



## **ORDINANCE O-41-2021**

### **AN ORDINANCE TO AMEND FINANCIAL POLICY 4.20 "INVESTMENTS & DEPOSITS OF FUNDS POLICY" AND CHAPTER 157 "INVESTMENT POLICY" OF THE CITY OF NEW ALBANY, OHIO'S CODIFIED ORDINANCES AS REQUESTED BY THE CITY OF NEW ALBANY AND DECLARING AN EMERGENCY TO WAIVE BOTH THE SECOND READING AND THE THIRTY DAY REFERENDUM PERIOD**

**WHEREAS**, the City of New Albany has been notified of an investment opportunity with the New Albany Plain Local Joint Parks District (the "District") in which the city would purchase the District's outstanding bonds in the amount of \$1,695,000, maturing each December of 2022, 2023, and 2024; and

**WHEREAS**, such investment is not currently included as an allowable investment under the City of New Albany financial policy 4.20 "Investments & Deposits of Funds Policy" and Chapter 157 "Investment Policy" of the City of New Albany Codified Ordinances due to the security not obtaining a rating by a nationally recognized standard rating service and the city being the sole purchaser of the security; and

**WHEREAS**, the city has performed proper due diligence on the District's security to ensure that the creditworthiness is of the highest standards and that full payment can be expected in effort to reduce the risk of investing in the District's security; and

**WHEREAS**, a review of the security has determined the city will receive a higher rate of return on the investment than the current municipal and securities market and the District will benefit from a lower interest rate paid on the bonds and lower interest rate than offered on their recent competitive bidding process for refinancing, ultimately benefiting the tax payers and residents of the City of New Albany; and

**WHEREAS**, to allow for the city to purchase the District's security, an amendment to the City of New Albany financial policy 4.20 "Investments & Deposits of Funds Policy" and Chapter 157 "Investment Policy" of the City of New Albany Codified Ordinances is required; and

**WHEREAS**, this ordinance constitutes an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the city and for the further reason that this ordinance is required to be immediately effective to provide sufficient time for the closing of the purchase of the District's outstanding bonds.

**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.** Financial policy 4.20 "Investments & Deposits of Funds Policy" and Codified Ordinance Chapter 157 "Investment Policy" section 157.06 be amended as set forth in Exhibit A, which depicts the amendment in colored ink.

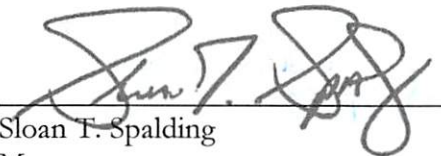
**Section 2.** For the reasons stated herein, council hereby declares an emergency and waives the second reading and referendum period.


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

**Section 4.** Pursuant to Article VI, Section 6.07(A) of the charter of the City of New Albany, this ordinance shall be effective immediately upon passage.

**CERTIFIED AS ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Attest:**

  
Sloan T. Spalding  
Mayor

  
Jennifer H. Mason  
Clerk of Council

**Approved as to form:**

  
Mitchell H. Banchefsky  
Law Director

**Legislation dates:**

|             |            |
|-------------|------------|
| Prepared:   | 10/25/2021 |
| Introduced: | 11/02/2021 |
| Revised:    |            |
| Adopted:    | 11/02/2021 |
| Effective:  | 11/02/2021 |

## **EXHIBIT A – O-41-2021**

### **Policy 4.20 – Investments & Deposits of Funds Policy**

#### **Purpose of Policy:**

The City of New Albany strongly desires to maintain, safeguard, and prudently grow the assets of the City. These would include, but are not limited to: financial assets, equipment and machinery, land, infrastructure, and/or intellectual property (i.e., non-physical assets). In order to prevent loss and properly account for the City's assets, the following policy has been developed.

#### **A. General Policies & Procedures:**

##### **1. Investment Policy**

All idle funds shall be invested in accordance with the Statement of Investment Policy approved by City Council. This policy emphasizes safety, preservation of principal, liquidity, and yield.

##### **2. Interest Distribution**

Interest shall be distributed to the following funds in proportion to their cash balance as a percentage of the total cash balances of all funds:

- (1) Street Construction, Maintenance & Repair Fund;
- (2) State Highway Fund;
- (3) Permissive Tax Fund;
- (4) Capital Equipment Replacement Fund;
- (5) Capital Improvement Fund;
- (6) Park Improvement Fund;
- (7) Bond Improvement Fund;
- (8) Infrastructure Replacement Fund; and
- (9) Water & Sanitary Sewer Improvement Fund.

All other interest will be distributed to the General Fund except as otherwise required by statute or as required by state or federal grants.

3. Deposit of Funds

All cash and securities should be deposited within 24 hours of receipt wherever possible.

4. Depository Bank

The City shall review its designation of public depositories eligible to receive deposits of the City's funds at least once every five years. Depositories so designated shall appear on a list of eligible depositories authorized by the State of Ohio.

B. **Investment Policy (per City Codified Ordinances):**

**157.01 SCOPE.**

The Council hereby directs that the investing authority of this public entity shall reside with the Director of Finance in accordance with this Investment Policy. This Policy is designed to cover all moneys under the control of the Director of Finance and those that comprise the core investment portfolio.

This policy applies to the investment of all interim deposits and does not apply to the investment of employees' retirement funds. Except for cash in certain restricted and special funds, the City of New Albany will consolidate cash and reserve balances from all funds to

maximize investment earnings and to increase efficiencies with regard to investment pricing, safekeeping and administration. In the event that a specific policy item is not addressed herein, the City shall rely upon relevant policies contained within Ohio Revised Code Section 135.

## 157.02 GENERAL OBJECTIVES

The primary objectives, in priority order, of investment activities shall be safety, liquidity and yield:

- (a) **Safety**: Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk.
  - 1. *Credit Risk* – The City of New Albany will seek to minimize credit risk associated with specific securities by:
    - i. Limiting investments to the types of securities permitted by Section 157.06 of this Investment Policy.
    - ii. Pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisors with which the City will do business in accordance with Section 157.04 of this Investment Policy.
    - iii. Diversifying the investment portfolio so that the impact of potential losses from any one type of security or from any one individual issuer may be minimized.
  - 2. *Interest Rate Risk* – The City will seek to minimize interest rate risk, which is the risk that the market value of securities in the portfolio will fall due to changes in market interest rates, by:
    - i. Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity.
    - ii. Investing operating funds primarily in shorter-term securities, money market mutual funds, or similar investment pools and limiting the average maturity of the portfolio in accordance with this policy.
- (b) **Liquidity**: The investment portfolios shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This is accomplished

by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands (static liquidity). Furthermore, since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with an active secondary, or resale market. Alternatively, a portion of the portfolio may be placed in money market mutual funds not subject to floating rate N.A.V. ("Prime" per Dodd-Frank Act) or local government investment pools which offer same-day liquidity for short-term funds.

- (c) **Yield**: The investment portfolio shall be designed with the objectives of attaining a market rate of return throughout budgetary and economic cycles. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The core of investments is limited to relatively low-risk securities in anticipation of earning a market return relative to the risk being assumed. Securities shall generally be held until maturity with the following exceptions:
- i. A security with declining credit may be sold early to minimize loss of principal.
  - ii. A security may be sold in order to realize a capital gain.
  - iii. A security sale at either a gain or loss followed by the purchase of a separate security that could be expected to improve the quality, yield or target duration in the portfolio. For purposes of this section, "redeemed" shall also mean "called" in the case of a callable security.
  - iv. Liquidity needs of the portfolio require that the security be sold.

### 157.03 STANDARDS OF CARE

- (a) **Prudence** - The standard of prudence to be used by the investment officials in managing the City's investment portfolio shall be the 'prudent person' standard and shall be applied in the context of managing an overall portfolio. Investment officers acting in accordance with written procedures and this investment policy, and exercising due diligence shall be relieved of personal financial responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and the liquidity and sale of securities are carried out in accordance with the terms of this policy.

The 'prudent person' standard states that, "Investments shall be made using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds considering the probable income as well as the probable safety of their capital."

- (b) **Ethics and Conflicts of Interest** - Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees and officers shall refrain from undertaking personal investment transactions with the same individual and firm with whom business is conducted on behalf of the City of New Albany.
- (c) **Delegation of Authority**: Authority to manage the investment program is granted to the Director of Finance, hereinafter referred to as Investment Officer, and derived from ORC §153.14. Responsibility for the operation of the investment program is hereby delegated to the Investment Officer, who shall act in accordance with established written procedures and internal controls for the operation of the investment program consistent with this investment policy. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Investment Officer. The Investment Officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials. The Investment Officer may, subject to the approval of Council, engage the services of an independent, SEC Registered Investment Advisor (the "Investment Advisor") whose firm may be authorized to execute trades with approved brokers as defined in Section 157.04. The Investment Advisor is responsible for reporting trades and pricing to the Investment Officer. The Investment Advisor will not act as a trustee or as a Custodian.

#### 157.04 AUTHORIZED FINANCIAL INSTITUTIONS, DEPOSITORIES AND BROKER/DEALERS.

- (a) **Authorized Financial Institutions, Depositories and Broker/Dealers**: A list of authorized institutions and dealers shall be maintained by the Investment Officer. All investments, except for investments in securities described in divisions (B)(5) and (6) of Ohio Revised Code Section 135.14 and for investments by a municipal corporation in the issues of such municipal corporation, shall be made only through a member of FINRA, through a bank, savings bank, or savings and loan association regulated by the Superintendent of Financial Institutions, or through an institution regulated by the Comptroller of the Currency, Federal Deposit Insurance Corporation, or Board of Governors of the Federal Reserve System.

- (b) **Repurchase Agreements:** Repurchase agreements shall be transacted only through banks located within the State of Ohio with which the Investment Officer has signed a Master Repurchase Agreement as required in Chapter 135 of the Ohio Revised Code.
- (c) **Certificates of Deposit:** Certificates of Deposit shall be issued by commercial banks or savings and loans with FDIC coverage. Any Certificates of Deposit purchased by the City shall not exceed FDIC insurance ceilings.

#### 157.05 SAFEKEEPING AND CUSTODY.

- (a) **Delivery versus Payment:** All trades of marketable securities will be executed by delivery versus payment (DVP) to ensure that securities are deposited in an eligible financial institution prior to the release of funds.
- (b) **Safekeeping:** The Investment Officer shall be responsible for the safekeeping of investment assets. Securities purchased for the Municipality will be held in safekeeping by a qualified trustee (hereinafter referred to as the "Custodian"), as provided in Ohio R.C. 135.37. Securities held in safekeeping by the Custodian shall be evidenced by a monthly statement describing such securities. The Custodian may safekeep securities in Federal Reserve Bank book entry form, Depository Trust Company book entry form in the account of the Custodian or the Custodian's correspondent bank, or non-book entry (physical) securities held by the Custodian or the Custodian's correspondent bank. The Custodian shall annually provide a copy of their most recent report on internal controls (SSAE 16 SCO reports, or equivalent).
- (c) **Internal Controls:** The Investment Officer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the City are protected from loss, theft or misuse. Details of the internal controls system shall be documented in an investment procedures manual and shall be reviewed and updated annually. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived, and (2) the valuation of costs and benefits requires estimates and judgment of management.

