-site views and sound generated from such equipment.
5. Exterior Elevations: All exterior elevations of each building shall be required to have the following characteristics:
  - a. Consistency of Finish: The same palette of exterior finishes and color shall be used on all sides of each building.
  - b. Exterior Wall Finishes: Cementitious products such as Hardi Plank or its equivalent cementitious product, brick, wood siding, stone, cultured stone, metal, EIFS and composite material (except vinyl) shall be used as exterior wall finish materials where appropriate. Exterior wall finish materials must be used to complete massing elements. The application of brick veneer to a single building façade shall be prohibited. Alternative building materials may be used subject to Architectural Review District approval (Chapter 1157).

6. Roof: General roof massing shall incorporate pitched roofs. Flat roofs shall be permitted, but must integrate strong cornice lines. Acceptable roof materials include natural and synthetic slate, cedar shake, dimensional asphalt shingle, and standing seam metal. Roof elements shall be incorporated that emphasize and reduce the building scale at the building storefront such as, but not limited to, dormers, cupolas, roof spires, and hip and gable roofs.

7. Gutters and Downspouts: Sloped roofs shall be required to employ gutters and downspouts for drainage.

i. Gutter Specifications: Gutters shall be of a metal type and shall be painted to match fascias.

ii. Scuppers: Scuppers may be used on the rear of a building with a parapet in lieu of interior drains. Scupper boxes on the rear of a building shall be painted to blend in with the exterior color or shall be of a manufactured metal of a color which complements the finished material to which it is affixed. Through-wall scuppers may be permitted where parapet walls are used. Overflow drains may be an open scupper through a parapet. An open scupper shall be detailed to minimize its appearance on the building elevation.

8. Exterior Doors: All exterior doors other than doors whose primary purpose is for the entry or exit of customers shall be made of a heavy gauge metal. Such doors shall be painted with a color that blends with the color of the exterior masonry on the elevation on which the door is located.

9. Drive-thrus: A building located on an outparcel shall be permitted to have a pick-up unit on the side or rear of the structure. The pick-up unit shall include architectural details that are comparable to and consistent with the architecture in the balance of the subarea in which the pick-up unit is located.

10. Playgrounds: Outdoor playgrounds are prohibited.

## **VI. Access, Parking, Site Circulation, and Traffic Commitments:**

A. Private Road: The Private Road shall be paved to provide two-way vehicular traffic. This access route shall be a private road built to public specifications. Any parcel that contains no improvements other than the Private Road and associated improvements shall not be subject to the minimum street frontage requirements for a parcel under the Codified Ordinances. The Private Road shall be subject to covenants, conditions, and restrictions (“CCRs”) covering the real property within this Zoning District which will be recorded prior to the transfer and conveyance of any real property in the Zoning District by the applicant to an unaffiliated third party and will provide easements for vehicular and pedestrian access and set forth the respective rights and obligations of all property owners in this Zoning District and property owners of adjacent property to the west relating to maintenance, repair, and replacement of improvements within the easement for the Private Road. The Private Road shall be within a thirty foot (30’) wide easement established under the CCRs, except near its intersections with each of

Beech Road and Smith's Mill Road, where the easement width may be larger. The property owner shall, upon written request from the City, dedicate the Private Road to the City for use as a public street upon approval of a final plat by the City. The dedication shall include a right-of-way width of 42 feet for the portion of the Private Road extending westward from Beech Road, with an easement in favor of the City that is nine (9) feet in width on each side of that right-of-way to accommodate utilities, street trees, and sidewalks. The dedication shall include a right-of-way width of 30 feet for all other portions of the Private Road, with an easement in favor of the City that is 10 feet in width on each side of that right-of-way to accommodate utilities, street trees, and sidewalks.

**B. Subarea 1-A Public Street Access:** Subarea 1-A shall have the following rights of vehicular access:

1. One access point along Beech Road in the current location of the paved apron into the site. Such access point shall be restricted to right-in, right-out turn movements unless, at the time of final development plan approval for one or more outparcels the Planning Commission approves an additional left in and/or left out turn movement based on a traffic analysis presented by the applicant to the City and which has been approved and accepted by the City Traffic Engineer.
2. One additional access point with right-in, right-out turn movements may be permitted along Beech Road to the north of the access point described in the immediately preceding paragraph, but only if approved as part of a final development plan that includes a traffic analysis supporting the access point which has been approved by the City Traffic Engineer.
3. One additional access point on the south side of Smith's Mill Road, located at least 500 feet from the center of the intersection of Beech Road and Smith's Mill Road and located at a safe distance from the easternmost access point described in the immediately preceding subsection (c), with right-in, right out turn movements. Additional turn movements may be permitted if approved by the City based on a review of a traffic analysis provided by the applicant and which has been approved and accepted by the City Traffic Engineer.
  - a. A total of three access points on the south side of Smith's Mill Road are permitted between this zoning district and the Beech/161 Northwest Quad zoning district.
4. A minimum of one vehicular access point with full turn movements shall be provided along the Private Road for each parcel. At the time of final development plan, two vehicular access points along the Private Road may be permitted for parcels with side and rear boundary lines that are contiguous with the Private Road, subject to approval of the city engineer and supported by a traffic analysis provided by the applicant. The city engineer may waive this obligation at their discretion. An outparcel that is developed as a gas station use as referenced in Section II.A may have its permitted access point along the Private Road (or one of the access points along the Private Road, if more than one is permitted) to be at a width of up to forty feet (40') to facilitate gasoline tanker trucks and other large delivery vehicles.

C. Sidewalk; Pedestrian Circulation: A 5-foot wide concrete sidewalk shall be provided on both sides of all Private Roads. . Parking lot designs and pedestrian circulation routes shall provide safe, convenient, and efficient access for vehicles, pedestrians, and bicyclists. Pedestrian circulation via internal public and/or private walkways shall be encouraged. An 8-foot wide asphalt leisure trail shall be required along Beech Road and Smith's Mill Road.

D. Parking and Loading Spaces:

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

2. There shall be no more than two (2) rows of parking spaces in front of the principal building and one drive aisle in front of the principal building to provide vehicle circulation around each site, except if a hotel is built to the south of the portion of the Private Road extending westward into this Zoning District from Beech Road then additional parking is permitted in front of the building as approved by the Planning Commission.

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

A. Tree Preservation: Reasonable and good faith efforts will be made to preserve existing trees and tree rows occurring within required setbacks. 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.

B. A landscape plan for the entirety of the Beech Road and Smith's Mill Road street frontages within Subarea 1-A shall be filed along with the first final development plan for property within Subarea 1-A which includes a building.

C. SR 161 Treatment: A four-board white horse fence shall be required generally running parallel to State Route 161 along the perimeter of this Zoning District but outside of the right-of-way. The landscaping plan shall include plantings at the minimum rate of ten trees per 100 linear feet within the required minimum pavement setback from State Route 161 in all areas where existing trees are not preserved. Required trees may be grouped or spaced and existing trees may be used to meet the planting requirements. Trees planted pursuant to this paragraph shall be of species which are native to Central Ohio. No single species shall be used for more than one-third of the trees required by this paragraph. Minimum sizes for trees required to be planted pursuant to this paragraph shall be two (2) caliper inches.

D. Treatment along Beech Road and Smith's Mill Road: Within the minimum required pavement setbacks along each of Beech Road and Smith's Mill Road, landscaping shall be coordinated and consistent throughout. The following also shall be provided, as generally illustrated in the attached Exhibit A:

1. Fence: A four-board white horse fence shall be required along the street frontage. The final location will be determined with a final development plan approval for a specific development proposal, if required, or by City staff if no final development plan approval is required.

2. Setback Landscaping: A landscaped area shall be required behind the fence and within the required pavement setbacks. This buffer shall consist of deciduous shade trees planted at a rate equal to 10 trees or more for every 100 lineal feet of street frontage. Such trees may be equally spaced or randomly grouped and shall be of species which are native to Central Ohio. No single species shall be used for more than one-third of the trees required by this paragraph. Minimum sizes for trees required to be planted pursuant to this paragraph shall be two (2) or three (3) caliper inches, provided that no more than 50% of these trees shall be two (2) inches in caliper.

3. Gateway Feature: City Gateway features are planned throughout the Business Park and may be located in this Zoning District near the intersection of Beech Road and Smith's Mill Road. Once gateway feature design is finalized, it may be incorporated into the buffer treatment. If its design is not finalized prior to submitting a final development plan, adequate space shall be provided on the site and the landscape buffer shall be designed to incorporate this feature, subject to approval of the City Landscape Architect.

4. Screening of Parking: A landscape buffer to screen parking areas shall be located within the pavement setback along all public rights-of-way. This buffer may contain landscape material, mounding, or a combination of both and shall have a minimum height of 4 feet and a minimum opacity of 75%.

