



**ORDINANCE O-10-2023**

**AN ORDINANCE TO ACCEPT A 67.547 ACRE CONSERVATION EASEMENT AS REQUESTED BY THE NEW ALBANY COMPANY, LLC**

**WHEREAS**, The New Albany Company, LLC has obtained permits from the Ohio EPA that require the protection of certain watercourses in the general vicinity near to the city of New Albany; and

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

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

**WHEREAS**, the city will be the recipient (grantee) of conservation easements totaling 67.547 acres; and

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

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

**Section 1.** The city manager is hereby authorized to accept the conservation easement totaling 67.547 acres as described and depicted on Exhibit A.

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

**Section 3.** Pursuant to Article 6.07(B) of the New Albany Charter, this ordinance shall become effective thirty (30) days after adoption.

**CERTIFIED AS ADOPTED** this 7 day of Feb, 2023.

**Attest:**

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

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

**Approved as to form:**

  
\_\_\_\_\_  
Benjamin S. Albrecht  
Law Director

<b>Legislation dates:</b>	
Prepared:	01/06/2023
Introduced:	01/17/2023
Revised:	
Adopted:	02/07/2023
Effective:	03/09/2023

**CONSERVATION EASEMENT AGREEMENT**

This Conservation Easement Agreement (“Agreement”) is made to be effective on the last date of signature below (the “Effective Date”), by and between **THE NEW ALBANY COMPANY LLC**, a Delaware limited liability company having its address at 8000 Walton Parkway, Suite 120, New Albany, Ohio 43054 (“Grantor”), and **THE CITY OF NEW ALBANY, OHIO**, an Ohio municipal corporation having its address at 99 W. Main Street, New Albany, Ohio 43054 (“Grantee”).

**RECITALS:**

**WHEREAS**, Grantor is the sole owner in fee simple of certain real property known as Franklin County Auditor’s Tax Parcel Numbers 220-000032, 220-000145, 220-000521, and 220-001767 and being more particularly described in Instrument Number 201808290117096 and Official Record 14296G19, which are of record with the Office of the Recorder of Franklin County, Ohio (the “Property”); and

**WHEREAS**, Grantor desires to convey to Grantee the right to preserve and protect, in perpetuity, the conservation values of that limited portion of the Property that is generally depicted in Exhibit A attached hereto and made a part hereof and is more particularly described in Exhibit B attached hereto and made a part hereof (the “Conservation Easement Area”); and

**WHEREAS**, this Agreement and the Conservation Easement (as such term is defined below) created hereby is required by a Level Two Isolated Wetland Permit No. DSW401217323W dated September 7, 2021 as issued by the Ohio Environmental Protection Agency (“Ohio EPA”) and by a Nationwide Permit No. 27, Permit No. LHR-2020-537-SCR dated January 25, 2022 as issued by the U.S. Army Corps of Engineers (“USACE”) (together, the “Permits”). As a condition of the Permits and related application materials, watercourses, wetlands, and adjacent areas must be protected by a conservation easement, and this Agreement is intended to satisfy this condition. In addition, the Conservation Easement Area established under this Agreement may be used to satisfy similar preservation requirements pursuant to similar permits issued or to be issued in the future to Grantor.

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

**AGREEMENT:**

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

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

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

4. **Prohibited Actions:** Subject to existing easements and encumbrances of record which affect the Conservation Easement Area and except as otherwise permitted herein, any activity on or use of the Conservation Easement Area that is inconsistent with the purposes of the Conservation Easement is strictly prohibited without the prior written consent of the Grantee, the Ohio EPA and the USACE. By way of example, and not of limitation, the following activities and uses are prohibited within the Conservation Easement Area, except as otherwise permitted or required by the Permit:

- a. **Commercial Activities:** Commercial development or industrial activity;
- b. **Construction:** The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots;
- c. **Cutting Vegetation:** Any cutting of trees, ground cover or vegetation, or destroying by any means of herbicides or pesticides, other than the removal or control of invasive and noxious species;

- d. **Land Surface Alteration:** The removal of soil, sand, gravel, rock, minerals or other materials, or doing any act that would alter the topography of the Conservation Easement Area;
- e. **Dumping:** The placement of waste, garbage and unsightly or offensive materials;
- f. **Water Courses:** Dredging, straightening, filling, channeling, impeding, diverting, or otherwise altering any natural water courses, streams and adjacent riparian buffers located within the Conservation Easement Area;
- g. **Utilities:** The installation of new transmission lines for electric power, communications, water, sewer, natural gas, or petroleum products. For the avoidance of doubt, any structures or utilities existing as of the date of this Agreement are permitted to remain in the Conservation Easement Area; and
- h. **Other Activities:** Each and every other activity or construction project which endangers the natural, scenic, biological, or ecological integrity of the Conservation Easement Area.