The internal controls structure shall address the following points:

- i. Control of collusion
- ii. Separation of transaction authority from accounting and recordkeeping.
- iii. Custodial safekeeping
- iv. Avoidance of physical delivery of securities
- v. Clear delegation of authority to subordinate staff members

- vi. Written confirmation of transactions for investments and wire transfers

#### 157.06 PERMITTED INVESTMENTS.

The Investment Officer may invest in any instrument or security authorized in Chapter 135 of the Ohio Revised Code, as amended. A copy of the appropriate ORC section will be kept with this policy.

Periodically the City may determine it prudent to invest in securities not covered under ORC Chapter 135. The City will perform proper due diligence on the security to ensure that the creditworthiness is of the highest standards and that full payment can be expected. A prospective investment that is not covered under ORC Chapter 135 shall be submitted to City Council for its approval.

#### 157.07 DERIVATIVES.

Investments in derivatives are strictly prohibited.

#### 157.08 COLLATERAL.

All investments and deposits shall be collateralized pursuant to Chapter 135 of the Ohio Revised Code.

#### 157.09 REPORTING.

- (a) **Inventory:** The Investment Officer shall maintain an inventory of all obligations and securities acquired by the Investment Officer. The inventory shall include the following:
  - i. description of the security,
  - ii. type,
  - iii. security cost,
  - iv. par, or face value, of the security,
  - v. maturity date,
  - vi. settlement date, and
  - vii. coupon rate
- (b) **Reporting:** The Investment Officer shall maintain a monthly portfolio report and issue a portfolio report at least quarterly which details the following:

- i. all transactions during the period,
- ii. income received and expenses paid;
- iii. security purchases and sales;
- iv. purchase yield of each security, and
- v. the effective yield and effective maturity of the portfolio.

- (c) **Authority:** The portfolio report shall state the names of any persons or entity effecting transactions on behalf of the investing authority.

#### 157.10 COMMITTEE MEETINGS.

The Council or a designated Investment Advisory Committee will endeavor to meet on a quarterly basis; however, said committee shall meet no less than twice per annum to review the portfolio in terms of security, type, risk and investment return. The Investment Officer shall be responsible for maintaining records of all investments and deposits and preparing reports that summarize recent market conditions, economic conditions, economic developments and anticipated investments for the Council.

#### 157.11 ACKNOWLEDGMENT.

Pursuant to Chapter 135 of the Ohio Revised Code, all entities conducting business and all brokers, dealers, and financial institutions initiating transactions with the Municipality by giving advice or making investment policy, or executing transactions initiated by the Municipality, must acknowledge their agreement to abide by this investment policy's content.

#### BROKER/AGENT ACKNOWLEDGEMENT OF RECEIPT

By signing below, the institution submits that it has read and acknowledges the investment policies, and agrees to abide by its content.

\_\_\_\_\_  
Name of Institution

\_\_\_\_\_  
Authorized Officer

\_\_\_\_\_  
Date

City of New Albany:

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Director of Finance

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Date



## RESOLUTION R-53-2021

### **A RESOLUTION CREATING A DESIGNATED OUTDOOR REFRESHMENT AREA (DORA) FOR THE NEW ALBANY VILLAGE CENTER AND ENACTING REGULATIONS**

**WHEREAS**, pursuant to the provisions of Ohio Revised Code §4301.82, the City of New Albany is permitted to create a Designated Outdoor Refreshment Area ("DORA"); and

**WHEREAS**, on October 7, 2021, the city manager submitted an application to council via the clerk of council, for approval of a DORA in the specified section of the Village Center; and

**WHEREAS**, pursuant to §4301.82(C), notice of filing of the DORA application and the date of a public hearing thereon was published in a newspaper of general circulation on October 18, 2021, posted on the city's website, and advertised via e-newsletter to residents; and

**WHEREAS**, the public hearing on the application was held on November 2, 2021 during which public testimony was taken; and

**WHEREAS**, the DORA application as submitted and amended meets the requirements of the Ohio Revised Code §4301.82.

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

**Section 1.** Council hereby approves the DORA application, attached as Exhibit A, as having met the requirements of ORC §4301.82(B)(1-5) and approves the establishment of a New Albany Village Center Designated Outdoor Refreshment Area comprised of the area as depicted on the attached Exhibit B, such area to include and encompass the premises of the permit holders located at the street addresses listed in the application as is required to be included pursuant to ORC §4301(F)(1)(a).

**Section 2.** The DORA encompasses not fewer than four (4) qualified permit holders, all of which are identified in the attached Exhibit A – Section 3 by business name, address, liquor permit type, and liquor permit number.

**Section 3.** In order to ensure public health and safety, and in accordance with ORC §4301.82(F)(1)(b), the number, spacing, and type of signage designating the DORA boundary shall be as set forth on the attached Exhibit A – Section 6.1.

**Section 4.** The hours of operation for the DORA shall be as set forth on Exhibit A – Section 6.2, in accordance with ORC §4301.82(F)(a)(c), which will apply to all activity within the DORA. These hours of operation may be expanded by approval of the city manager/or designee, or changed by council.

**Section 5.** The Public Health & Safety Plan (PHSP) as set forth in Section 5 of the DORA application is hereby approved as meeting the requirements of ORC §4301.82(F)(1)(d), including the manner in which the number of personnel needed to carry out the (PHSP) shall be determined.

**Section 6.** The Sanitation Plan, that will help maintain the appearance and public health of the area as described in Section 5 of the DORA application, is hereby approved as meeting the requirements of ORC §4301.82(f)(1)(e).

**Section 7.** As is required by ORC 4301.82(F)(1)(g), beer and intoxicating liquor shall only be served in plastic bottles or other plastic containers, which shall be provided by the qualified permit holders in a readily-identified container that identifies the name of the establishment that is serving the beverage as approved by the city manager/or designee.

**Section 8.** As required by §4301.82(I)(1), council shall review the requirements of the DORA, as established herein, within five (5) years from the effective date of this resolution.

**Section 9.** Council determines that all public notice requirements of ORC §4301.82 prior to the passage of this resolution have been met.

**Section 10.** The clerk of council is hereby instructed to forward a copy of this resolution to the Ohio Division of Liquor Control and to the investigative unit of the Ohio Department of Public Safety, all in accordance with ORC §4301.82(C) and §4301.82(F)(3).


**Section 11.** 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 Section 121 of the Ohio Revised Code.

**Section 12.** Pursuant to Article 6.07(A) of the New Albany Charter, this resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this 10 day of Nov, 2021.

Attest:

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

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

Approved as to form:

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

**Legislation dates:**

|             |            |
|-------------|------------|
| Prepared:   | 11/05/2021 |
| Introduced: | 11/16/2021 |
| Revised:    |            |
| Adopted:    | 11/16/2021 |
| Effective:  | 11/16/2021 |



**Application to the Council of the City of New Albany, Ohio for the establishment of a Designated Outdoor Refreshment Area, with specific boundaries, in the Village Center area.**

Submitted: October 6, 2021  
Amended: November 3, 2021

**Introduction**

The City Manager of New Albany, Ohio respectfully submits the following application to the City Council of New Albany, Ohio to approve and establish a Designated Outdoor Refreshment Area (DORA), pursuant to Ohio Revised Code (ORC) 4301.82. The proposed application meets all the state requirements.

A DORA is an area where the open carry restrictions do not apply at particular hours, and adults are permitted to possess and consume alcohol in public, with certain restrictions. DORAs have already been established in several cities in central Ohio. The purpose of New Albany's DORA would be to promote economic development of the Village Center by creating an exciting destination that will increase the number of customers for local businesses and to support residents' desire for more retail and restaurant opportunities in the community.

**Section 1 – Boundaries**

Pursuant to ORC 4301.82(B)(1)(a) and F(1)(a), the boundaries of the DORA are depicted on the map on the next page. The specific boundaries of the DORA, including street addresses are shown below. This proposed DORA is approximately 41.9 acres, and the limit for a DORA boundary in a city with less than 35,000 residents is one hundred and fifty contiguous acres. It is the intent of the city that the segment of Market Street from Main Street easterly to the terminus of the boundary will only be used in conjunction with city sponsored special events, as approved by the city manager or designee. This segment will not be used on the regular DORA days and hours as outlined in Section 6.2 outside of a special event.

| Street Name            | Range     | Even/Odd |
|------------------------|-----------|----------|
| W. Granville St        | 100-170   | Even     |
| W. Granville St        | 65-501    | Odd      |
| E. Dublin Granville Rd | 6401-6601 | Odd      |
| W. Main St             | 60-250    | Even     |
| Market St              | 120-310   | Even     |

## DORA Boundaries Map





## Section 2 – Nature and Types of Establishments Located within the Proposed DORA

Pursuant to ORC 4301.82(B)(2), the nature and types of establishments located within the DORA are as follows:

The DORA encompasses portions of the New Albany Village Center, including portions of the Market Square Development, Rose Run Park and the City's Arts District. Within the DORA, the majority of the buildings have retail and restaurants on their first floor. The floors above are primarily comprised of office space. The McCoy Performing Arts Center and the Hinson Amphitheater are performing arts spaces located with the boundary. There is also undeveloped land within the DORA boundary that is expected to be developed with a mix of uses. There are no residential uses within the DORA boundary.