E. Interior Setback Lines: A landscape buffer shall be required within the required setback of any interior side parcel line (i.e., those lines not contiguous with a public right-of-way line or the boundary line of the Private Road. It shall consist of a ten (10) foot landscape buffer with grass and landscaping. Deciduous tree plantings shall be required in the buffer. Trees shall be planted a ratio of four (4) trees for every one-hundred (100) feet of side property line. Deciduous shrubs shall be planted under the trees. The landscaping material within interior side lot line buffers shall be coordinated along shared property lines to achieve a cohesive planting scheme.

F. Stormwater Basins: Wet and dry stormwater basins shall conform to the standards set forth in Section 1171.08 of the Codified Ordinances of the City of New Albany unless other design solutions are found to be appropriate. Other design solutions may be appropriate if the City Landscape Architect finds that an alternative design, shape, and appearance is appropriate in particular relationship to streetscape and other site design considerations. One or more stormwater basins may be shared to serve this Zoning District and the Beech/161 Northwest Quad Zoning District to accommodate the stormwater management needs of uses within this Zoning District, so as to eliminate the need for each parcel to have its own on-site basin.

G. Street Trees: A street tree row shall be established along the Private Road and all publicly dedicated rights-of-way (except SR 161) within or adjacent to this subarea and shall contain one (1) tree for every thirty (30) feet of road frontage. Trees shall be regularly spaced

along Beech Road and Smith's Mill Road. Street trees shall be located a minimum of ten (10) feet from the edge of the right-of-way unless the City's Landscape Architect approves planting these trees closer to the right-of-way or within the right-of-way. Minimum street tree size at installation shall be three (3) caliper inches. Street trees shall be installed on both sides of the entirety of the Private Road at the time that the Private Road is constructed. Street trees along Beech Road shall be installed along the entire street frontage of Subarea 1-A when the first parcel develops which has frontage on this street. Similarly, street trees along Smith's Mill Road shall be installed along the entire street frontage of Subarea 1-A when the first parcel develops which has frontage on this street.

H. 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 tree areas). Parking lots shall be designed to accommodate parking lot islands with tree(s) at the end of parking aisles. Parking areas should be designed to foster pedestrian connectivity by accommodating the required pedestrian connections/walkways and provide landscaping to enhance visual aspects of the development. Particular attention shall be given to quantity or plan material and size of parking lot landscape islands closest to buildings.

I. Pedestrian Circulation:

1. Leisure Trail: An eight (8) foot wide asphalt shared use path/leisure trail shall be provided along the south side of Smith's Mill Road and along the west side of Beech Road.

2. An internal pedestrian circulation system of walkways shall be created so that a pedestrian using a public walk or leisure trail 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.

3. Walkways, no less than five (5) feet in width, shall be provided along the full length of the building along any façade featuring a customer entrance and along any façade abutting public parking areas.

J. 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 deciduous 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.

K. Mounding: Mounding, if employed, shall be included on the landscape plan which is subject to review and approval by the City Landscape Architect.

L. Bonding: All street trees that are not installed prior to infrastructure acceptance shall be bonded to guarantee installation.



M. Decorative Silos: Decorative silos are permitted within this subarea. The location and features will be presented to the Planning Commission as a part of a final development plan.

**VIII. Lighting:**

A. 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.

B. 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.

C. All parking lot light poles shall be black or New Albany green and constructed of metal. Light poles shall not exceed thirty (30) feet in height.

D. Landscape uplighting from a concealed source shall not be permitted.

E. No permanent colored lights or neon lights shall be used on the exterior of any building.

F. All new electrical utilities that are installed in this subarea shall be located underground.

G. All other lighting on the site shall be in accordance with City Code.

H. Street lighting must meet the City Standards and Specifications.

**IX. Signage:**

A. A master sign plan for C-3 uses shall be filed for the entirety of this Zoning District along with the first final development plan that is filed which contains a building. With respect to gas station/convenience store signage, reference is made to signage at the existing gas station/convenience store use located to the east of the State Route 62/Walton Parkway as being representative of an appropriate design and specifications for signage for this use in this Zoning District. Signs for all uses that are permitted to be developed in the GE, General Employment zoning district category shall meet the applicable requirements of the Codified Ordinances unless a variance from such standards is approved by the Planning Commission.

B. Retail tenants are permitted one sandwich board sign, not to exceed six (6) square feet in area, per side. The signs may be placed on the sidewalk in front of the appropriate tenant space, but may not be sited in a location that interferes with vehicular sight distance. Sign panels may be dry erase or chalk boards. Sign panels may also be inserted into the sign frame. Changeable copy sign panels with individual letters or numbers are not permitted. Signs may be displayed only during business hours.

**X. Utilities: All utilities installed by the Developer shall be underground.**

**XI. Limitation on Total Acreage to be Utilized for Commercial in the Beech Road/Smith's Mill Road Area:** For the purposes of developing property with commercial uses (C-3 Highway Business District with noted limitations), those areas that are found in the Business Park East – Innovation Zoning District, Subareas B and C, Business Park East Zoning District Subarea 5, Beech/161 Northwest Quad Zoning District, and the subareas included in this rezoning text, shall be limited to a total of no more than 92 acres of commercial development. The remainder of the acreage not used for commercial contained within Business Park East – Innovation Zoning District, Subareas B and C, Business Park East Zoning District Subarea 5, Beech/161 Northwest Quad Zoning District and the subareas included in this rezoning text shall be developed only with the uses permitted in the GE – General Employment District (excluding “Retail Product Sales and Service”) as specified in this text and those uses adopted in the zoning texts for the Business Park East Zoning District and the Business Park East Innovation Zoning District.

**XII. Review Procedures:**

A. Development Review Procedure: The acreage within this Zoning District could be developed with uses that are permitted in the GE, General Employment District, subject to the limitations described in this zoning text. It is the intent that development proposals for the operation of these uses (other than those which are retail in nature) will be processed and reviewed by the City in the same manner as if they were not being developed within a planned zoning district. Furthermore, it is the intent that any retail uses permitted in the GE District and any other use that is permitted under this zoning text but would not be permitted to be developed and operated in the GE, General Employment zoning classification of the City's Codified Ordinances will be subject to further review by the City's Planning Commission in accordance with relevant provisions of Chapter 1159 (Planned Unit Development) of the City's Codified Ordinances.

B. Conditional Uses: Any person owning or having an interest in property may file an application to use such property for one or more of the conditional uses provided for by City's Codified Ordinances Code or by this zoning text. Applications for conditional uses shall follow the procedure and comply with the requirements of Chapter 1115, Conditional Uses, of the Codified Ordinances of the City of New Albany.