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

- a. **Right to Enter:** Grantee has the right to enter upon the Conservation Easement Area at reasonable times to monitor or to enforce compliance with this Agreement, provided that such entry shall occur after prior reasonable notice is provided to Grantor and appropriate consideration is given to the reasonable security or safety requirements of Grantor, or its tenants, contractors, employees or licensees. To the extent reasonably possible, entry shall be made from a public right-of-way. Grantee may not enter upon the Property (other than the Conservation Easement Area) or unreasonably interfere with Grantor's (including Grantor's tenants, contractors, employees, and licensees) use and quiet enjoyment of the Property. The general public is not granted access to the Conservation Easement Area or the Property under this Agreement.
- b. **Right to Preserve:** Grantee has the right to prevent any activity on or use of the Conservation Easement Area that is inconsistent with the terms or purposes of this Agreement. Nothing herein, however, is intended to place any restrictions on the use or development of those portions of the Property located outside of the boundaries of the Conservation Easement Area.

- c. **Right to Require Restoration:** Grantee shall have the right to require the restoration of the areas or features of the Conservation Easement Area which are damaged by any activity of Grantor (including its successors and assigns) which is inconsistent with the requirements of this Agreement. Grantee's rights under this paragraph shall include, but shall not be limited to, the right to initiate any proceedings or actions in law or equity as are necessary to enforce the terms of this Agreement or facilitate the restoration of the Conservation Easement Area.
- d. **Signs:** Grantee shall have the right to place signs within the Conservation Easement Area which identify the land as being protected by the Conservation Easement. The number, size and content of any such signs are subject to the prior approval of the owner of the Property, which shall not be unreasonably conditioned, delayed or withheld. Grantee reserves the right to post or clearly mark the boundaries of the Conservation Easement Area at locations that are mutually agreed upon with the owner(s) of the Conservation Easement Area.

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

- a. **Right to Convey:** Grantor shall retain the right to sell, mortgage, bequeath, donate or otherwise convey any or all portions of the Property, including, without limitation, the Conservation Easement Area. Any conveyance shall remain subject to the terms and conditions of this Agreement and the subsequent interest holder shall be bound by the terms and conditions hereof.
- b. **Right to Access:** Grantor shall retain the right to unimpeded access to the Conservation Easement Area.
- c. **Limited Encroachment:** Grantor shall be permitted to encroach onto the Conservation Easement Area for the purpose of maintaining drainage swales, lines, pipes or other similar facilities ("Drainage Facilities") that exist within the Conservation Easement Area as depicted on Exhibit A. Limited construction activities and removal of vegetation within the Conservation Easement Area shall be permitted in association with such limited encroachment. Grantor shall restore (i) all pre-construction contours, and (ii) all vegetation within the Conservation Easement Area

that has been damaged or removed during the maintenance of the Drainage Facilities, as follows:

- A. Disturbed areas shall be seeded with the permanent, native seed mix specified for stream buffers in that certain plan titled Stream and Wetland Restoration for Avis Road Pooled Mitigation and prepared by Evans, Mechwart, Hambleton & Tilton, Inc. (the "Final Mitigation Plan");
  - B. Trees and shrubs shall be replaced on a one-for-one basis; and
  - C. Trees and shrubs shall be chosen from the plant list specified for Embankment Trees & Shrubs in the Final Mitigation Plan.
- d. **Use of Property:** The portions of the Property located outside of the boundaries of the Conservation Easement Area are not subject to the restrictions of the Conservation Easement created hereunder. Grantor shall be permitted to use and develop all portions of the Property under its ownership which are located outside of the boundaries of the Conservation Easement Area without restriction.