Examples of the establishments located in the DORA:

| Name   | Type                                     | Address                  |
|--|--|--------------------------|
| Starbucks  | Restaurant                               | 220 Market St            |
| Whit's Frozen Custard                            | Restaurant                               | 220 Market St, Suite B,  |
| Rusty Bucket                                     | Restaurant                               | 180 Market St, Suite A   |
| Mellow Mushroom                                  | Restaurant                               | 260 Market St, Suite A   |
| Fox in the Snow                                  | Restaurant                               | 160 W Main St, Suite G   |
| Hudson 29  | Restaurant                               | 260 Market St, Suite D   |
| BrewDog  | Restaurant                               | 97 E Dublin Granville Rd |
| Tailfeathers Boutique & Three French Hens        | Retail                                   | 220 Market St, Suite E   |
| Hayley Gallery                                   | Retail – Art                             | 260 Market St, Suite B   |
| PetPeople  | Retail                                   | 160 W Main St, Suite C   |
| Columbus OBGYN                                   | Health Services                          | 160 W Main St, Suite 220 |
| Philip Heit Center for Healthy New Albany        | Health Services, Health/Fitness Facility | 150 W Main St            |
| Columbus Metropolitan Library: New Albany Branch | Institutional                            | 200 Market St            |

## Section 3 – Qualified Permit Holders

Pursuant to ORC 4301.82(B)(3), the DORA will encompass not fewer than four qualified permit holders as defined by ORC 4301.82(A), which are identified in the chart below. As new establishments receive a permit in the DORA area, they will be added.



| Permit Number | Permit Name     | DBA        | Address                  |
|---------------|-----------------|------------|--------------------------|
| 09124150030   | BrewDog         | Restaurant | 97 E Dublin Granville Rd |
| 11924580015   | Rusty Bucket    | Restaurant | 180 Market St, Suite A   |
| 98757080020   | Mellow Mushroom | Restaurant | 260 Market St, Suite A   |
| 12046700145   | Hudson 29       | Restaurant | 260 Market St, Suite D   |

#### **Section 4 – Master Zoning Plan for Area**

Pursuant to ORC 4301.82(B)(4), the uses of land within the DORA are in accord with the master zoning map of the City of New Albany and the parcels are zoned as follows:

- UC (Urban Center), I-PUD (Infill Planned Development) and C-PUD (Comprehensive Planned Development).

Eating and drinking establishments that serve alcohol are permitted uses in all the above zoning districts except in the UC Park and UC Campus Subdistricts. The proposed DORA is located within an area of the city that supports mixed uses such as entertainment, performing arts, dining, retail, office, residential and parkland and will serve to complement the uses within this area.

#### **Section 5 – Proposed Requirement for the Purpose of Ensuring Public Health and Safety**

##### **Section 5.1 – Safety Plan**

Pursuant to ORC 4301.82(B)(5) and (F)(1)(d), a Safety Plan has been developed to ensure public safety within the DORA. The New Albany Police Department is committed to working with the community and the businesses within the DORA to preserve and maintain the safety and security of all who visit and work within. The New Albany Police Department has multiple resources which can be utilized to maintain public safety within the DORA.

The Public Safety Plan includes:

- Uniformed officers will patrol the DORA as part of their regular patrol responsibilities.
- The department will ensure extra police patrols to include cruiser, foot, and bike officers during the DORA's hours of operation.



- In the event of an above average number of people within the area, the on-duty supervisor or officer in charge will assign an officer(s) to be stationed within the DORA.
- The chief of police or his/her designee may assign additional officers or request mutual aid to provide law enforcement services to the DORA during scheduled special events.
- The city may require special event organizers to provide additional security by hiring off-duty police officers, reimbursing the city for overtime, or hiring private security to be present during the event.
- During the first six months of the DORA, the chief of police and the department's command staff will review the Safety Plan monthly during its regularly scheduled staff meeting. If needed, the Safety Plan will be modified.

The chief of police has determined that the Safety Plan referenced above is sufficient to maintain public safety within the DORA and can be implemented with the existing personnel of the New Albany Police Department.

#### **Section 5.1.1 – Additional Rules and Requirements**

Pursuant to ORC § 4301.82(B)(5), and in conjunction with other rules, standards and requirements set forth in this application, additional rules and requirements for the purpose of ensuring public safety and health within the DORA are as follows:

- A person may have possession of an open container of beer, wine, or intoxicating liquor outdoors within the DORA if such alcoholic beverage was purchased from a qualified permit holder to which both of the following apply:
  - The permit holder's premises is located within the DORA; and
  - The permit holders permit has an outdoor refreshment area designation.
- No Person shall do any of the following:
  - Enter the premises of an establishment of a qualified permit holder within the DORA
    - while possessing an open container of beer, wine, or intoxicating liquor acquired elsewhere, or



- Possess an open container of beer, wine, or intoxicating liquor while being in or on a motor vehicle within the DORA, unless the possession is otherwise authorized under division (D) or (E) of ORC § 4301.62.

### **Section 5.1.2 – Sanitation Plan**

Pursuant to ORC § 4301.82 (B)(5), (F)(1)(e), and (F)(1)(f), a Sanitation Plan has been developed that will help maintain the appearance and public health of the area within the DORA.

There are currently sufficient permanent trash receptacles located within the proposed DORA. The trash receptacles will be serviced by the city or its designee on a regular schedule. City staff will monitor the receptacles and coordinate additional collections, if needed.

Trash receptacles may be moved, and additional trash receptacles may be added within the DORA at the discretion of the city manager or designee. Upon approval of the city manager or designee, additional receptacles may be added by the city or any permit holder, and the servicing of such receptacles shall remain the responsibility of the installing entity.

Temporary receptacles will be placed at various locations throughout the DORA during special events depending on the size of the event and the attendance expected. The purchase, installation, maintenance and removal of temporary trash receptacles will be the responsibility of the event organizers.

Additionally, each participating establishment will be required to provide and maintain adequate trash receptacles at the entryways of their respective businesses and/or patio areas.

The city manager or designee shall evaluate the need and frequency of street sweeping and the servicing of trash receptacles, and, if needed or advisable, implement changes or modifications to the Sanitation Plan during the existence of the DORA.

The city manager has determined that the Sanitation Plan described herein is sufficient to help maintain the appearance and public health within the DORA. This Sanitation Plan can be carried out utilizing existing city personnel.



## Section 6 – Additional Information

### Section 6.1 – Signage

Pursuant to ORC § 4301.82 (F)(1)(b), there will be approximately 40 signs designating the DORA boundaries. The signs will be mounted and located at all street intersections along the DORA boundaries.

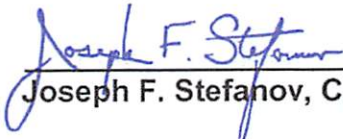
### Section 6.2 – Hours of Operation & Events

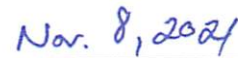
Pursuant to ORC § 4301.82 (F)(1)(c), the hours of operation for the DORA will be:

- Thursday–Saturday 5 p.m. – 10 p.m., unless otherwise approved by the city manager or designee.
- These hours/days can be changed by City Council at any time.

The city requires that each Community Event held within the DORA receives a permit through the office of the city manager. Permit requirements may differ between events depending on their size, layout, use of public right-of-way, and program. However, each event will be reviewed to ensure that adequate sanitation, signage, and public safety requirements are established. The necessity of portable restrooms, ADA accessibility, pedestrian mobility, public safety access, crowd control, DORA boundary management, and trash management will be addressed. Should an event include the sale of alcohol within the DORA Boundaries, such requests will require Council approval and require an F class license from the Ohio Department of Liquor control.

Submitted by:

  
Joseph F. Stefanov, City Manager



Date



TOTAL AREA:  
41.9 ACRES



## RESOLUTION R-54-2021

### **A RESOLUTION TO ALLOW THE CITY MANAGER ENTER INTO THE JOINT SELF INSURANCE AGREEMENT WITH THE CENTRAL OHIO HEALTH CARE CONSORTIUM FOR THE THREE-YEAR TERM, JANUARY 1, 2022 THROUGH DECEMBER 31, 2024**

**WHEREAS**, the City of New Albany ("City") provides health and other insurance benefits to employees through the Central Ohio Health Care Consortium ("COHCC"); and,

**WHEREAS**, the COHCC requires the City and other COHCC members to adopt the Joint Self-Insurance Agreement ("Agreement") every three (3) years; and,

**WHEREAS**, the Agreement has been revised for the next three (3) year term, January 1, 2022 through December 31, 2024; and

**WHEREAS**, Council has determined that the Agreement should be executed.

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

**Section 1.** Council authorizes the city manager to enter into the Agreement, attached hereto as Exhibit A, regarding health and other insurance benefits.

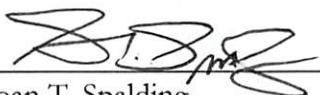
**Section 2.** This Agreement shall supersede and replace all applicable state and local laws, which it has the authority to supersede and replace.


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

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

**CERTIFIED AS ADOPTED** this 16 day of Nov, 2021.

Attest:

  
Sloan T. Spalding  
Mayor

  
Jennifer H. Mason  
Clerk of Council

Approved as to form:

  
Mitchell H. Banchevsky  
Law Director

**Legislation dates:**

Prepared: 11/04/2021

Introduced: 11/16/2021

Revised:

Adopted: 11/16/2021

Effective: 11/16/2021

EXHIBIT A – R-54-2021

**AMENDED AND RESTATED  
CENTRAL OHIO HEALTH CARE CONSORTIUM  
JOINT SELF-INSURANCE AGREEMENT**

WHEREAS, Section 9.833 of the Ohio Revised Code permits any POLITICAL SUBDIVISION that provides health care benefits for its officers or employees to join in any combination with other POLITICAL SUBDIVISIONS to establish and maintain a joint self-insurance program to provide health care benefits pursuant to a written agreement (the “AGREEMENT”); and

WHEREAS, effective January 1, 1992, a number of POLITICAL SUBDIVISIONS joined together to form the Central Ohio Health Care Consortium Joint Self-Insurance Agreement with other POLITICAL SUBDIVISIONS and established a joint self-insurance program (the “Original Agreement”) to provide health care benefits for their officers and/or employees; and

WHEREAS, the Original Agreement was restated on July 1, 1994, through the implementation and execution of Amendment No. 1 to Central Ohio Health Care Consortium Joint Self-Insurance Agreement (“Amendment No. 1”); and

WHEREAS, in 1997, the MEMBERS of the POOL adopted Amendment No. 2 to Amendment No. 1 (“Amendment No. 2”), pursuant to which Sections 3.06(a) and 8.01(b) of Amendment No. 1 were amended; and

WHEREAS, in 2000, the MEMBERS further amended Amendment No. 1 and Amendment No. 2 by replacing existing Section 6.03 with a new provision regarding the POOL CONTRIBUTION FACTOR; and

WHEREAS, in 2003, the MEMBERS further amended Amendments No. 1 and No. 2 by modifying Section 7.01 Monthly Payments and Section 7.04 Assessments adding “Thereafter, payment is subject to a 5% penalty with the interest of 1½% per month or portion thereof”; and

WHEREAS, in 2006, the MEMBERS further amended Amendments No. 1 and No. 2 by modifying Section 3.05 and making other minor clarification modifications; and

WHEREAS, in 2009, the MEMBERS amended Amendments No. 1 and No. 2 by modifying Section 4.03 to add the BOARD office of Treasurer; by modifying Section 4.03 to add the Treasurer to the Executive Committee; by modifying Section 4.05 to create a FINANCE COMMITTEE; and by modifying Section 4.03 to eliminate the term limitation for BOARD Chairman; and

WHEREAS, in 2016, the MEMBERS amended and restated the AGREEMENT, effective as of January 1, 2016 (the “2016 RESTATED AGREEMENT”), to incorporate all prior and current amendments into one document and to modify the AGREEMENT to: (1) create a mandatory reserve and specify the method to determine and create the

mandatory funding level; and (2) establish October 1<sup>st</sup> as the MEMBER withdrawal deadline; and

WHEREAS, in 2018, the MEMBERS again amended and restated the AGREEMENT, effective as of January 1, 2019 (the "2019 RESTATED AGREEMENT"), to provide the operating terms under the AGREEMENT for the three-year TERM of the AGREEMENT beginning January 1, 2019 and ending December 31, 2021; and

WHEREAS, in 2021, the MEMBERS again desire to amend and restate the AGREEMENT, effective as of January 1 2022, to provide the current operating terms under the AGREEMENT for the three-year TERM of the AGREEMENT beginning January 1, 2022, making the changes identified herein.