C. Appeals and Variances:

1. Appeals:

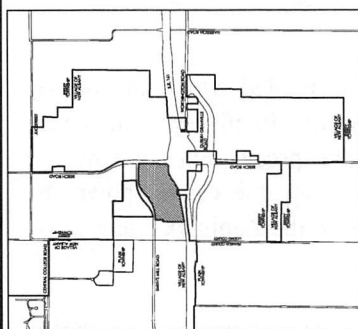
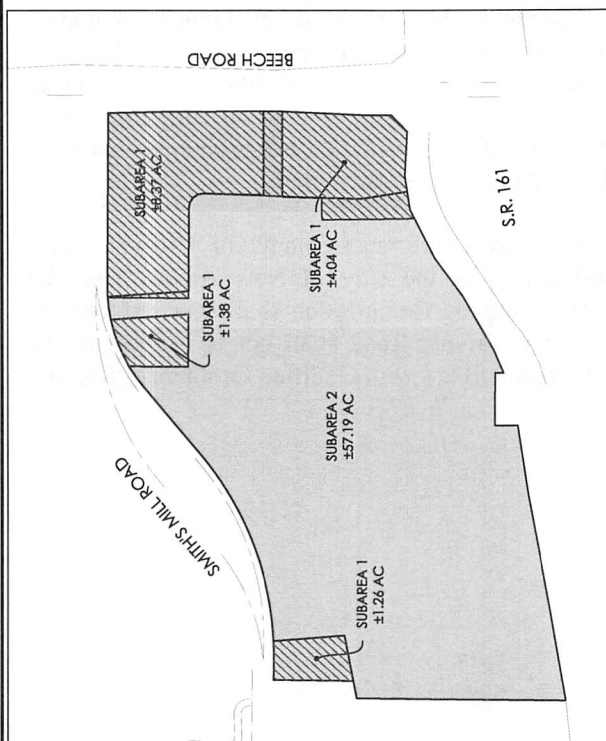
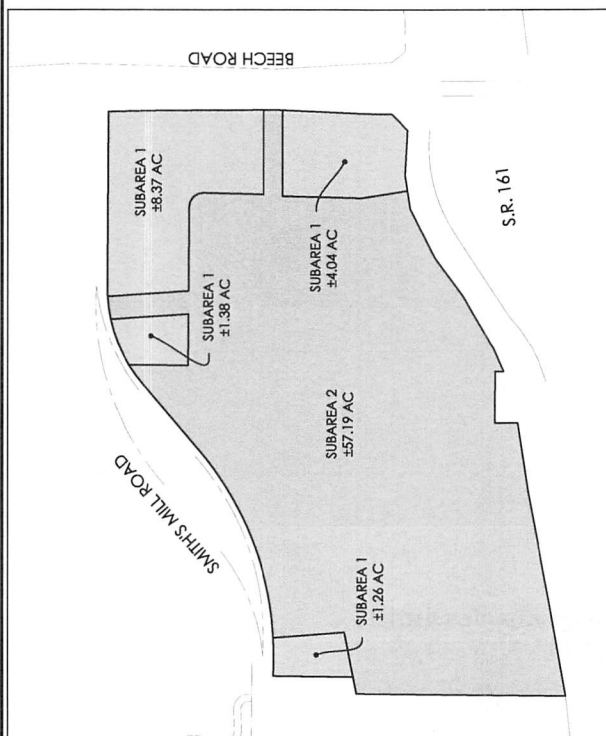
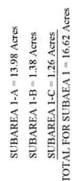
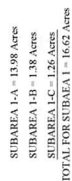
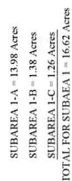
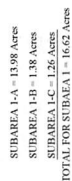
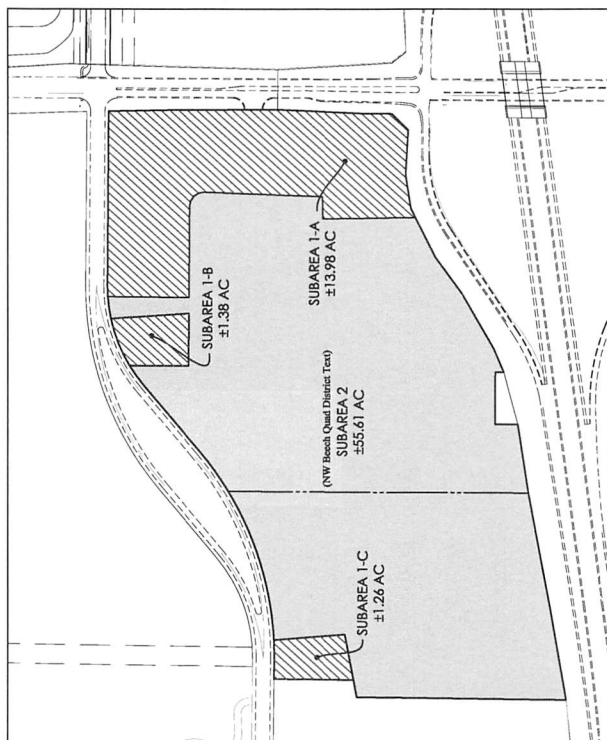
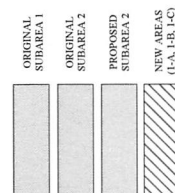
a. Taking of Appeals: Appeals to the Board of Zoning Appeals concerning interpretation or administration of the text or the underlying zoning ordinance by the Zoning Officer or any other administrative official may be taken by any person aggrieved, including a tenant, or by a governmental officer, department, board, or bureau. Such appeal shall be taken within twenty days after the date of the decision by filing a notice of appeal specifying the grounds thereof with the officer from whom the appeal is taken and the Board of Zoning Appeals.

b. Imminent Peril: An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Officer certifies to the Board of

Zoning Appeals, after notice of appeal shall have been filed with him, that by reason of facts stated in the application a stay would, in his opinion, cause imminent peril to life or property. In such case, the proceeding shall not be stayed other than by a restraining order which may, on due cause shown, be granted by the Board of Zoning Appeals, after notice to the Zoning Officer or by judicial proceedings.

2. Nature of Variance: On a particular property, extraordinary circumstances may exist making a strict enforcement of the applicable development standards of the PUD portion of this text or the Zoning Ordinance unreasonable and, therefore, the procedure for variance from development standards is provided to allow the flexibility necessary to adapt to changed or unusual conditions, both foreseen and unforeseen, under circumstances which do not ordinarily involve a change of the primary use of the land or structure permitted.

3. Variance Process: The procedures and requirements of Chapter 1113, Variances of the Codified Ordinances of the City of New Albany shall be followed in cases of appeals. The Planning Commission shall hear requests for variances in this zoning district. The Private Road shall not be subject to the regulations of the subdivision standards found with Codified Ordinances Chapter 1187.





Prepared: 10/24/2019  
Introduced: 11/05/2019  
Revised:  
Adopted:  
Effective:

## ORDINANCE O-39-2019

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF NEW ALBANY BY AMENDING THE ZONING MAP TO REZONE 1.2 +/- ACRES OF LAND LOCATED AT 3180 BEECH ROAD FOR AN AREA TO BE KNOWN AS THE "JUG STREET NORTH EXPANSION ZONING DISTRICT" FROM ITS CURRENT ZONING OF "AG" AGRICULTURAL DISTRICT TO "L-GE" LIMITED GENERAL EMPLOYMENT 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 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 Planning Commission of the City of New Albany has 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.** 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 1.2 ± acre area of land located at 3180 Beech Road for an area to be known as the "Jug Street North Expansion Zoning District" from its current zoning of "Ag" Agricultural District to "L-GE" Limited General Employment;
- B. The zoning district's zoning 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.

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

PROPOSED

## Exhibit A - O-39-2019

### JUG STREET NORTH ZONING DISTRICT EXPANSION

#### LIMITATION (L-GE) TEXT

September 18, 2019

The property that is the subject of this zoning text consists of 1.2+/- acres generally located to the east of and adjacent to Beech Road, generally to the north of its intersection with Jug Street. The Jug Street North Zoning District Extension (hereinafter, the “Zoning District”) serves to extend the same or similar zoning and development standards to the property as apply to the Jug Street North Zoning District, which surrounds this Zoning District on the north, east, and south and was approved by New Albany City Council in Ordinance O-17-2019. 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)).
8. Off-premise signs

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

1. Street Improvements: To the extent street improvements are required, the developer shall work with the City Manager or his designee to determine the appropriate timing and phasing of all required street improvements.
2. Vehicular Access Points – Generally: 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. Parking and Loading: Parking and loading spaces shall be provided for each use per Section 1167 of the Codified Ordinances of the City of New Albany.

4. Traffic Analyses: 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.

5. Dedication of Rights-of-Way: The developer shall dedicate property as directed by the City for public street rights-of-way as follows:

a. Beech Road: The total right-of-way for Beech Road shall be 100 feet. Right-of-way shall be dedicated to the City within this Zoning District to a width of 50 feet as measured from the centerline of Beech Road.

b. 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. Beech Road: There shall be a minimum building and pavement setback of 185 feet as measured from the centerline of Beech Road.

b. 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.

c. Perimeter Boundaries: There shall be a minimum building and pavement setback of 25 feet from perimeter boundaries of this Zoning District which are not adjacent to a public right-of-way.

d. Elimination of Setbacks: In the event that a parcel located within this Zoning District and an adjacent parcel located outside of this Zoning District (i) come under common ownership or control, (ii) are zoned to allow compatible non-residential uses, and (iii) 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 in this Zoning District shall be 65 feet.
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 shall be made sufficiently prominent that they can be easily identified from a distance, except on buildings where pedestrian traffic is expected to be minimal such as, but not necessarily limited to, data centers or warehouses, or in the context of multi-building projects where the visibility of building entrances may be obstructed.
  - 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. Except as contemplated in Section E.5.b below, 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 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.

3. Roof-Mounted Equipment: Screening of all roof-mounted equipment shall be required on all four sides of buildings using materials that are consistent and harmonious with the building's façade and character. Such screening shall be provided not only in order to screen the equipment from off-site view but also to buffer sound generated by such equipment. Parapets (among other architectural elements) may be used to provide screening. Where a building is screened from view outside of the Zoning District by a building located within this Zoning District, City staff may waive or reduce these screening requirements provided that the developer demonstrates adequate buffering of sound from off-site.

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

1. Buffering: Buffering of uses and improvements from adjacent rights-of-way located outside of the Zoning District and from other property that is adjacent to this Zoning District shall be provided by means of tree preservation as well as mounding and plantings as detailed in this subsection.

a. 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.

b. Street Frontage Preservation Area: A "Street Frontage Preservation Area" shall be deemed to include the minimum pavement setback from the Beech Road right-of-way. Within the Street Frontage Preservation Area, the developer shall preserve existing healthy and mature trees and vegetation, provided, however, that public or private utilities may be installed within 60 feet of the centerline of Beech Road and/or may cross the Street Frontage Preservation Area (and trees may be removed as a result of such installations or crossings) provided, however, that the developer shall use good faith efforts to install utility crossings in a manner that minimizes the impact on healthy and mature trees. Trees within the

Street Frontage Preservation Area may be removed if they present a danger to persons or property.

2. Screening: Screening by way of mounding and plantings shall be provided near the public right-of-way for Beech Road. A minimum eight (8) foot high mound shall be installed along the property line that is shared with the public right-of-way of Beech Road (after any required right-of-way dedicated is completed pursuant to this text) 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 twelve (12) feet above ground level. This mound shall be installed within the minimum pavement setback, except that where a detention pond is located within the minimum setback area, the required mounding and landscaping shall be installed between the detention pond and the impervious improvements which are located closest thereto. The plan for this area must be reviewed and approved by the City's Landscape Architect. Utilities may be placed within or cross through the perimeter which abuts the right-of-way for Beech Road and the screening provided for above, and vehicular access drives may cross through such areas as well.