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

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

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

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



9. **Remediation:** If, at any time, there occurs, or has occurred, a release caused by the owner of the Conservation Easement Area and subject to Section 7.b. hereof in, on, or about the Conservation Easement Area of any substance now or hereafter defined, listed, or otherwise classified, and in excess of any amount permitted pursuant to any federal, state, or local law, regulation, or requirement, or in an amount that is hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, then the owner(s) of the Conservation Easement Area shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

10. **Cessation of Existence:** If Grantee shall cease to be authorized to acquire and hold conservation easements, then, with the prior consent of the owner of the Conservation Easement Area, Ohio EPA and the USACE, this Agreement shall become vested in another qualified entity that is eligible to acquire and hold a conservation easement under Ohio law and such vesting shall be deemed an assignment pursuant and subject to Section 13 of this Agreement. The owner of the Conservation Easement Area shall execute and deliver such documents and instruments as may be necessary to properly reflect the substitution or replacement of Grantee hereunder.

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

12. **Recordation:** Grantor shall cause this instrument to be recorded in a timely fashion in the Recorder's Office, Franklin County, Ohio, and Grantee may re-record it at any time as may be required to preserve its rights in this Agreement.

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

day notice period in the Recorder's Office, Franklin County, Ohio. The failure of Grantee to give such notice shall not affect the validity of this Agreement nor limit its enforceability in any way.

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

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

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

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

18. **Termination of Rights and Obligations:** A party's rights and obligations under this Agreement shall terminate upon the transfer of its interest in the Conservation Easement Area and the owner of the Conservation Easement Area shall only be liable for acts or failures to comply with this Agreement which occur during its period of ownership. Liability for acts or failures to comply with this Agreement which occur prior to transfer shall survive any such transfer.

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

20. **"As Is" Condition:** Grantee has examined the Conservation Easement Area and agrees to accept the "AS-IS" condition of the same for purposes of this Agreement.

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

22. **No Merger:** The Conservation Easement provided under this Agreement is intended to facilitate the perpetual protection of the Conservation Easement Area as provided

herein. No easement granted or enjoyed hereunder shall be eliminated through the doctrine of merger as the result of Grantee holding title to and/or having ownership of the Conservation Easement Area.

*[Remainder of this page intentionally left blank; Signature pages to follow]*

**IN WITNESS WHEREOF**, Grantor has caused the execution of this Agreement to be effective as of the Effective Date.

**GRANTOR:**

**THE NEW ALBANY COMPANY LLC,**  
a Delaware limited liability company

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

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF OHIO  
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of **THE NEW ALBANY COMPANY LLC**, a Delaware limited liability company, on behalf of the limited liability company. This is an acknowledgment certificate; no oath or affirmation was administered to the signer with regard to the notarial act.

\_\_\_\_\_  
Notary Public

**IN WITNESS WHEREOF**, Grantee has caused the execution of this Agreement to be effective as of the Effective Date.

**GRANTEE:**

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

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

STATE OF OHIO  
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of **The City of New Albany, Ohio**, an Ohio municipal corporation, on behalf of said municipal corporation. This is an acknowledgment certificate; no oath or affirmation was administered to the signer with regard to the notarial act.