NOW, THEREFORE, the undersigned agree as follows:

## **ARTICLE ONE NAME**

Section 1.01. Name. The unincorporated joint self-insurance program known as the Central Ohio Health Care Consortium (the "POOL") is hereby continued as stated herein.

Section 1.02. Duration. The POOL shall have a perpetual duration and shall continue until terminated pursuant to this AGREEMENT. Health benefits coverage hereunder for original MEMBERS initially commenced on January 1, 1992, immediately upon the termination of the health care coverage that previously was provided by Central Benefits Mutual Insurance Company.

Section 1.03. Legal Status. The POOL shall be deemed to be a legal entity, separate and apart from its MEMBERS, formed for the public purpose of enabling its MEMBERS to obtain insurance, to create a joint self-insurance program, and to provide for the joint administration of POOL as well as the FUNDS of the POOL.

Section 1.04. Effective Date. This AGREEMENT amends and completely supercedes the existing Central Ohio Health Care Consortium Joint Self-Insurance Agreement (the "2019 RESTATED AGREEMENT"). This restated AGREEMENT shall become effective as of January 1, 2022.

## **ARTICLE TWO DEFINITIONS**

Section 2.01. Act. "ACT" means Section 9.833 of the Ohio Revised Code ("ORC") and any successor statute thereto, as amended from time to time.

Section 2.02. Administrator. “ADMINISTRATOR” means the entity designated to supervise the administration of the POOL and to perform such other duties as are set forth in any applicable Administration Agreement.

Section 2.03. Agreement. “AGREEMENT” means this Amended and Restated Central Ohio Health Care Consortium Joint Self-Insurance Agreement and all counterparts hereto, as amended from time to time.

Section 2.04. Board. “BOARD” means the Board of Directors of the POOL.

Section 2.05. Contribution(s). “CONTRIBUTION(S)” means any amounts paid by a MEMBER to any FUND.

Section 2.06. Fund. “FUND” or “FUNDS” means those amounts paid by MEMBERS pursuant to Articles Six and Seven of this AGREEMENT.

Section 2.07. Member. “MEMBER” means a POLITICAL SUBDIVISION that is a party to this AGREEMENT and that has not withdrawn from or been terminated from participation in the POOL.

Section 2.08. Political Subdivision. “POLITICAL SUBDIVISION” has the same meaning given to it by the ACT.

Section 2.09. Pool Contribution Factor. “POOL CONTRIBUTION FACTOR” has the meaning as defined in Section 6.03 hereof.

Section 2.10. Scope of Coverage. “SCOPE OF COVERAGE” means the coverage, limits and deductibles set forth in Section 4.07 hereof.

Section 2.11. Surplus Funds. “SURPLUS FUNDS” means the amount by which the FUNDS available to operate the POOL for any year or years exceed all of the costs, liabilities (including claim liabilities, claim reserves and reserves for terminal liability) and expenses of operating the POOL.

Section 2.12. Term. “TERM” means a three-year contract period entered into by the MEMBERS beginning January 1 of any of the following years: 2010, 2013, 2016, 2019, 2022, 2025.

Section 2.13. Vested and Non-Vested Members. “VESTED MEMBER” means any MEMBER who (1) was an original MEMBER of the POOL (*i.e.*, as of January 1, 1992) as well as (2) any MEMBER after such MEMBER has completed one full three-year TERM. “NON-VESTED MEMBER” means any MEMBER who is not a VESTED MEMBER.

Section 2.14. Terms Defined Elsewhere.

ACTUARY  
BENEFITS COMMITTEE

Section 4.07(s)  
Section 4.05(b)

|                                    |                 |
|------------------------------------|-----------------|
| CERTIFIED PUBLIC ACCOUNTANT or CPA | Section 4.07(s) |
| DIRECTOR                           | Section 3.04(c) |
| ELECTION                           | Section 3.05(c) |
| EXPECTED COSTS                     | Section 7.01    |
| FINANCE COMMITTEE                  | Section 4.05(a) |
| FUNDING RATE                       | Section 7.01    |
| INCURRED BUT NOT REPORTED or IBNR  | Section 6.04    |
| POOL                               | Section 1.01    |
| SECOND ELECTION                    | Section 3.05(d) |
| SMALL MEMBER GROUP                 | Section 6.03    |
| 2016 RESTATED AGREEMENT            | Recitals        |
| 2019 RESTATED AGREEMENT            | Section 1.04    |

### **ARTICLE THREE MEMBERSHIP**

**Section 3.01. Qualification.** An applicant seeking membership in the POOL must meet all of the qualifications required by the ACT and, in the case of a NON-VESTED MEMBER, must demonstrate to the satisfaction of the BOARD the financial ability to pay all CONTRIBUTIONS.

**Section 3.02. Application.** All applicants to become MEMBERS shall apply for membership in any manner and on any form approved by or acceptable to the BOARD.

**Section 3.03. Effective Time of Membership.** An applicant shall become a MEMBER at the time that a duly authorized officer of the applicant executes, and a duly authorized officer of the POOL accepts, this AGREEMENT on behalf of the POOL. No applicant shall be permitted to become a MEMBER unless it provides written documentation satisfactory to the BOARD, in its sole judgment, that the applicant has the requisite capacity and authority, and has obtained all required approvals, to execute this AGREEMENT and to perform all of its obligations hereunder.

**Section 3.04. Duties of Members.** Each MEMBER agrees to do or cause to be done all of the following:

(a) to cooperate with and institute all loss prevention procedures and guidelines developed by the BOARD or the ADMINISTRATOR;

(b) to adopt and institute wellness program components or options as identified by the BOARD or the ADMINISTRATOR;

(c) to designate a representative of the MEMBER (a "DIRECTOR") to serve on the BOARD, and to cause that DIRECTOR to attend all monthly and special meetings of the BOARD;

(d) to provide the ADMINISTRATOR access to the records of the MEMBER during normal business hours, upon 24 hours' prior written notice and only for the

purpose of conducting necessary services related to the operation of the POOL and for no other purpose;

(e) to permit the ADMINISTRATOR and any agent or attorney of the ADMINISTRATOR or the POOL to represent the MEMBER in investigating, litigating and settling any claim made against the POOL or the MEMBER that is within the SCOPE OF COVERAGE provided by the POOL; and

(f) to promptly pay when and as due all CONTRIBUTIONS, assessments and uncovered losses (as described in Sections 7.02 and 7.03), if any, required under this AGREEMENT.

### Section 3.05. Terms of Membership.

(a) Each original VESTED MEMBER of the POOL committed to remain a MEMBER for three years, until December 31, 1994. Thereafter, the MEMBERS agreed to continue the POOL for three successive three-year terms (each such three-year period hereunder, a "TERM"). In 2003, the MEMBERS agreed to continue the POOL for successive three-year TERMS indefinitely.

(b) The MEMBERS intend that the POOL shall continue in effect indefinitely, for succeeding three-year TERMS, subject to the continual election of MEMBERS to remain participants in the POOL as provided below.

(c) On or before October 1, of the last year of the current TERM, each MEMBER of the POOL shall indicate in writing to the BOARD whether or not it intends to continue its participation beyond the current TERM (the "ELECTION"). At least two MEMBERS must elect to continue their participation for the POOL to continue. If less than two MEMBERS elect to continue, the POOL shall terminate effective as of 11:59 p.m., local Columbus, Ohio time, on December 31 of the last year of the current TERM, and the BOARD shall be responsible for winding up and dissolving the affairs of the POOL.

(d) If, at the ELECTION, MEMBERS representing more than one-third (1/3) of the total number of employees and officers of MEMBERS insured by the POOL at the time of the ELECTION opt to leave the POOL at the end of the applicable TERM, the MEMBERS who initially elected to continue their participation in the POOL shall be given another opportunity to indicate in writing whether they desire to continue in the POOL beyond the current TERM (the "SECOND ELECTION"). The SECOND ELECTION shall be made by each remaining MEMBER on or before November 1, and at least two MEMBERS must elect during the SECOND ELECTION to continue their participation beyond the current TERM in order for the POOL to continue. If less than two MEMBERS elect during the SECOND ELECTION to continue, the POOL shall terminate effective as of 11:59 p.m., local Columbus, Ohio time, on December 31 of the last year of the current TERM, and the BOARD shall be responsible for winding up and dissolving the affairs of the POOL.

(e) If two or more MEMBERS elect to continue, either at the ELECTION or SECOND ELECTION, all such MEMBERS shall be required to participate for another three-year TERM; provided, however, that any such continuing MEMBER may voluntarily withdraw at the end of any year within that subsequent TERM upon compliance with the withdrawal provisions of Section 8.01 herein. The rights of MEMBERS to share in the SURPLUS FUNDS of the POOL upon withdrawal are governed by Section 8.01 hereof.

**Section 3.06. Terms of Membership for Non-Vested Member.**

(a) Upon initial entry into the POOL, each NON-VESTED MEMBER shall be required to remain a MEMBER, and may not withdraw from the POOL, until the December 31<sup>st</sup> following the second anniversary of the MEMBER'S joining the POOL. A MEMBER'S rights to participate in and/or withdraw from the POOL for any subsequent TERM shall be governed by Section 3.05 hereof.

(b) Subject to Section 8.01 hereof, NON-VESTED MEMBERS shall be entitled to share in SURPLUS FUNDS of the POOL on the same basis as VESTED MEMBERS. NON-VESTED MEMBERS shall pay a surcharge and/or otherwise buy into such surplus on terms established by the BOARD.