3. 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. All street trees that are not installed prior to infrastructure acceptance shall be bonded to guarantee installation.

4. 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.

5. 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.

6. 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 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.

7. All project landscape plans are subject to review and approval by the City Landscape Architect.

8. 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. New landscaping installed within the pavement setback along Beech Road shall be coordinated and consistent throughout the length of the Zoning District's frontage on that street. Similarly, new landscaping installed within the pavement setback along Jug Street shall be coordinated and consistent throughout the length of the Zoning District's frontage on that street.

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, except that light poles located within 300 feet of properties where residential uses exist or are permitted shall be no higher than 18 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.

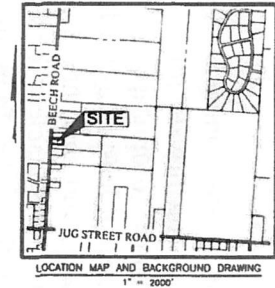
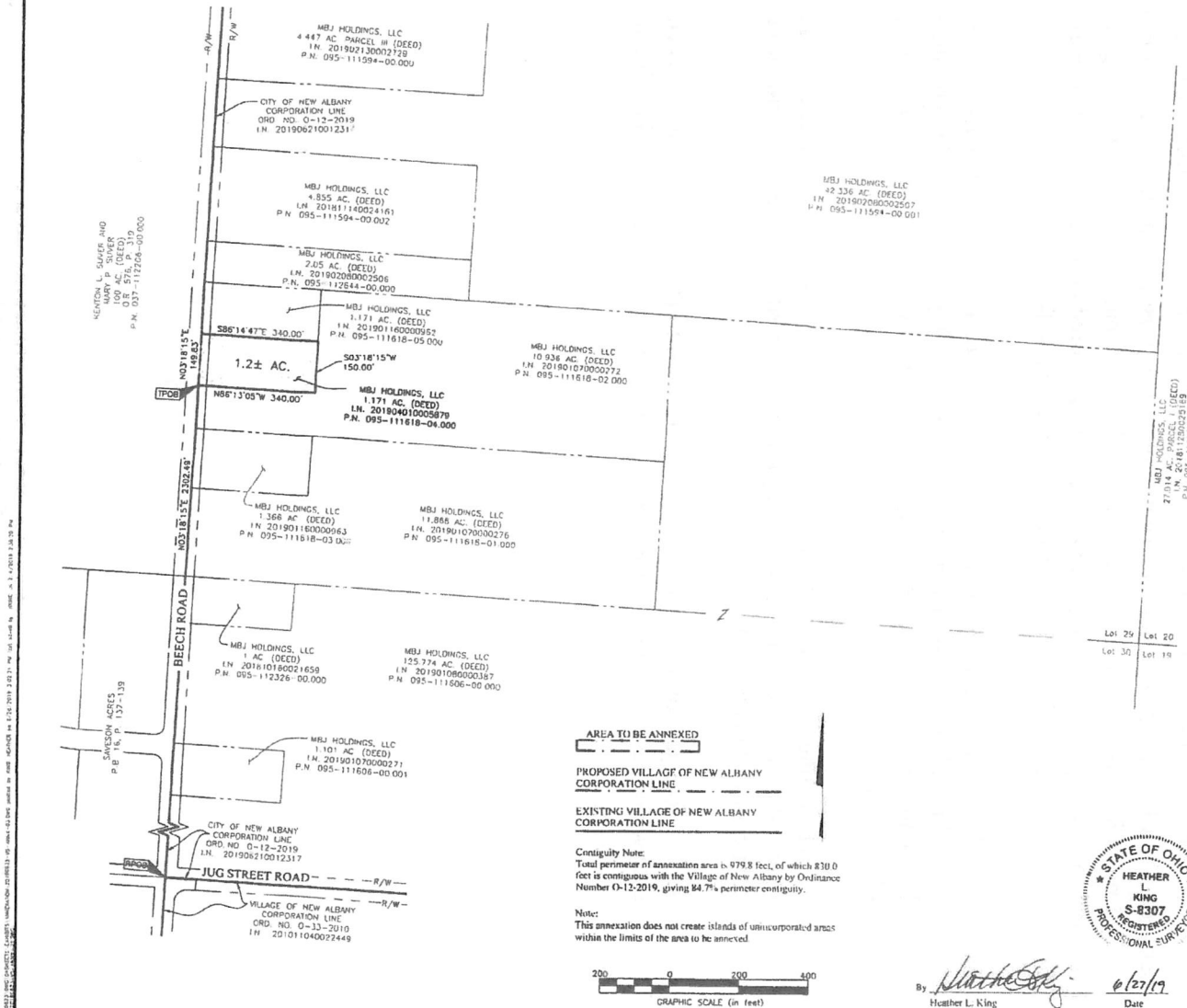
H. Signage: All signage shall conform to the standards set forth in Chapter 1169 of the Codified Ordinances of the City of New Albany.

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 serving private improvements within the Zoning District shall be permitted within an individual parcel (or multiple contiguous parcels under common ownership) provided that they shall be located at least 300 feet from the nearest 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 such 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 200 feet from the centerline 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 its minimum functional design height, which shall not exceed 125% 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).

# Zoning Map



Proposed Annexation  
of 1.2 +/- acres to the Village 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.

Agent 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 in the City of New Albany, Ohio, of the territory shown hereon and having given due consideration to the prayer of said petition, do hereby grant the same.

Board of Licking County Commissioners

Petition Received \_\_\_\_\_, 20\_\_\_\_  
Commissioner  
Petition Approved \_\_\_\_\_, 20\_\_\_\_  
Commissioner  
Commissioner

Transferred this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon the duplicates of this office.

Containing \_\_\_\_\_ sheets  
Transfer Fee \_\_\_\_\_  
Licking County Auditor

Received for Record \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ (AM-PM) and recorded \_\_\_\_\_, 20\_\_\_\_, in plat ordinance, petition, etc. in Plat Book Volume \_\_\_\_\_, Page \_\_\_\_\_.

Plat 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 shown hereon for annexation to the City of New Albany, Ohio, a municipal corporation.

Attest \_\_\_\_\_  
Clerk, City of New Albany



By Heather L. King 6/27/19  
Heather L. King  
Professional Surveyor No. 8307  
Date

<b>EMHT</b>			Date: January 30, 2019
Evans, Mechwart, Hamilton & Tolan, Inc. Engineers • Surveyors • Planners • Scientists 3500 New Albany Road, Columbus, OH 43204 Phone: 614.775.4900 Fax: 614.775.3448 emht.com			Scale: 1" = 200'
Job No: 2018-0623			Sheet: 1 of 1
REVISIONS			
MARK	DATE	DESCRIPTION	
HLK	6/26/19	Revised per annexation recording	





Prepared: 10/28/2019  
Introduced: 11/05/2019  
Revised:  
Adopted:  
Effective:

## ORDINANCE O-40-2019

### ANNUAL APPROPRIATION ORDINANCE

#### **AN ORDINANCE TO MAKE APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF NEW ALBANY, STATE OF OHIO, DURING THE FISCAL YEAR ENDING DECEMBER 31, 2020**

**WHEREAS**, Ohio Revised Code §5705.38(A) requires the taxing authority of each political subdivision to pass an annual appropriation measure on or about the first day of each year; and

**WHEREAS**, Council for the City of New Albany, State of Ohio, wishes to provide for funding for current expenses and other expenditures of the city during fiscal year 2020.