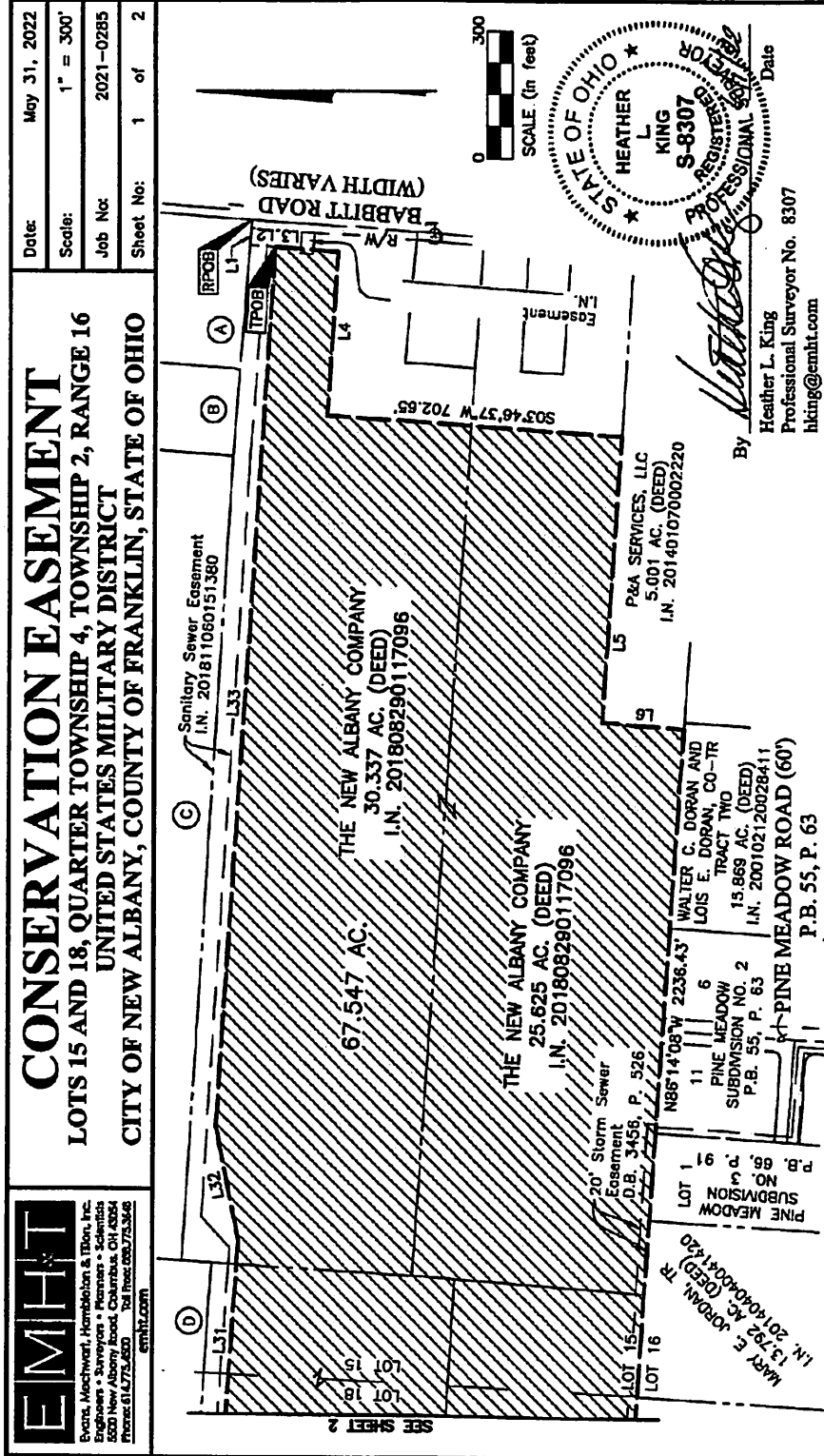
\_\_\_\_\_  
Notary Public

**Approved as to Form:**

\_\_\_\_\_  
Benjamin Albrecht, City Law Director

This instrument prepared by:  
The New Albany Company LLC  
8000 Walton Parkway, Suite 120  
New Albany, Ohio 43054  
(614) 939-8000