**ARTICLE FOUR  
BOARD OF DIRECTORS**

**Section 4.01. Establishment of Board.** The POOL shall have a Board of Directors, which shall, among other duties, determine the general policy of the POOL. Each MEMBER shall be entitled to appoint one DIRECTOR to the BOARD.

**Section 4.02. Term of Directorships.** A person appointed by a MEMBER to serve as a DIRECTOR on the BOARD shall remain in office until the earlier of (1) the date the POOL receives evidence of the appointment of his or her successor or (2) the effective time of the withdrawal from or termination of the appointing MEMBER'S participation in the POOL.

**Section 4.03. Officers and Executive Committee.** The BOARD shall annually elect from the DIRECTORS of the BOARD a Chairman, a Vice-Chairman, a Secretary, and a Treasurer. The DIRECTORS receiving the largest number of votes for each office shall be elected.

The BOARD shall annually elect an executive committee to be comprised of the Chairman, the Vice-Chairman, the Secretary and the Treasurer of the POOL, and two other DIRECTORS. The two DIRECTORS receiving the largest number of votes for the executive committee shall be elected. The executive committee may bind the BOARD only as to matters over which the BOARD has given express authorization.

**Section 4.04. Meetings.**

(a) Meetings of the BOARD shall be held monthly at such time as the Secretary shall prescribe. Such meetings may be held and attended in person or electronically through teleconference, video conference or other appropriate means. Unless waived, the Secretary shall give written or electronic notice to each DIRECTOR of the time, date, place, and format of each meeting, at least seven days prior to each meeting. This notice may, but is not required to, contain an agenda of items to be discussed. Any item of POOL business may be considered at the monthly meetings contained in the notice of the meeting.

(b) Special meetings may be called by the ADMINISTRATOR, the Chairman, or by a majority of the DIRECTORS. Only items listed for discussion in the notice of the special meeting may be considered. Unless waived, the Secretary shall give written or electronic notice to each DIRECTOR of the time, date, place, format and purposes of a special meeting at least three days prior to each meeting.

#### Section 4.05. Committees of the Board.

(a) The BOARD shall appoint a standing finance committee ("FINANCE COMMITTEE") consisting of as many DIRECTORS, proxies or other designees as the BOARD chooses and to be chaired by the Treasurer. The FINANCE COMMITTEE shall be responsible for the POOL's pricing policies and related matters.

(b) The BOARD shall also appoint a standing benefits committee ("BENEFITS COMMITTEE") consisting of as many DIRECTORS, proxies or other designees as the BOARD chooses and to be chaired by a member of the BENEFITS COMMITTEE as selected by its members. The BENEFITS COMMITTEE shall be responsible for evaluating benefit plan designs, wellness initiatives and related matters.

(c) The Chairman or BOARD may from time to time appoint ad hoc committees consisting of no fewer than five of the DIRECTORS. Membership of the ad hoc committees may be changed at any time by the Chairman or by the BOARD. An ad hoc committee may bind the BOARD only as to matters over which the BOARD has given such committee express authorization.

Section 4.06. Compensation. DIRECTORS shall be entitled to reimbursement of actual expenses incurred in the pursuit of POOL business and such other reasonable and lawful compensation as may be awarded from time to time by the BOARD.

Section 4.07. Powers and Duties. The BOARD is authorized and directed to carry out each and every act necessary, convenient or desirable to and for carrying out the purpose of this AGREEMENT and the POOL, including, but not limited to:

- (a) hiring the ADMINISTRATOR;
- (b) receiving MEMBERS' CONTRIBUTIONS;
- (c) administering the POOL and settling and paying, or causing the payment of, claims on behalf of the MEMBERS;

(d) making and entering into contracts to conduct and operate the POOL, including, but not limited to, the execution of an administrative agreement with the ADMINISTRATOR;

(e) employing agents and employees on behalf of the POOL;

(f) establishing and adopting requirements for membership in the POOL, including, but not limited to, a potential member's commitment to certain wellness initiatives to be identified by the BOARD and/or the ADMINISTRATOR;

(g) approving new MEMBERS;

(h) terminating the participation of existing MEMBERS;

(i) approving and amending the annual budget of the POOL;

(j) resolving disputes over the SCOPE OF COVERAGE provided by the POOL;

(k) approving educational and other programs relating to risk reduction;

(l) approving reasonable and necessary loss reduction and preventive procedures to be followed by all MEMBERS;

(m) approving each MEMBER'S FUNDING RATE (as that term is defined in Section 7.01 hereof);

(n) establishing rules and regulations regarding the payment of FUNDS from the POOL as shall from time to time seem appropriate or necessary, including the payment of reasonable expenses related to the administration of the POOL;

(o) establishing and adopting policies for the administration of the POOL and/or the management and investment of the FUNDS, including, but not limited to investment and mandatory reserve policies as well as policies for pricing and rating;

(p) investing POOL FUNDS;

(q) providing surety and/or fidelity bonds for DIRECTORS and all persons charged with the custody or investment of POOL FUNDS;

(r) purchasing directors and officers, errors and omissions and such other insurance coverage for the benefit of the POOL and its DIRECTORS as the BOARD shall deem necessary, appropriate or desirable;

(s) hiring an independent actuary who shall be a member of the American Academy of Actuaries (the "ACTUARY") as well as a certified public accountant

("CERTIFIED PUBLIC ACCOUNTANT" or "CPA") to perform duties required by the ACT or otherwise by the BOARD;

(t) hiring independent legal counsel to provide services to the BOARD and POOL, as necessary;

(u) establishing one or more bank accounts, which may include establishing a trust(s) with the trust department(s) of one or more National bank(s), to collect premiums, pay claims and otherwise to manage and account for all POOL FUNDS;

(v) requiring the ADMINISTRATOR to provide evidence of coverage satisfactory to the BOARD with respect to stop-loss and/or any other kind of insurance purchased by the ADMINISTRATOR for the benefit of the POOL; and

(w) determining whether the POOL has any SURPLUS FUNDS and, if so, how such SURPLUS FUNDS shall be utilized for the operation of the POOL and/or shall be distributed to MEMBERS, in accordance with the terms of this AGREEMENT.

The coverage, limits, deductibles and other terms of the health care benefits (the "SCOPE OF COVERAGE") to be provided by the POOL are described in documents maintained by the BOARD and incorporated herein by this reference. From time to time, the BOARD may revise the SCOPE OF COVERAGE as it deems necessary or appropriate.

The BOARD may delegate one or more of its duties to one or more committees established under Section 4.05, with oversight and approval retained by the BOARD.

Section 4.08. Voting; Proxies. Each DIRECTOR shall be entitled to one vote on each matter voted upon by the BOARD, except that the Chairman shall have an additional vote in the event of a tie. A DIRECTOR may be represented and may vote by a proxy appointed by an instrument in writing signed by the DIRECTOR and confirmed by the MEMBER which elected such DIRECTOR, but such instrument must be filed with the Secretary of the meeting before the person holding the proxy shall be allowed to vote.

The BOARD may include in any process or procedure for administering the POOL, including voting, the use of alternative media, including, but not limited to, telephonic, facsimile, computer or other such electronic means as available. Use of alternative media shall be deemed to satisfy any requirements of the POOL or this AGREEMENT requiring a "written" document or an instrument signed "in writing" to the extent permissible under the ORC, or the Internal Revenue Code of 1986, as amended, if applicable.

Section 4.09. Quorum. A quorum of the BOARD shall consist of fifty percent (50%) of the DIRECTORS. Except as provided in Section 11.09 below, the affirmative vote of a majority of the DIRECTORS present at a meeting at which a quorum is present shall be the vote of the BOARD.

## **ARTICLE FIVE ADMINISTRATOR**

Section 5.01. Contract. The BOARD shall contract with an ADMINISTRATOR and delegate to such ADMINISTRATOR some or all of its contractual powers and duties (set forth in Article Four above), as the BOARD shall deem advisable.

Section 5.02. Annual Report. The BOARD shall require the ADMINISTRATOR to prepare and present to the BOARD an annual report regarding the condition of the POOL, within 90 days after each calendar year end. The report shall be in such form and include such information as is prescribed by, or acceptable to, the BOARD. The report may be consolidated with the ADMINISTRATOR'S budget recommendation required by Section 6.02 hereof.

## **ARTICLE SIX POOL FUNDS**

Section 6.01. Establishment of the Funds(s). The BOARD shall establish one or more FUNDS which shall consist of MEMBER CONTRIBUTIONS in amounts it deems sufficient to annually fund the administrative expenses of the POOL; to purchase excess insurance, stop-loss insurance or reinsurance for the POOL; to pay current year claims and claim expenses and to establish and maintain sufficient reserves. At or about the close of any three-year TERM hereunder, the BOARD may also establish one or more FUNDS, which may consist of MEMBER CONTRIBUTIONS and/or any existing SURPLUS FUNDS, in amounts it deems appropriate to fund the claims, claims expense and other costs and expenses associated with the termination and run-off of the three-year TERM then ending.

Section 6.02. Budget. No later than October 1 in each POOL year, the ADMINISTRATOR shall prepare and submit to the BOARD an estimate of the budget of the POOL for the succeeding calendar year. If the budget is acceptable to the BOARD, the BOARD shall approve such budget in the manner established in Article Four.

Section 6.03. Pool Contribution Factor. The POOL CONTRIBUTION FACTOR for each MEMBER of the POOL shall be as follows:

| Number of Employees<br>and Officers Insured<br>by the MEMBER | Percentage of<br>Adjustment Related<br>to the MEMBER'S Loss<br>Experience | Percentage of<br>Adjustment Related<br>to the POOL'S Loss<br>Experience |
|--|---|---|
| -----  | -----   | -----   |
| 50-99  | 20%   | 80%   |
| 100-124  | 30%   | 70%   |
| 125-149  | 40%   | 60%   |
| 150-199  | 50%   | 50%   |
| 200-299  | 60%   | 40%   |

300 +

80%

20%

With respect to those MEMBERS whose number of insured employees and officers is fewer than 50, all such MEMBERS shall be treated as a single group (the "SMALL MEMBER GROUP"). The POOL CONTRIBUTION FACTOR for each MEMBER in the SMALL MEMBER GROUP shall be determined by adding all employees and officers insured by all MEMBERS in the SMALL MEMBER GROUP, and by then applying the percentages shown in the chart shown above to that total. Such determination shall be reviewed at the conclusion of each TERM in order to determine whether any MEMBER should be removed from or return to the SMALL MEMBER GROUP, as well as the POOL CONTRIBUTION FACTOR to be applied for the upcoming TERM.