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

**Section 1:** To provide for the current expenses and other expenditures within the 2020 Annual Budget Program of the City of New Albany during the fiscal year ending December 31, 2020, the annual sums as follows are hereby set aside and appropriated:

Fund	Department	Category	Amount
General	Police	Personal Services	5,406,781
General	Police	Operating and Contractual Services	378,170
General	Community Development	Personal Services	1,697,393
General	Community Development	Operating and Contractual Services	1,251,700
General	Public Service	Personal Services	3,225,033
General	Public Service	Operating and Contractual Services	951,000
General	Land & Building Maintenance	Personal Services	67,167
General	Land & Building Maintenance	Operating and Contractual Services	1,448,800
General	Council	Personal Services	210,765
General	Council	Operating and Contractual Services	525,250
General	Administrative Services	Personal Services	1,608,847
General	Administrative Services	Operating and Contractual Services	1,230,235

Fund	Department	Category	Amount
General	Finance	Personal Services	639,497
General	Finance	Operating and Contractual Services	669,500
General	Legal	Personal Services	3,300
General	Legal	Operating and Contractual Services	445,000
General	General Administration	Personal Services	218,280
General	General Administration	Operating and Contractual Services	606,800
General	N/A	Capital	26,500
General	N/A	Transfers & Other Financing Uses	2,183,009
		<b>Total General Fund</b>	<b>22,793,028</b>

Fund	Department	Category	Amount
Severance Liability	General Administration	Personal Services	250,000
Street Construction, Maintenance & Repair	Public Service	Operating and Contractual Services	135,000
Street Construction, Maintenance & Repair	N/A	Capital	345,000
State Highway	Public Service	Operating and Contractual Services	20,000
State Highway	N/A	Capital	20,000
Permissive Tax	Public Service	Operating and Contractual Services	65,000
Permissive Tax	N/A	Capital	30,000
Economic Development (NACA)	Community Development	Operating and Contractual Services	2,472,962
Economic Development (NACA)	Public Service	Operating and Contractual Services	100,000
Economic Development (NACA)	N/A	Transfers & Other Financing Uses	525,438
Economic Development (NAECA)	N/A	Transfers & Other Financing Uses	552,768
Hotel Excise Tax	Community Development	Operating and Contractual Services	127,000
Healthy New Albany Facilities	Land & Building Maintenance	Operating and Contractual Services	920,000
Healthy New Albany Facilities	N/A	Transfers & Other Financing Uses	571,013
Mayors Court Computer	Administrative Services	Operating and Contractual Services	6,500
Oak Grove EOZ	Community Development	Operating and Contractual Services	3,651,000
Central College EOZ	Community Development	Operating and Contractual Services	2,183,000
Oak Grove II EOZ	Community Development	Operating and Contractual Services	1,456,000
Blacklick EOZ	Community Development	Operating and Contractual Services	4,000,000
Alcohol Education	Police	Operating and Contractual Services	1,500
Drug Use Prevention Program Grant	Police	Personal Services	36,000
Law Enforcement & Education	Police	Operating and Contractual Services	2,250
Safety Town	Police	Operating and Contractual Services	64,000
DUI Grant	Police	Personal Services	2,500
Law Enforcement Assistance	Police	Personal Services	1,200
K-9 Patrol	Police	Operating and Contractual Services	17,100

Fund	Department	Category	Amount
Windsor TIF	General Administration	Operating and Contractual Services	745,000
Windsor TIF	N/A	Transfers & Other Financing Uses	723,858
Wentworth Crossing TIF	General Administration	Operating and Contractual Services	126,000
Wentworth Crossing TIF	N/A	Transfers & Other Financing Uses	104,876
Hawksmoor TIF	General Administration	Operating and Contractual Services	66,000
Hawksmoor TIF	N/A	Transfers & Other Financing Uses	76,201
Enclave TIF	General Administration	Operating and Contractual Services	23,000
Enclave TIF	N/A	Transfers & Other Financing Uses	50,000
Saunton TIF	General Administration	Operating and Contractual Services	50,000
Saunton TIF	N/A	Transfers & Other Financing Uses	80,000
Richmond Square TIF	General Administration	Operating and Contractual Services	57,000
Richmond Square TIF	N/A	Transfers & Other Financing Uses	85,281
Tidewater I TIF	General Administration	Operating and Contractual Services	130,000
Tidewater I TIF	N/A	Transfers & Other Financing Uses	135,000
Ealy Crossing TIF	General Administration	Operating and Contractual Services	114,000
Upper Clarenton TIF	General Administration	Operating and Contractual Services	189,000
Upper Clarenton TIF	N/A	Transfers & Other Financing Uses	80,000
Balfour Green TIF	General Administration	Operating and Contractual Services	12,000
Balfour Green TIF	N/A	Transfers & Other Financing Uses	12,130
Straits Farm TIF	General Administration	Operating and Contractual Services	155,000
Blacklick TIF	General Administration	Operating and Contractual Services	666,000
Blacklick TIF	N/A	Transfers & Other Financing Uses	266,024
Blacklick II TIF	General Administration	Operating and Contractual Services	500
Village Center TIF	General Administration	Operating and Contractual Services	493,000
Village Center TIF	N/A	Transfers & Other Financing Uses	542,275
Reasearch & Technology District TIF	General Administration	Operating and Contractual Services	12,000
Oak Grove II TIF	General Administration	Operating and Contractual Services	20,000
		<b>Total Special Revenue Funds</b>	<b>22,569,376</b>

Fund	Department	Category	Amount
Debt Service	N/A	Debt Service	5,197,786
		<b>Total Debt Service Funds</b>	<b>5,197,786</b>

Fund	Department	Category	Amount
Capital Improvement	N/A	Capital	6,080,000
Capital Improvement	Finance	Operating and Contractual Services	64,000
Park Improvement	N/A	Capital	5,125,000
Water & Sanitary Sewer Improvement	N/A	Transfers & Other Financing Uses	220,513
Leisure Trail Improvement	N/A	Capital	10,000
Oak Grove II Infrastructure	Finance	Operating and Contractual Services	24,000
Economic Development Capital	N/A	Capital	25,000
		<b>Total Capital Projects Funds</b>	<b>12,970,991</b>
		<b>Total All Funds</b>	<b>63,531,181</b>

**Section 2:** To affect the purposes of the foregoing appropriations, the city manager is authorized to enter into agreements on such terms determined in the city manager's discretion, consistent with all other ordinances and resolutions in effect and enacted from time to time.

**Section 3:** The director of finance is authorized to allocate the appropriations for a department within activities. Except as provided in Section 4, the director of finance is authorized to approve transfers between activities, provided that funds may not be transferred between appropriation line items.

**Section 4:** The director of finance is authorized to transfer up to \$10,000 between appropriation line items, provided that such transfers are within the same fund and department, where applicable.

**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:** 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 \_\_\_\_\_ day of \_\_\_\_\_, 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-40-2019** were posted in accordance with Section 6.12 of the Charter for 30 days starting on \_\_\_\_\_, 2019.

\_\_\_\_\_  
Jennifer Mason, Clerk of Council

\_\_\_\_\_  
Date



Prepared: 10/28/2019  
Introduced: 11/05/2019  
Revised:  
Adopted:  
Effective:

## RESOLUTION R-52-2019

### **A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE NEW ALBANY COMMUNITY FOUNDATION AND NEW ALBANY COMMUNITY AUTHORITY IN ORDER TO ACQUIRE OWNERSHIP OF THE PROPOSED AMPHITHEATER UPON THE COMPLETION OF ITS CONSTRUCTION AND MAKE A DONATION OF \$1,000,000 TOWARD ITS CONSTRUCTION**

**WHEREAS**, to date, the New Albany Community Foundation has obtained financial commitments in the amount of \$5,410,000 for the construction of a community amphitheater of which \$1,925,000 has been collected; and

**WHEREAS**, the city has entered into a long term ground lease with the New Albany Plain Local School District for the property adjacent to the McCoy Center for the Performing Arts upon which the amphitheater will be built; and

**WHEREAS**, the New Albany Community Foundation has entered into a construction management agreement with Corna Kokosing Construction Company and obtained a guaranteed, not to exceed base price, of \$5,410,000 (excluding alternate items) for the construction of the amphitheater; and

**WHEREAS**, it has been the stated desire and intention of the New Albany Community Foundation that ownership of the amphitheater should be transferred to the City of New Albany free and clear of any and all financial encumbrances upon the completion of its construction; and

**WHEREAS**, upon its free and clear transfer of ownership to the City of New Albany, the city shall become responsible for the physical operation and maintenance of the amphitheater, and the New Albany Community Foundation shall be responsible for the contracting and payment of the performers, speakers, etc.; and

**WHEREAS**, the City of New Albany has entered into a memorandum of understanding with the Columbus Association for the Performing Arts (CAPA) to operate and manage the amphitheater on its behalf; and

**WHEREAS**, Council recognizes the value of the amphitheater to the community in terms of the residents' quality of life and future economic development opportunities; and

**WHEREAS**, the amphitheater will provide a unique venue for the community to access and enjoy the performing arts, particularly, those with a presence in New Albany and Central Ohio; and

**WHEREAS**, the amphitheater is intended to become a focal point for the Rose Run Park and Community Entertainment District; and

**WHEREAS**, in support of the amphitheater and its benefits to the community, the council wishes to contribute one million dollars (\$1,000,000.00) in support of its construction.

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

**Section 1:** The city manager is hereby authorized to enter into agreements with the New Albany Community Foundation and the New Albany Community Authority in order to obtain free and clear ownership of the amphitheater upon the completion of its construction.

**Section 2:** Council hereby authorizes the appropriation and payment of an amount not to exceed one million dollars (\$1,000,000.00) to the New Albany Community Foundation exclusively for the construction of the amphitheater, upon the execution of all necessary agreements referenced herein and attached as Exhibit A.

**Section 3.** The city manager is hereby authorized to make and execute amendments to the agreement such as are not adverse to the interests of the city.

**Section 4.** 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 5:** Pursuant to Article 6.07(A) of the New Albany Charter, this resolution shall take effect upon adoption.