Each POOL CONTRIBUTION FACTOR shall remain constant for the entire life of the POOL, subject to change only as provided in Section 11.09 hereof. Notwithstanding the above, the BOARD shall have the authority to use reasonable discretion in the consideration of extenuating circumstances that may apply to any MEMBER in the determination and application of the appropriate POOL CONTRIBUTION FACTOR for such MEMBER. Further, the BOARD may develop and adopt policies regarding pricing and rates for MEMBERS, and particularly new NON-VESTED MEMBERS (as provided in Section 4.07(o)), based on the prior status of such MEMBER's benefit programs (e.g., fully-insured, self-funded with run-out claims liability, self-funded without run-out claims liability etc.).

Additionally, and notwithstanding anything contained in this AGREEMENT elsewhere to the contrary, the MEMBERS in the SMALL MEMBER GROUP shall be treated as if they were a single MEMBER not only for purposes of determining their POOL CONTRIBUTION FACTOR, but also for purposes of allocating and distributing SURPLUS FUNDS, establishing the FUNDING RATE for the SMALL MEMBER GROUP and determining and assessing supplemental payments to the POOL under Article Seven of the AGREEMENT. In each such case, the MEMBER'S rights and/or liabilities within the SMALL MEMBER GROUP shall be determined by dividing (a) the number of employees and officers insured by the MEMBER by (b) the total number of all employees and all officers insured by all MEMBERS within the SMALL MEMBER GROUP, and applying that fraction to each such MEMBER as the BOARD shall deem appropriate under the circumstances.

Except as otherwise provided in this Section 6.03, the MEMBERS in the SMALL MEMBER GROUP shall be treated as separate and distinct MEMBERS for all other purposes under the AGREEMENT. The BOARD shall have the authority to interpret this AGREEMENT to resolve any conflicts or issues arising out of the creation of the SMALL MEMBER GROUP and the allocation of any rights and liabilities to each MEMBER within the SMALL MEMBER GROUP.

Section 6.04. Mandatory Reserve. The BOARD shall establish a mandatory reserve for the purposes of protecting the FUND from future losses and maintaining fiscal solvency. This reserve shall be set aside for contingencies and potential unforeseen liabilities such as a spike in claims payments in excess of expected claims. The BOARD

will adopt a Mandatory Reserve Policy which will outline mandatory reserve targets. For purposes of a NON-VESTED MEMBER, the pricing of such reserve amount will be phased in over the first two years of the NON-VESTED MEMBER's participation in the POOL. Should additional CONTRIBUTIONS be required to achieve the reserve funding target, the BOARD shall determine a reserve surcharge for MEMBERS to be included in the MEMBERS' CONTRIBUTIONS.

**Section 6.05. Surplus Funds.** In the event that MEMBER CONTRIBUTIONS exceed claims and expenses for the FUND, the BOARD, shall first apply the SURPLUS FUNDS to the mandatory reserve. Should the reserve exceed the BOARD'S established funding target, the BOARD may, in its sole discretion, apply SURPLUS FUNDS toward the CONTRIBUTIONS of MEMBERS for any subsequent year, and/or fund any other necessary and proper cost, liability and/or expense of the POOL. Additionally, the BOARD may refund to its MEMBERS all or some portion of the excess payments, if any, made by its MEMBERS to the POOL, which reimbursement may be based on each MEMBER'S and the POOL'S loss experience and such other factors as the BOARD deems appropriate under the circumstances. The BOARD shall determine the amount of SURPLUS FUNDS, if any, as of December 31 of each year hereunder on or before April 1 in each succeeding year, and shall promptly communicate this information to each MEMBER.

**Section 6.06. Purchase of Stop-Loss Insurance.** The BOARD shall continue to consider appropriate risk management products or services that could limit the financial liability to the POOL. The BOARD shall also investigate the purchase of specific stop-loss coverage, and upon the termination of the POOL, the availability of insurance to cover the terminal liabilities of the withdrawing MEMBERS, and shall purchase such coverage if deemed to be in the best interests of the MEMBERS at that time. The BOARD may, in its discretion, create sub-pools for the allocation of the costs for any purchased stop-loss coverage, with such factors to be reviewed on an actuarial basis, and applied each TERM.

**Section 6.07. Actuarial and Financial Reports.** The BOARD shall require the ACTUARY and the CPA to prepare and deliver to the BOARD the report(s) required by the ACT.

## **ARTICLE SEVEN FUNDING SCOPE OF RISK SHARING PROTECTION**

**Section 7.01. Monthly Payments.** On or before October 1 in each year, the BOARD (after consultation with its ADMINISTRATOR, its ACTUARY or such other persons as the BOARD may deem necessary or appropriate) shall calculate the expected costs ("EXPECTED COSTS") for the POOL for the next calendar year. EXPECTED COSTS shall include anticipated claims costs and fixed and administrative costs associated with the operation of the POOL, including premiums for stop-loss insurance, excess insurance and directors and officers' liability insurance, errors and omissions insurance and fees for its ADMINISTRATOR, ACTUARY, CPA and legal counsel. After calculating EXPECTED COSTS and on or about October 1 in each year, the

BOARD shall determine each MEMBER'S FUNDING RATE ("FUNDING RATE") for the immediately following calendar year. A MEMBER'S FUNDING RATE shall be determined with reference to the number of employees and officers of the MEMBER who are covered by the POOL as of September 1, the loss experience of the MEMBER and the MEMBER'S POOL CONTRIBUTION FACTOR. FUNDING RATES shall be established so as to enable the POOL to satisfy its EXPECTED COSTS, as well as any additional funding deemed necessary or appropriate by the BOARD. By way of example, the BOARD may establish FUNDING RATES to provide funds in excess of EXPECTED COSTS in order to establish reserves for future POOL year operations.

FUNDING RATES shall be paid monthly by MEMBERS, and payment must be received by the POOL on or before the 15<sup>th</sup> of each month hereunder with no grace period whatsoever. Thereafter, payment is subject to a 5% penalty with the interest of 1½% per month or portion thereof.

Section 7.02. Assessments. From time to time, the BOARD may require that MEMBERS make supplemental payments to the POOL for any necessary or appropriate purpose where there is reasonable concern that FUNDS then available to the POOL (whether through surplus, monthly payments of FUNDING RATES, stop-loss coverage, reinsurance or otherwise) will not be sufficient to meet the responsibilities of the POOL; provided, however, that the total of such supplemental payments and all payments under Section 7.01 hereof in any year shall not exceed two hundred percent (200%) of the EXPECTED COSTS for that POOL year. The BOARD may assess supplemental payments from MEMBERS, including withdrawn or terminated MEMBERS (related to their period of membership in the POOL), for any one or more years of their membership. All assessments for supplemental payments shall be made proportionately among the MEMBERS of the POOL for the year as to which the assessment relates, in direct relation to each MEMBER'S FUNDING RATE for that year.

MEMBERS shall be responsible for supplemental payments during the life of the POOL and any later period when claims or expenses need to be paid which are attributable to any year of membership during which the event causing the expenses or claims requiring the supplemental payments occurred.

Section 7.03. Member Responsibility for Losses and Deficiencies.

(a) In the event that the losses of the POOL in any year exceed amounts paid to the POOL under Sections 7.01 and 7.02, together with all stop-loss, reinsurance and other coverage then in effect, then the payment of any uncovered losses shall be covered by the POOL and such losses shall be allocated to the MEMBERS as part of the POOL CONTRIBUTION FACTOR described in Section 6.03.

(b) In the event that the administrative costs and expenses of operating the POOL exceed the FUNDS available therefor, including but not limited to amounts available to the POOL by assessment under Section 7.02, then the BOARD may assess the MEMBERS for such deficiency. All such assessments shall be made proportionately among the MEMBERS for the year, as to which the assessment relates, in direct relation to each MEMBER'S FUNDING RATE for that year.

**Section 7.04. Payment of Assessments.** Each MEMBER shall promptly pay all assessments hereunder, and in each case no later than the forty-fifth (45<sup>th</sup>) day after the BOARD has given the MEMBER written notice of the assessment, with no grace period whatsoever. Thereafter, payment is subject to a 5% penalty with the interest of 1½% per month or portion thereof.

## **ARTICLE EIGHT MEMBER'S WITHDRAWAL OR TERMINATION**

### **Section 8.01. Withdrawal.**

(a) A VESTED MEMBER, or a NON-VESTED MEMBER that has completed its membership requirement as described in Section 3.06, may withdraw from the POOL by giving prior written notice to the POOL no later than October 1 of the year in which membership is to cease. The MEMBER'S withdrawal shall be effective as of 11:59 p.m., local Columbus, Ohio time, on December 31 in the year in which such notice is given; provided, however, that the MEMBER shall remain liable thereafter for any assessments which the BOARD may make under Sections 7.02 and/or 7.03. At and after the effective time of withdrawal, the withdrawing MEMBER shall be wholly and solely responsible for providing health care (and other, if any) benefits that previously had been provided by the POOL, including but not limited to any and all IBNR and/or terminal liabilities related to its prior POOL participation, to the extent such expenses exceed the total of the MEMBER's CONTRIBUTIONS for the last three months as an active MEMBER, and the POOL shall have absolutely no liabilities to the MEMBER in that regard.

(b) No withdrawing MEMBER shall have any rights whatsoever to participate in a distribution of the SURPLUS FUNDS of the POOL, whether then or any time thereafter.

**Section 8.02. Termination.** Upon a vote of the BOARD taken in accordance with Article Four and upon five days' written notice, a MEMBER'S participation may be terminated if such MEMBER materially breaches or violates any of the terms of this AGREEMENT. Without limiting the generality of the foregoing, the failure of a MEMBER to promptly make payments to the POOL in complete conformity with the provisions of Article Seven shall be deemed to be a material breach and violation of this AGREEMENT which warrants termination. Upon termination, the terminated MEMBER shall (a) remain liable for any and all amounts remaining due and unpaid under Article Seven, (b) have no rights whatsoever to share in any SURPLUS FUNDS then and/or at any time thereafter, and (c) effective as of 11:59 p.m., local Columbus, Ohio time, on the effective date of termination as outlined in the written notice provided to the MEMBER, the terminated MEMBER shall be wholly and solely responsible for providing health care (and other, if any) benefits that previously had been provided by the POOL, including, but not limited to, any and all IBNR and/or terminal liabilities related to its prior POOL participation, to the extent such expenses exceed the total of the

MEMBER's CONTRIBUTIONS for the last three months as an active MEMBER, and the POOL shall have absolutely no liabilities to the MEMBER in that regard.