**CERTIFIED AS ADOPTED** this \_\_\_\_\_ day of November, 2019.

**Attest:**

\_\_\_\_\_  
Sloan T. Spalding  
Mayor

\_\_\_\_\_  
Jennifer H. Mason  
Clerk of Council

**Approved as to form:**

\_\_\_\_\_  
Mitchell Banchevsky, Law Director



## **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 untenable, 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 tenable condition with reasonable dispatch.

(c) In the event the Premises, because of such damage or destruction, are not repaired and restored to a tenable 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).



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.

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

## **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 programing 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,

### **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.

## **GROUND LEASE**

**THIS GROUND LEASE (this "Lease"), made this 20<sup>th</sup> day of August, 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 approximately (1.9+- acres), 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 numbers 222-000141, 222-000104, 222-000228, and 222-002915 as depicted on Exhibit "T", 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**

**~~19-35~~ WHEREAS, Landlord is authorized to execute this Lease pursuant to District Resolution 19-35, and Tenant is authorized to execute this Lease pursuant to Resolution R-38-19; 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 Landlord's receipt of compensation in the amount of \$10.00.**

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## **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:**

**See Exhibit I**

**EXHIBIT B**

**GROUND LEASE**

**[See next 17 pages]**





**EXHIBIT A**

**DESCRIPTION AND DEPICTION OF THE PROPERTY**

[See next page.]

IN WITNESS WHEREOF, the Authority, the City and the Community Foundation have caused this Agreement to be executed in their respective names by their duly authorized officers all as of the date hereinbefore written.

THE NEW ALBANY COMMUNITY  
AUTHORITY

By: \_\_\_\_\_  
Chair, Board of Trustees

And By: \_\_\_\_\_  
Treasurer, Board of Trustees

NEW ALBANY COMMUNITY  
FOUNDATION

By: \_\_\_\_\_  
Chair, Board of Trustees

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

THE CITY OF NEW ALBANY

By: \_\_\_\_\_  
City Manager

And By: \_\_\_\_\_  
Finance Director

the prior written approval of the other parties, except to a transferee through a merger or consolidation and only if such resulting entity expressly assumes in writing, in a form satisfactory to the other parties, all obligations of the party under this Agreement and has a net worth, determined in accordance with generally accepted accounting principles consistently applied, at least as great as the party immediately prior to such merger or consolidation.

Section 7.9. Entire Agreement. This Agreement is signed by the parties as a final expression of all of the terms, covenants and conditions of their agreement and as a complete and exclusive statement of its terms, covenants and conditions and is intended to supersede all prior agreements and understandings concerning the subject matter of this Agreement.

Section 7.10. Counterparts. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

End of Article VII

[This Space Intentionally Left Blank; Signatures on Next Page]

Agreement shall inure to the benefit of and shall be binding to the extent authorized and permitted by applicable law upon the Authority, the City and the Community Foundation, and their permitted respective successors and assigns, subject, however, to the specific provisions hereof. The Authority, the City and the Community Foundation will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in this Agreement. Each provision of this Agreement is binding upon such officer of the Authority, the City and the Community Foundation as may from time to time have the authority or duty under law to take such actions as may be necessary to perform all or any part of the duty required by such provision; provided, however, that no such covenant, stipulation, obligation or agreement shall be deemed a covenant, stipulation, obligation or agreement of any present or future member, officer, agent, or employee of any of the parties in their individual capacity.. Each duty of the Authority and the City and of any of their officers and employees undertaken pursuant to this Agreement is a duty specifically enjoined by law and of each such officer and employee having authority thereunder or by provision of law to perform such duty, resulting from an office, trust or station, within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

Section 7.3. Amendments. Changes and Modifications. This Agreement may only be amended by written instrument executed by all parties to this Agreement.

Section 7.4. Severability. In case any section or provision of this Agreement, or any covenant, stipulation, obligation, agreement, act, or action, or part thereof made, assumed, entered into, or taken thereunder or any application thereof, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect the remainder thereof or any other section or provision thereof or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into, or taken thereunder, which shall be construed and enforced as if such illegal or invalid portion were not contained therein, nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such section, provision, covenant, stipulation, obligation, agreement, act, or action, or part thereof shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 7.5. Term. The term of this Agreement shall run until ninety (90) days after the acceptance of Project pursuant to Section 2.4 of this Agreement.

Section 7.6. Governing Law. This Agreement shall be governed exclusively and construed exclusively by and construed in accordance with the laws of the State.

Section 7.7. Approvals. Any provision of this Agreement requiring the approval of the Authority, the City or the Community Foundation, satisfaction or evidence of satisfaction of the Authority, the City or the Community Foundation, or certification or opinion of the Authority, the City or the Community Foundation, shall be interpreted as requiring action by the Authorized Authority Representative, the Authorized City Representative or the Authorized Community Foundation Representative, respectively, for this purpose granting, authorizing or expressing such approval, satisfaction certificate, certification or opinion, as the case may be, unless such provision expressly provides otherwise. The Authority, the City or the Community Foundation shall act reasonably and respond promptly in connection with each such request for approval, satisfaction, certification or opinion requested by the other party or parties.

Section 7.8. Assignment. This Agreement may not be assigned by any of the parties without

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

Section 6.1. Remedies. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by any party hereto, or any successor to such party, such party or successor shall, upon written notice from the others, proceed promptly to cure or remedy such default or breach. In case such remedial action is not taken or not diligently pursued within thirty (30) days of such written notice, the party asserting default or breach may institute such proceedings at law or in equity as may be necessary or desirable in its opinion to remedy such default or breach.

Section 6.2. Force Majeure. If by reason of Force Majeure, any party fails in the observance or performance of any of its agreements, duties or obligations to be observed or performed under this Agreement, the party shall not be deemed to be in default of this Agreement. However, the party shall promptly give notice to the other parties of the existence of an event of Force Majeure and shall use its best efforts to remove the effects thereof; provided that the settlement of strikes or other such disturbances shall be entirely within its discretion.

The term Force Majeure shall mean, without limitation, the following:

- (i) acts of God; strikes, lockouts or other such disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials (except the parties to the Agreement or their officials), or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraints of government and people; explosions; breakage; malfunction or accident to facilities, machinery, or transmission lines; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or
- (ii) any cause, circumstance or event not reasonably within the control of the party.

End of Article VI

## ARTICLE VII

### MISCELLANEOUS

Section 7.1. Notices. All notices, certificates, requests or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to any party to this Agreement shall also be given to all the other parties to this Agreement. The Authority, the Community Foundation and the City may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 7.2. Binding Effect: Performance of Covenants and Actions: No Personal Liability. This

Section 5.5. Community Foundation to Maintain its Existence. The Community Foundation agrees that it will endeavor to maintain its existence as an Ohio not-for-profit corporation and not dissolve or otherwise dispose of all or substantially all of its assets during the term of this Agreement.

Section 5.6. Authorization of Agreement.

(a) The Authority hereby represents, warrants and covenants to the other parties that:

- (i) The officer(s) of the Authority executing this Agreement have been duly authorized by the Authority to enter into this Agreement on behalf of the Authority; and
- (ii) The Authority has all necessary power and authority to enter into this Agreement and this Agreement constitutes a valid and binding obligation of the Authority in accordance with its terms, and all Authority legislation and Authority governmental approvals necessary to cause this Agreement to be effective and binding against the Authority have been or will be enacted and granted.

(b) The City represents, warrants and covenants to the other parties that:

- (i) The officer(s) executing this Agreement on behalf of the City is or are duly authorized by the City to enter into this Agreement on behalf of the City; and
- (ii) The City has all necessary power and authority to enter into this Agreement and the execution of this Agreement constitutes the valid and binding obligation of the City in accordance with its terms, and City approvals necessary to cause this Agreement to be effective and binding against the City have been or will be enacted and granted.

(c) The Community Foundation hereby represents, warrants and covenants to the other parties that:

- (i) The officer(s) executing this Agreement on behalf of the Community Foundation is or are duly authorized by the Community Foundation to enter into this Agreement on behalf of the Community Foundation; and
- (ii) The Community Foundation has all necessary power and authority to enter into this Agreement and the execution of this Agreement constitutes the valid and binding obligation of the Community Foundation in accordance with its terms, and Community Foundation approvals necessary to cause this Agreement to be effective and binding against the City have been or will be enacted and granted.

End of Article V

## ARTICLE IV

### INSURANCE, DAMAGE, DESTRUCTION AND CONDEMNATION

Section 4.1. Insurance During Construction Period. Prior to commencement of the Project, the Authority shall procure or cause to be procured, and shall maintain or caused to be maintained during the construction period for the Project, builder's risk insurance as provided in the Ground Lease.

Section 4.2. Insurance During Operational Period. The provision and maintenance of insurance during the operational period after completion of the Project and acceptance of title by the City shall be in accordance with the Joint Operating Agreement.

Section 4.3. Damage, Destruction and Condemnation. Reference is made to the Ground Lease and Operating Agreement for further provisions applicable to damage, destruction and condemnation of the Project.

End of Article IV

## ARTICLE V

### WARRANTIES AND SPECIAL COVENANTS

Section 5.1. Warranties of the Authority. The Authority warrants and represents that: (a) it has duly accomplished all conditions precedent necessary to be accomplished by it prior to execution and delivery of this Agreement; (b) it is not in default under any of the provisions contained in the laws of the State in any manner which would impair its ability to carry out its obligations hereunder; (c) it has power to enter into the transactions contemplated by this Agreement; (d) it has duly authorized the execution and delivery of this Agreement; and (e) it will do all things required of it in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor public body.

Section 5.2. Authority to Maintain its Existence. The Authority agrees that it will endeavor to maintain its existence as a community authority under the Act and not dissolve or otherwise dispose of all or substantially all of its assets during the term of this Agreement.

Section 5.3. Warranties of the City. The City warrants and represents that: (a) it is a municipal corporation operating under the laws of the State; (b) it has authority and is empowered to enter into this Agreement; and (c) by proper action, its Council has authorized the City Manager to execute and deliver this Agreement.

Section 5.4. City to Maintain its Existence. The City agrees that it will endeavor to maintain its existence as a municipal corporation and not dissolve or otherwise dispose of all or substantially all of its assets during the term of this Agreement.

Section 5.5. Warranties of the Community Foundation. The Community Foundation warrants and represents that: (a) it is an Ohio not for profit corporation; (b) it has authority and is empowered to enter into this Agreement; and (c) it has by proper action authorized the execution and delivery of this Agreement.



and one by the New Albany Company.

Section 2.3. Actual Completion Date. Completion of the acquisition, construction and equipping of the Project shall be certified to the Authority and the City by a certificate signed by the Authorized Authority Representative specifically describing any personal property included in the Project and stating that (i) the acquisition and equipping of the Project have been substantially completed in accordance with the Plans and Specifications and all costs then due and payable in connection therewith have been paid, (ii) such acquisition, construction and equipping have been accomplished in such a manner as to conform with all applicable zoning, planning, building, environmental and other regulations of all governmental authorities having jurisdiction, and (iii) such acquisition, construction and equipping have been accomplished to satisfaction so as to permit efficient operation of the Project. That certificate shall also specify the date by which the foregoing three events had occurred, which should be no later than the Target Completion Date. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which then exist or may subsequently come into being.

Section 2.4. Acceptance of Project by the City. Within ninety (90) days after the Actual Completion Date of the Project, the Authority and the Community Foundation agree to transfer to the City title to the Project free and clear of all liens and encumbrances and for no additional consideration, and the City agrees and covenants to accept that title to the Project and to maintain and operate the Project in accordance with the Operating Agreement.

Section 2.5. Limitation on City Funding of Design and Construction; Arrangements for Providing Same. The parties to this Agreement acknowledge that the only City funding for the design and construction of the Project is a City grant in the amount of \$1,000,000 (the "City Grant") and, in addition, to the pass through by the City of a grant from the State of Ohio in the amount of \$1,000,000 (the "State Grant"). The City agrees that the City Manager and Finance Director will take all actions necessary to provide this funding to the Project consistent with any City Ordinances authorizing the same and the State Grant Agreement.

End of Article II

### ARTICLE III

#### OPERATION AND MAINTENANCE OF THE PROJECT

Section 3.1. Operation After Completion of the Project and Acceptance of Title. The City shall, after completion of and acceptance of title of the Project under Section 2.3 of this Agreement use its best efforts to operate and maintain or cause the Project to be operated and maintained in accordance with all applicable laws, ordinances, orders, rules, regulations and requirements of all federal, State and local governments and appropriate departments, commissions, boards and officers thereof, the Operating Agreement, and any applicable provisions of the Ground Lease.

Section 3.2. Financial Support for Amphitheatre Event Programming. The Foundation will endeavor to provide funding for Amphitheater programming through its endowment.

End of Article III

Foundation under this Agreement.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms “hereof”, “herein”, “hereby”, “hereto”, “hereunder” and similar terms shall mean this Agreement; and the term “hereafter” means after, and the term “heretofore” means before the effective date of this Agreement. Words of the masculine gender include the feminine and the neuter genders and when the sense so indicates, words of the neuter gender may refer to any gender.

The captions and headings in this Agreement shall be solely for convenience of reference and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

Section 1.2. Need for the Project. It is found, determined and confirmed that the construction, improvement, furnishing and equipping of the Project on the Property encourages the orderly development of a well-planned, diversified and economically sound new community and encourages the initiative and participation of private enterprise in such undertakings, and supports the New Community Development Program and will promote those purposes stated in Section 349.02 of the Ohio Revised Code.

End of Article I

## ARTICLE II

### CONSTRUCTION AND COMPLETION

Section 2.1. Construction and Completion: Change Orders. Subject to all of the terms and conditions of the Ground Lease and this Agreement, the Authority covenants and agrees to undertake or cause to be undertaken and completed the acquisition, construction, improvement, furnishing and equipping of the Project in accordance with the Plans and Specifications and with the Costs of the Project and expenses thereof to date being paid from the sources identified in this Agreement and particularly Exhibit C hereto.

The Authority, City and the Community Foundation agree (a) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, and in general to do all things which may be requisite or proper, for acquiring and equipping the Project, and (b) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, and other demands whatsoever which may be due, owing and payable under the terms of any contract, order, receipt, writing and instruction in connection with the acquisition, construction and equipping of the Project, and to enforce the provisions of any contract, agreement, obligation, bond or other performance security in connection therewith.

The Authority covenants and agrees that it shall not approve or otherwise make any fundamental changes in the Plans and Specifications without the written approval of the City and the Community Foundation.

Section 2.2. Oversight Committee. To monitor the planning and construction of the Project, an oversight committee (the “Oversight Committee”) may be established consisting of three members: one appointed by the Authority, one appointed by the City and one appointed by the Community Foundation

“Engineer” means EMHT Engineers, Surveyors, Planners, Scientists.

“Operating Agreement” means the Memorandum of Understanding dated \_\_\_\_\_, 2019, by and among the City, the Columbus Association for the Performing Arts and the Jeanne B. McCoy Center for the Performing Arts, providing for the operation and maintenance of the Project after its acceptance by the City pursuant to this Agreement, and any agreement entered into pursuant to that Memorandum of Understanding.

“Notice Address” means:

- (a) As to the Authority:     The New Albany Community Authority  
8000 Walton Parkway, Suite 120 New Albany, Ohio 43054  
Attention: Treasurer
- (b) As to the City:         The City of New Albany  
99 West Main Street  
New Albany, Ohio 43054  
Attention: City Manager
- (c) As to the Community  
Foundation:               New Albany Community Foundation  
220 Market Street, Suite 205 New Albany, Ohio 43054  
Attention: President

The Authority, the City, and the Community Foundation may, subsequent to the provision of proper notice, designate any further, different or more specific addresses to which mailings shall be sent.

“Plans and Specifications” means the Plans and Specifications for the Project, including a Project budget, Project timetable and estimated Project costs, as changed and supplemented from time to time as permitted by and provided in this Agreement, including change orders pursuant to any construction or construction management contract for the Project.

“Project” means the construction of the Amphitheater on the Property for use and operation for educational, cultural and community purposes.

“State” means the State of Ohio.

“Target Completion Date” means May 31, 2021.

Any reference herein to the Authority or the City, or to other public boards, commissions, departments, institutions, agencies, bodies, entities or officers thereof, shall include those who or which are lawfully performing their functions or those who or which succeed to their functions, duties or responsibilities pursuant to or by operation of law. Any reference to a section or provision of the Constitution of the State or to the Act, a section, provision or chapter of the Ohio Revised Code or Federal or State laws and regulations, shall include such section or provision or chapter as from time to time amended, modified, revised, supplemented or superseded; provided, however, that no such change in the Constitution or laws shall be deemed applicable by reason of this provision if such change would in any way constitute an impairment of the rights of the Authority, the City and the Community

Design Agreement with DLR Group Inc. dated \_\_\_\_\_, 2019, and the [Authority/Foundation] is entering into a Construction Agreement with Corna/Kokosing dated \_\_\_\_\_, 2019;

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

## ARTICLE I

### DEFINITIONS AND DETERMINATIONS

Section 1.1. Definitions: Captions: Rules of Construction. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings unless the context or use indicates another or different meaning or intent. Those words and terms not specifically defined herein and used herein as defined words or terms shall have the meanings set forth in the Act.

“Actual Completion Date” means the date certified to the City pursuant to Section 2.3 of this Agreement.

“Architect” means DLR Group Inc.

“Authorized Authority Representative” means the person designated from time to time as representative of the Authority hereunder by written certificate containing the specimen signature of such person, signed on behalf of the Authority by its authorized representative and furnished to the other parties. Such certificate may designate an alternate or alternates who shall have the same authority, duties and powers as the Authorized Authority Representative.

“Authorized Community Foundation Representative” means the person designated from time to time as representative of the Community Foundation hereunder by written certificate containing the specimen signature of such person, signed on behalf of the Authority by its authorized representative and furnished to the other parties. Such certificate may designate an alternate or alternates who shall have the same authority, duties and powers as the Authorized Community Foundation Representative.