## **ARTICLE NINE TERMINATION OF POOL**

Section 9.01. Termination. This AGREEMENT may be terminated only by the written agreement of no less than two-thirds (2/3) of all MEMBERS. After a vote to terminate the POOL, the BOARD shall wind-up the POOL'S business as quickly as practicable, but in any event shall complete this process no later than 12 months after the termination date. During such period, the POOL shall continue to pay all claims and expenses until the POOL FUNDS are exhausted.

After payment of all claims and expenses, or upon the termination of the 12-month period, any remaining SURPLUS FUNDS held by the POOL shall be paid to the MEMBERS of the POOL who are MEMBERS as of the termination date. The BOARD shall determine the manner in which such SURPLUS FUNDS shall be distributed, and shall consider (a) the percentage relationship which each MEMBER'S CONTRIBUTIONS to the POOL for the prior three calendar years of the POOL bears to all MEMBERS' CONTRIBUTIONS to the POOL for that same period and (b) the loss experiences of each MEMBER for the prior three calendar years of the POOL. If, after the payment of all claims and expenses, or upon the termination of the 12-month period, the POOL'S funds are not sufficient to pay claims and expenses, the payment of any uncovered losses shall revert to and be the sole obligation of the individual MEMBERS against which the claims or expenses were made, and the BOARD shall assess such MEMBERS for the full amount owed.

The POOL, through the BOARD, may require that MEMBERS provide written documentation satisfactory to the BOARD, in its sole judgment, that such MEMBER has the requisite capacity and authority, and has obtained all required approvals, to vote on any matter contemplated by this Section 9.01.

The POOL shall not be responsible for any claims filed after the 12-month period. MEMBERS shall remain obligated to make payments to the POOL pursuant to Article Seven related to periods prior to the termination date.

## **ARTICLE TEN INDEMNIFICATION**

Section 10.01. Indemnification. Subject to the determination required by Section 10.03 below, the POOL shall indemnify any officer or DIRECTOR of the POOL who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, any action threatened or instituted by or in the right of the POOL), against expenses (including, without limitation, reasonable attorneys' fees, filing fees, court reporters' fees and transcript costs), judgments, fines

and amounts paid in settlement actually and reasonably incurred by the officer or DIRECTOR in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the POOL, and with respect to any criminal action or proceeding, he had no reasonable cause to believe his conduct was unlawful. A person claiming indemnification under this Section 10.01 shall be presumed, in respect of any act or omission giving rise to such claim for indemnification, to have acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the POOL, and with respect to any criminal matter, to have had no reasonable cause to believe his conduct was unlawful, and the termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, rebut such presumption.

Section 10.02. Court-Approved Indemnification. Anything contained in this AGREEMENT or elsewhere to the contrary notwithstanding:

(a) the POOL shall not indemnify any officer or DIRECTOR of the POOL who was a party to any completed action or suit instituted by or in the right of the POOL to procure a judgment in its favor by reason of the fact that he is or was a DIRECTOR, officer, employee or agent of the POOL, in respect of any claim, issue or matter asserted in such action or suit as to which he shall have been adjudged to be liable for acting with reckless disregard of the best interests of the POOL or misconduct (other than negligence) in the performance of his duty to the POOL unless and only to the extent that the Court of Common Pleas of Franklin County, Ohio or the court in which such action or suit was brought shall determine upon application that, despite such adjudication of liability, and in view of all the circumstances of the case, he is fairly and reasonably entitled to such indemnity as such Court of Common Pleas or such other court shall deem proper; and

(b) the POOL shall promptly make any such unpaid indemnification as is determined by a court to be proper as contemplated by this Section 10.02.

Section 10.03. Determination Required. Any indemnification provided for under Section 10.01 and not precluded under Section 10.02 shall be made by the POOL only upon a determination that such indemnification of the officer or DIRECTOR is proper in the circumstances because he has met the requirements set forth in Section 10.01. Such determination may be made only (a) by a majority vote of a quorum consisting of DIRECTORS of the BOARD who were not and are not parties to, or treated with, any such action, suit or proceeding, or (b) if such a quorum is not obtainable or if a majority of a quorum of disinterested DIRECTORS so directs, in a written opinion by independent legal counsel other than an attorney, or a firm having associated with it an attorney, who has been retained by or who has performed services for the POOL or any person to be indemnified, within the past five years, or (c) by the court in which such action, suit or proceeding was brought, if any.

Section 10.04. Advances for Expenses. Expenses (including, without limitation, reasonable attorneys' fees, filing fees, court reporters' fees and transcript costs) incurred in defending any action, suit or proceeding referred to in Section 10.01 shall be paid by

the POOL in advance of the final disposition of such action, suit or proceeding to or on behalf of the officer or DIRECTOR promptly as such expenses are incurred by him, but only if such officer or DIRECTOR shall first agree, in writing, to repay all amounts so paid in respect of any claim, issue or other matter asserted in such action, suit or proceeding in defense of which he shall not have been successful on the merits or otherwise:

(a) if it shall ultimately be determined as provided in Section 10.03 that he is not entitled to be indemnified by the POOL as provided under Section 10.01; or

(b) if, in respect of any claim, issue or other matter asserted by or in the right of the POOL in such action or suit, he shall have been adjudged to be liable for acting with reckless disregard of the best interests of the POOL or misconduct (other than negligence) in the performance of his duty to the POOL, unless and only to the extent that the Court of Common Pleas of Franklin County, Ohio or the court in which such action or suit was brought shall determine upon application that, despite such adjudication of liability, and in view of all the circumstances, he/she is fairly and reasonably entitled to all or part of such indemnification.

Section 10.05. Article Ten Not Exclusive. The indemnification provided by this Article Ten shall not be exclusive of, and shall be in addition to, any other rights to which any person seeking indemnification may be entitled, and shall continue as to a person who has ceased to be an officer or DIRECTOR of the POOL and shall inure to the benefit of the heirs, executors, executors, and administrators of such a person.

## **ARTICLE ELEVEN MISCELLANEOUS**

Section 11.01. Ohio Law Governs. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Ohio.

Section 11.02. Enabling Action by Members. If any action requiring the vote, consent or approval of any or all MEMBERS of the POOL is required in order to make permissible or lawful any actions contemplated by this AGREEMENT, each DIRECTOR will vote for such action on behalf of its MEMBER.

Section 11.03. Counterparts. This AGREEMENT and any amendment hereto may be executed in one or more counterparts, each of which shall be deemed to be an original, but all counterparts taken together shall constitute one and the same AGREEMENT.

Section 11.04. Severability. The invalidity or unenforceability of any provision of this AGREEMENT in any particular respect shall not affect the validity and enforceability of any other provision of this AGREEMENT or of the same provision in any other respect.

**Section 11.05. Captions.** All captions used in this AGREEMENT are for convenience or reference only, do not form a substantive part of this AGREEMENT and shall not restrict or enlarge any substantive provision of this AGREEMENT.

**Section 11.06. Notices.** All notices and other communications required or permitted under this AGREEMENT shall be in writing and shall be mailed by regular U.S. mail, postage prepaid, or otherwise delivered by hand or by messenger, addressed (a) if to a MEMBER, to the DIRECTOR representing that MEMBER at such DIRECTOR'S address set forth on the last page of this AGREEMENT or at such other address as the MEMBER or DIRECTOR shall have furnished to the POOL in writing or (b) if to the POOL, at the POOL address set forth on the last page of this AGREEMENT and addressed to the attention of the Secretary of the POOL or at such other address as the POOL shall have furnished to the MEMBERS in writing. Each such notice or other communication shall for all purposes of this AGREEMENT be treated as effective or having been given (a) when delivered, if delivered personally or (b) if sent by mail, when deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed in compliance with this Section 11.06.

Notwithstanding the foregoing, the parties may elect to use alternative media for the purpose of providing such notices and communications, including, but not limited to, facsimile, computer or other such electronic means as are available, provided that any method used shall include a confirmation statement or receipt providing evidence that such transmission was received by the intended recipient.

**Section 11.07. Entire Agreement.** This AGREEMENT constitutes the entire agreement between the parties hereto in respect of the subject matter of this AGREEMENT, and this AGREEMENT supersedes all prior and contemporaneous agreements between the parties hereto in respect of the subject matter of this AGREEMENT.

**Section 11.08. Pronouns; Gender.** All pronouns and any variations thereof used in this AGREEMENT to refer to any person or persons shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or persons may require.

**Section 11.09. Amendment.** This AGREEMENT may be amended only by the written agreement of no less than two-thirds (2/3) of all MEMBERS. The POOL, through the BOARD, may require that MEMBERS provide written documentation satisfactory to the BOARD, in its sole judgment, that such MEMBER has the requisite capacity and authority, and has obtained all required approvals to vote on any matter contemplated by this Section 11.09.

**Section 11.10. Other Instruments.** The MEMBERS agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this AGREEMENT.

**Section 11.11. Non-Waiver.** No failure by either party to this AGREEMENT to insist upon strict compliance with any term of this AGREEMENT, or to enforce any

rights or seek any remedy upon any default of the other party, shall affect, or constitute a waiver of, the other party's right to insist upon such strict compliance, enforce that right or seek that remedy with respect to that default or any prior, contemporaneous or subsequent default; nor shall any custom or practice of the parties at variance with any provision of this AGREEMENT affect, or constitute a waiver of, either party's right to demand strict compliance with all provisions of this AGREEMENT.

Section 11.12. Review by Legal Counsel. MEMBER recognizes that it is in its best interest to have this AGREEMENT reviewed by legal counsel to ensure that the POOL is suitable and appropriate for MEMBER.

IN WITNESS WHEREOF, this AGREEMENT was executed on the \_\_\_\_\_ day  
of \_\_\_\_\_, 2021 by the undersigned duly authorized officer of the MEMBER  
indicated below:

ACCEPTED FOR THE CENTRAL  
OHIO HEALTH CARE  
CONSORTIUM:

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MEMBER:

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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## **RESOLUTION R-55-2021**

### **A RESOLUTION TO REQUEST PERMISSION FROM THE AUDITOR OF STATE TO CREATE A SPECIAL REVENUE FUND FOR MANAGEMENT OF THE NEW CHARLEEN AND CHARLES HINSON AMPHITHEATER**

**WHEREAS**, in September of 2021, the City of New Albany was granted ownership of the newly constructed Charleen and Charles Hinson Amphitheater (the Amphitheater) which provides a venue for live outdoor concerts, events, and other programming; and

**WHEREAS**, the City of New Albany entered into an agreement with the Columbus Association for the Performing Arts (CAPA) and the McCoy Center for the Arts (McCoy Center) on August 12<sup>th</sup>, 2021 to provide certain management services to the city in support of the Amphitheater; and

**WHEREAS**, the City of New Albany shall receive revenue derived from rentals, ticket sales and other fees and incur expenses for the operation of the facility including the cost of the management services contract with CAPA and the McCoy Center, maintenance, materials and supplies, and other expenditures; and

**WHEREAS**, the city desires to capture the revenue and expenditures related to the Amphitheater's operations in a separate fund to provide for greater transparency and evaluation of the Amphitheater's activity; and

**WHEREAS**, the city desires to the utilize the revenue derived from the activity of the Amphitheater for the operation of, maintenance of, equipment necessary or any other expense related to the Amphitheater; and

**WHEREAS**, Ohio Revised Code 5705.12 allows for the establishment of special funds; and

**WHEREAS**, Ohio Auditor of State Bulletin 99-006 requires the taxing authorities of subdivisions to request the approval of new funds when it is necessary to capture additional financial information about a specific source of revenue or a specific activity, and when the taxing authority wants to impose internal restrictions on the use of otherwise unrestricted resources

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

**Section 1:** Council hereby requests permission from the Auditor of State to create the Hinson Amphitheater special revenue fund for the purpose of easily tracking and accounting for the activity related to the Amphitheater.