“Authorized City Representative” means the person designated from time to time as representative of the City hereunder by written certificate containing the specimen signature of such person, signed on behalf of the City by its City Manager and furnished to the other parties. Such certificate may designate an alternate or alternates who shall have the same authority, duties and powers as the Authorized City Representative.

“Costs” means, as applied to the Project, without intending to limit thereby any proper definition of the term “Costs” under provisions of law, including the Act, all costs related to land acquisition and land development, the acquisition, construction, maintenance and operation of community facilities, the providing of furnishings and equipment therefor, financing charges including interest prior to and during construction and interest for the duration of the Authority’s New Community Development Program, planning expenses, engineering expenses and all other expenses necessary and incident to the carrying forward of the Authority’s New Community Development Program, and all items of cost which are described in the Act.

This Charleen and Charles Hinson Amphitheater Agreement (the “Agreement”) is made and entered into as of November \_\_, 2019 by and between THE NEW ALBANY COMMUNITY AUTHORITY (the “Authority”), a new community authority of a new community district and a body corporate and politic all established pursuant to Chapter 349 of the Ohio Revised Code (the “Act”), THE CITY OF NEW ALBANY (the “City”), an Ohio municipal corporation, and the NEW ALBANY COMMUNITY FOUNDATION (the “Community Foundation” or the “Foundation”), an Ohio not-for-profit corporation (collectively referred to herein from time to time as the “parties”):

WITNESSETH:

WHEREAS, the Authority has been organized and the Community District created under Chapter 349 of the Ohio Revised Code following the filing of a petition by the Developer in the office of the Clerk of the Franklin County Board of County Commissioners on July 7, 1992 (the “Petition”), and the adoption of Resolution 860-92 on August 25, 1992 by that Board of County Commissioners, which Resolution declared the Authority to be organized and defined the boundaries of the District; and

WHEREAS, the Authority is authorized by Section 349.06(1) of the Ohio Revised Code to enter into all contracts and agreements and execute all instruments related to “land acquisition” and “construction of community facilities” (both as defined in the Act) and which include buildings, structures and other facilities for educational, recreational, cultural and other community purposes; and

WHEREAS, the Authority is authorized by the Act to enter into agreements with the City and the Foundation, whereby the Authority may construct or cause the construction of and equip or cause the equipping of, and may sell, lease or dedicate, with or without consideration, or otherwise transfer lands, and other facilities, in support of educational, cultural and community purposes;

WHEREAS, the Authority, the City and the Community Foundation desire to have an amphitheater constructed on property owned by the School District (the “Property”), a description and depiction of which are attached as Exhibit A, which facility will upon completion be transferred to the City; and

WHEREAS, on August 20, 2019, the Board of Education of the New Albany-Plain Local School District, as landlord, and the City, as Tenant, entered into a Ground Lease (the “Ground Lease”) for the Property as a location for the Amphitheater, which Ground Lease is attached hereto as Exhibit B;

WHEREAS, to finance the construction of the Charleen and Charles Hinson Amphitheater (the “Project”), it is the intent of the Foundation to provide funding in the minimum amount of \$5,410,000 from the sources shown on attached Exhibit C (including but not limited to a grant of \$250,000 from Plain Township), and the City to provide funds in the amount of \$1,000,000 (the “City Grant”) and, in addition, to pass through in support of the funding of the Project a grant from the State of Ohio in the amount of \$1,000,000 (the “State Grant”) to be made under a grant agreement between the City and the State (the “State Grant Agreement”), with the City Grant and the State Grant being the only funding from the City for the design and construction of the Project; and

WHEREAS, to provide for the design and construction of the Project, the Foundation and the Authority entered into a Grant and Agency Agreement dated July 11, 2018, the Authority entered into a

**Exhibit A – R-52-2019**

**CHARLEEN AND CHARLES HINSON AMPHITHEATER AGREEMENT**

**By and Between**

**THE NEW ALBANY COMMUNITY AUTHORITY**

**and**

**THE CITY OF NEW ALBANY**

**and**

**NEW ALBANY COMMUNITY FOUNDATION**

**Dated as of:**

**November \_\_, 2019**



Prepared: 10/28/2019  
Introduced: 11/05/2019  
Revised:  
Adopted:  
Effective:

## RESOLUTION R-53-2019

### **A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A COMMUNITY REINVESTMENT AREA AGREEMENT WITH AMAZON WEB SERVICES, INC., AND A TAX INCREMENT FINANCING AGREEMENT WITH MJB HOLDINGS, LLC, EACH FOR PROJECT BADGER**

**WHEREAS**, the Council of the City, by its Resolution No. R-17-09 adopted March 3, 2009 (the "Original CRA Legislation"), created the Oak Grove II Community Reinvestment Area (the "Original Area"), and by its Resolutions No. R-41-10 adopted July 6, 2010, No. R-72-10 adopted November 16, 2010, No. R-53-12 adopted October 12, 2012, No. R-26-13 adopted July 16, 2013, No. R-72-14 adopted September 9, 2014, No. R-49-2015 adopted November 17, 2015, No. R-45-16 adopted November 1, 2016, No. R-02-17 adopted February 7, 2017, No. R-05-2019 adopted February 19, 2019, and No. R-27-2019 adopted May 21, 2019 (together the "CRA Expansion Legislation" and together with the Original CRA Legislation the "CRA Legislation") amended the designation of the Original Area to include certain other parcels within the City (collectively, with the Original Area, the "Area"); and

**WHEREAS**, Amazon Web Services, Inc. (the "Company") has submitted to the City the application attached to the Community Reinvestment Area Agreement (the "CRA Agreement") referred to in Section 1 of this Resolution (the "Agreement Application") and has remitted with the Agreement Application the required State application fee to be forwarded to the Ohio Development Services Agency with a copy of the final CRA Agreement; and

**WHEREAS**, the City's Housing Officer, duly designated under Ohio Revised Code Section 3735.65, has reviewed the Agreement Application and has recommended the same to City Council on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities in the Area and improve the economic climate of the City; and

**WHEREAS**, the City, having the appropriate legal authority, desires to provide certain property tax incentives to encourage the development the Project (as such term is defined in the CRA Agreement); and

**WHEREAS**, the Project Site is located in the Licking County Joint Vocational School District (C-TEC), the Johnstown-Monroe Local School District and the Licking Heights Local School District, and (i) the Board of Education of the Licking Heights Local School District has been given notice of the CRA Agreement and the TIF Agreement in accordance with, and in the time period prescribed by, Sections 5709.04 and 5709.83 of the Revised Code, (ii) the Board of Education of the Licking County Joint Vocational School District (C-TEC) have been given notice of the CRA Agreement and the TIF Agreement in accordance with, and in the time periods prescribed by, Section and 5709.83 of the Revised Code, and (iii) the Board of Education of the Johnstown-Monroe Local School District has waived its right to both receive notice under Section 5709.83 of the Revised Code and approve the CRA Agreement and the TIF Agreement; and

**WHEREAS**, to further support and facilitate the Project the City also desires make certain infrastructure improvements and provide for their financing; and

**WHEREAS**, the City, by its Ordinance No. O-03-2017 passed on February 21, 2017 (the "TIF Ordinance") established certain tax increment financings and created the Oak Grove II Public Improvement Tax Increment Equivalent Fund (the "TIF Fund"), all for the purpose of paying for certain Public Infrastructure Improvements as defined in Section 5709.40 of the Ohio Revised Code;

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

**Section 1.** Community Reinvestment Area Agreement. The CRA Agreement by and between the City and the Company, in the form presently on file with the Clerk of the Council, is hereby approved and authorized with any changes therein and amendments thereto not inconsistent with this Resolution and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, with the advice of the Director of Law, is hereby authorized to execute that CRA Agreement and approve the character of any changes and any amendments thereto as consistent with this Resolution and not substantially adverse to the City, as evidenced conclusively by his execution of that CRA Agreement.

**Section 2.** Tax Increment Financing Agreement. The Tax Increment Financing Agreement (the "TIF Agreement") by and between the City and MJB Holdings, LLC, in the form presently on file with the Clerk of the Council, is hereby approved and authorized with any changes therein and amendments thereto not inconsistent with this Resolution and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, with the advice of the Director of Law, is hereby authorized to execute that TIF Agreement and approve the character of any changes and any amendments thereto as consistent with this Resolution and not substantially adverse to the City, as evidenced conclusively by his execution of that TIF Agreement.

**Section 3.** Further Authorizations. Council further hereby authorizes and directs the City Manager, the Director of Law, the Director of Finance, the Community Development Director, the Clerk of Council, 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 Resolution and the transactions referenced or contemplated in this Resolution, the CRA Agreement and the TIF Agreement authorized and approved in this Resolution.

**Section 4.** Compliance with the Law. Council finds and determines that all formal actions of Council and any of its committees concerning and relating to the adoption of this resolution were taken in an open meeting of Council and any of 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 5.** Effective Date. This resolution is declared to be in full force and effect from and after the earliest period allowed by law.

**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

PROPOSED