**Section 2:** Should approval be granted by the Auditor of State for the creation of the Hinson Amphitheater special revenue fund, Council approves the establishment of such fund.

**Section 3:** Once approved, any and all revenue receipted into the newly created Hinson Amphitheater special revenue fund shall be used for the sole purpose of the operation of, maintenance of, equipment necessary or any other expense related to the Amphitheater.

**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 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 16 day of Nov, 2021.

**Attest:**

  
Sloan T. Spalding  
Mayor

  
Jennifer H. Mason  
Clerk of Council

**Approved as to form:**

  
Mitchell H. Banchevsky  
Law Director

**Legislation dates:**

|             |            |
|-------------|------------|
| Prepared:   | 11/04/2021 |
| Introduced: | 11/16/2021 |
| Revised:    |            |
| Adopted:    | 11/16/2021 |
| Effective:  | 11/16/2021 |



## **RESOLUTION R-56-2021**

### **A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO APPROVE AND SIGN AGREEMENTS WITH VTRE DEVELOPMENT, LLC RELATED TO INCENTIVES AVAILABLE FOR PROJECT DEVELOPMENT IN THE OAK GROVE II COMMUNITY REINVESTMENT AREA**

**WHEREAS**, the Council for the City of New Albany, Ohio (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-53-2012 adopted October 2, 2012, No. R-26-2013 adopted August 6, 2013, No. R-72-2014 adopted September 16, 2014, and R-49-2015 adopted November 17, 2015, No. R-45-2016 adopted November 1, 2016, No. R-02-17 adopted February 7, 2017, No. R-17-18 adopted July 17, 2018, No. R-41-18 adopted November 6, 2018, No. R-05-2019 adopted February 19, 2019, No. R-37-2019 adopted August 6, 2019, No. R-15-2021 adopted April 6, 2021, No. R-46-21 adopted September 21, 2021 and (together the "CRA Expansion Legislation" and collectively with the Original CRA Legislation the "CRA Legislation"), amended the designation of the Original Area to include the area known as the "Johnstown Monroe Area", "Johnstown Monroe Annex", "Licking Heights Annex", "Cobbs Road Annex", "Harrison Road Area", "Innovation Campus Area" "Innovation Campus Way Extension" "Beech Road South", "Babbitt Road", "Central College Road Area", "Jug Street North", "Jug Street South", and "Innovation District East" respectively, and certain other parcels within the City (collectively, with the Original Area, the "Area"), and designated that entire Area the Oak Grove II Community Reinvestment Area; and

**WHEREAS**, the City of New Albany has encouraged the development of real property and the acquisition of personal property to be located in the CRA; and

**WHEREAS**, the Director of Development of the State of Ohio has determined that the Area contains the characteristics set forth in R.C. Section 3735.66 and confirmed the Area as a "Community Reinvestment Area"; and

**WHEREAS**, VTRE Development, LLC, has submitted to the City a proposed agreement application (the "Application"), the Housing Officer of the City designated under Ohio Revised Code Section 3735.65 has reviewed the Application and has recommended the same to this Council on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities in the CRA and to improve the economic climate of the City, and the City, having appropriate authority, desires to provide the Company with the incentives available in the CRA for the development of the project described in that Application; and

**WHEREAS**, the Board of Education of the Career and Technology Education Centers of Licking County has been notified in accordance with the applicable law; and

**WHEREAS**, the Boards of Education of both the Johnstown-Monroe Local School District and the Licking Heights Local School District have each waived their right to receive notice under Section 5709.83 of the Revised Code in accordance with its respective compensation agreements entered into with the city of New Albany.

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

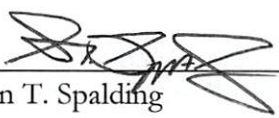
**Section 1.** The city manager is hereby authorized to execute the CRA Agreement by and between the City and the Company, in the form presently on file in the New Albany Community Development Department, which Agreement provides for a 100% CRA exemption for up to 15-years for the proposed project, and directed to take any further actions, and execute and deliver any further agreements, certificates or documents necessary to accomplish the granting of the incentives described in the Agreement, provided further that the approval of changes thereto by the city manager and their character as not being substantially adverse to the City shall be evidenced conclusively by the execution thereof.


**Section 2.** It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this ordinance were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

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

**CERTIFIED AS ADOPTED** this 16 day of Nov, 2021.

**Attest:**

  
Sloan T. Spalding  
Mayor

  
Jennifer H. Mason  
Clerk of Council

**Approved as to form:**

  
Mitchell H. Banchefsky  
Law Director

**Legislation dates:**

Prepared: 11/04/2021

Introduced: 11/16/2021

Revised:

Adopted: 11/16/2021

Effective: 11/16/2021



## **RESOLUTION R-57-2021**

### **A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO APPROVE AND SIGN AGREEMENTS WITH AL. NEYER RE, LLC RELATED TO INCENTIVES AVAILABLE FOR PROJECT DEVELOPMENT IN THE OAK GROVE COMMUNITY REINVESTMENT AREA**

**WHEREAS**, the Council for the City of New Albany, Ohio (the "City") by its Resolution No. R-29-98, adopted July 7, 1998, designated the Oak Grove Community Reinvestment Area (the "Original Area"), and by its Resolutions No. R-28-99 adopted on May 18, 1999, Ordinances Nos. O-23-2005 adopted September 20, 2005, O-24-2006 adopted June 20, 2006, O-39-2006 adopted on October 3, 2006, and Resolution No. R-46-2016 expanded the designation of the Original Area, to include the area known as the "Blacklick Area", the "Hedrick Parcel" and "Infill Areas" (collectively, with the Original Area, the "Area"), and designated that entire Area the Oak Grove Community Reinvestment Area (the "CRA"); and

**WHEREAS**, the City of New Albany has encouraged the development of real property and the acquisition of personal property to be located in the CRA; and

**WHEREAS**, the Director of Development of the State of Ohio has determined that the Area contains the characteristics set forth in R.C. Section 3735.66 and confirmed the Area as a "Community Reinvestment Area"; and

**WHEREAS**, Al. Neyer RE, LLC, has submitted to the City a proposed agreement application (the "Application"), the Housing Officer of the City designated under Ohio Revised Code Section 3735.65 has reviewed the Application and has recommended the same to this Council on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities in the CRA and to improve the economic climate of the City, and the City, having appropriate authority, desires to provide the Company with the incentives available in the CRA for the development of the project described in that Application; and

**WHEREAS**, the Board of Education of the Eastland-Fairfield Career & Technical Schools has been notified in accordance with the applicable law; and

**WHEREAS**, the Boards of Education of the New Albany-Plain Local School District has waived their right to receive notice under Section 5709.83 of the Revised Code in accordance with its respective compensation agreements entered into with the city of New Albany; and

**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 execute the CRA Agreement by and between the City and the Company, in the form presently on file in the New Albany Community Development Department, which Agreement provides for a 100% CRA exemption for up to 15-years for the proposed project, and directed to take any further actions, and execute and deliver any further agreements, certificates or documents necessary to accomplish the granting of the incentives described in the Agreement, provided further that the approval of changes thereto by the city manager and their character as not being substantially adverse to the City shall be evidenced conclusively by the execution thereof.


**Section 2.** It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this ordinance were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

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

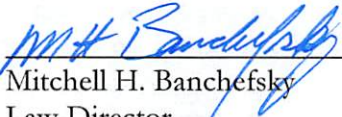
**CERTIFIED AS ADOPTED** this 16 day of Nov, 2021.

**Attest:**

  
Sloan T. Spalding  
Mayor

  
Jennifer H. Mason  
Clerk of Council

**Approved as to form:**

  
Mitchell H. Banchefsky  
Law Director

**Legislation dates:**

Prepared: 11/04/2021

Introduced: 11/16/2021

Revised:

Adopted: 11/16/2021

Effective: 11/16/2021



## **RESOLUTION R-58-2021**

### **A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO REQUEST AND ACCEPT THE SUM OF ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) FROM THE NEW ALBANY COMMUNITY AUTHORITY ECONOMIC DEVELOPMENT FUND FOR ECONOMIC DEVELOPMENT PROJECTS**

**WHEREAS**, Council of the City of New Albany was empowered by virtue of the laws of the State, including Article VIII, Section 13 of the Ohio Constitution, and Chapters 165 and 349 of the Ohio Revised Code to establish an Economic Development Fund by Resolution 52-2004; and

**WHEREAS**, the Economic Development Fund was established to promote the continued construction, improvement, furnishing and equipping of economic development activities; and

**WHEREAS**, the New Albany Community Authority (NACA) is permitted to disburse funds from the Economic Development Fund solely for the purpose of paying expenditures directly related to economic development initiatives that are approved by both the city and the authority; and

**WHEREAS**, Council has determined that various economic development initiatives are necessary in support of, and within, the New Albany International Business Park; and

**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 authorized and hereby directed to request that the New Albany Community Authority disburse the sum of one million five hundred thousand dollars (\$1,500,000.00) from the authority's Economic Development Fund to the city for payment of miscellaneous economic development projects.

**Section 2:** The appropriated funds shall be disbursed by NACA in accordance with a schedule established by the city and NACA.

**Section 3:** The city manager and director of finance are further authorized to enter into any agreements as may be necessary and appropriate for facilitating the request and acceptance.

**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 16 day of Nov, 2021

Attest:

  
Sloan T. Spalding  
Mayor

  
Jennifer H. Mason  
Clerk of Council

Approved as to form:

  
Mitchell H. Banchefsky  
Law Director

**Legislation dates:**

Prepared: 11/05/2021

Introduced: 11/16/2021

Revised:

Adopted: 11/16/2021

Effective: 11/16/2021