**Exhibit A**  
**Depiction of Conservation Easement Area**

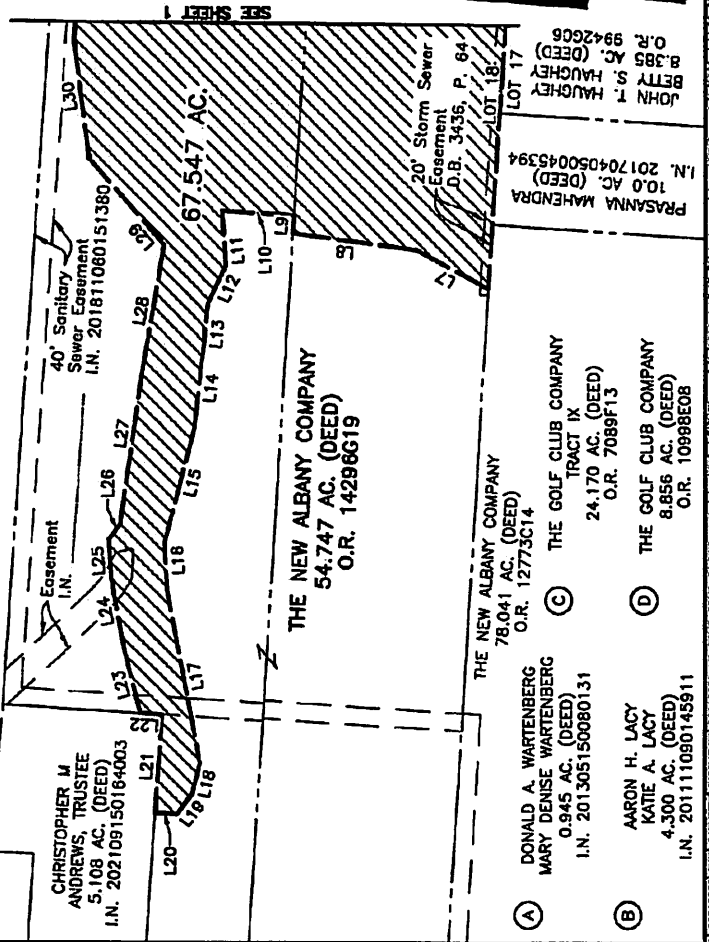


**EMHIT**  
 Evans, Mochel, Henshelen & Mann, Inc.  
 Engineers & Surveyors  
 6500 New Albany Road, Columbus, OH 43254  
 Phone: 614.775.4500 Fax: 614.775.3448  
 emhit.com

# CONSERVATION EASEMENT

## LOTS 15 AND 18, QUARTER TOWNSHIP 4, TOWNSHIP 2, RANGE 16 UNITED STATES MILITARY DISTRICT CITY OF NEW ALBANY, COUNTY OF FRANKLIN, STATE OF OHIO

Date: May 31, 2022  
 Scale: 1" = 300'  
 Job No: 2021-0285  
 Sheet No: 2 of 2



LINE	BEARING	DISTANCE
L1	N85°34'25"W	59.81'
L2	S04°25'49"W	60.51'
L3	S04°05'13"W	150.00'
L4	N85°19'01"W	390.08'
L5	N85°10'43"W	674.81'
L6	S04°19'17"W	194.53'
L7	N25°12'35"E	185.50'
L8	N07°32'43"E	281.80'
L9	S85°23'28"E	39.83'
L10	N03°46'29"E	163.13'
L11	S86°13'40"W	123.50'
L12	N64°31'36"W	94.13'
L13	N84°04'27"W	99.47'
L14	N83°01'20"W	184.06'
L15	N75°30'52"W	265.76'
L16	S87°03'27"W	109.03'
L17	S79°11'44"W	395.96'

LINE	BEARING	DISTANCE
L18	N76°23'29"W	73.77'
L19	N52°55'30"W	58.28'
L20	N05°29'00"E	48.84'
L21	S86°04'42"E	224.27'
L22	N03°36'18"E	49.40'
L23	N76°03'12"E	149.51'
L24	N78°25'43"E	163.25'
L25	N87°01'02"E	87.17'
L26	S52°37'50"E	40.81'
L27	S81°42'20"E	366.81'
L28	S80°05'09"E	271.66'
L29	N45°54'22"E	257.65'
L30	N82°36'28"E	288.21'
L31	S86°00'15"E	455.06'
L32	N78°42'06"E	280.48'
L33	S86°17'54"E	2081.87'



As per notes, plan, conditions, and specifications on drawings, and as shown by field, HAUCHER on 8/7/2022 11:57:17 PM last saved by 18690 on 8/7/2022 11:42:36 PM

**Exhibit B**  
**Legal Description of Conservation Easement Area**

**See attached.**



**CONSERVATION EASEMENT  
67.547 ACRES**

Situated in the State of Ohio, County of Franklin, City of New Albany, located in Lots 15 and 18, Quarter Township 4, Township 2, Range 16, United States Military District, being on, over and across those 25.625 and 30.337 acre tracts conveyed to MJB Holdings LLC by deed of record in Instrument Number 201808290117096 and that 54.747 acre tract conveyed to The New Albany Company by deed of record in Official Record 14296G19, (all references refer to the records of the Recorder's Office, Franklin County, Ohio) being described as follows:

Beginning, for reference, in the centerline of Babbitt Road (width varies) at the common corner of said 30.337 acre tract and that 0.945 acre tract conveyed to Donald A. Wartenberg and Mary Denise Wartenberg by deed of record in Instrument Number 201305150080131;

Thence North 85° 34' 25" West, with the line common to said 30.337 and 0.945 acre tracts, a distance of 59.81 feet to a point;

Thence South 04° 25' 49" West, across said 30.337 acre tract, a distance of 60.51 feet to the TRUE POINT OF BEGINNING;

Thence South 04° 05' 13" West, across said 30.337 acre tract, a distance of 150.00 feet to a point;

Thence North 86° 19' 01" West, across said 30.337 acre tract, a distance of 390.08 feet to a point;

Thence South 03° 46' 37" West, across said 30.337 and 25.625 acre tracts, a distance of 702.65 feet to a point in the northerly line of that 5.001 acre tract conveyed to P&A Services, LLC by deed of record in Instrument Number 201401070002220;

Thence North 86° 10' 43" West, with the line common to said 25.625 and 5.001 acre tracts, a distance of 674.81 feet to a point;

Thence South 04° 19' 17" West, with said common line, a distance of 194.53 feet to the line common to said 25.625 acre tract and that 15.869 acre tract conveyed as Tract Two to Walter C. Doran and Lois E. Doran, Co-Trustees, by deed of record in Instrument Number 200102120028411;

Thence North 86° 14' 08" West, with the southerly line of said 25.625 and 54.747 acre tracts, the northerly line of said 5.869 acre tract, that subdivision entitled "Pine Meadows Subdivision No. 2", of record in Plat Book 55, Page 63, that subdivision entitled "Pine Meadows Subdivision No. 3", of record in Plat Book 66, Page 91, that 13.792 acre tract conveyed to Mary E. Jordan, Trustee, by deed of record in Instrument Number 201404040041420, that 8.385 acre tract conveyed to John T. Haughey and Betty S. Haughey by deed of record in Official Record 9942G06, that 10.0 acre tract conveyed to Prasanna Mahendra by deed of record in Instrument Number 201704050045394, and that 78.041 acre tract conveyed to The New Albany Company by deed of record in Official Record 12773C14, a distance of 2236.43 feet to a point;

Thence across said 54.747 and 30.337 acre tracts, the following courses and distances:

North 28° 12' 35" East, a distance of 185.50 feet to a point;

North 07° 32' 43" East, a distance of 281.80 feet to a point;

South 85° 23' 28" East, a distance of 39.83 feet to a point;

North 03° 46' 29" East, a distance of 163.13 feet to a point;

South 86° 13' 40" West, a distance of 123.50 feet to a point;

North 64° 31' 38" West, a distance of 94.13 feet to a point;

North 84° 04' 27" West, a distance of 99.47 feet to a point;

North 83° 01' 20" West, a distance of 184.06 feet to a point;

CONSERVATION EASEMENT  
67.547 ACRES

-2-

North 75° 30' 52" West, a distance of 265.76 feet to a point;  
South 87° 03' 27" West, a distance of 109.03 feet to a point;  
South 79° 11' 44" West, a distance of 395.96 feet to a point;  
North 76° 23' 29" West, a distance of 73.77 feet to a point;  
North 52° 55' 30" West, a distance of 58.26 feet to a point; and

North 05° 29' 00" East, a distance of 48.84 feet to the line common to said 54.747 acre tract and that 5.108 acre tract conveyed to Christopher M. Andrews, Trustee, by deed of record in Instrument Number 202109150164003;

Thence South 86° 04' 42" East, with said common line, a distance of 224.27 feet to a point;  
Thence North 03° 36' 18" East, with said common line, a distance of 49.40 feet to a point;  
Thence across said 54.747 and 30.337 acre tracts, the following courses and distances:

North 76° 03' 12" East, a distance of 149.51 feet to a point;  
North 79° 25' 43" East, a distance of 163.25 feet to a point;  
North 87° 01' 02" East, a distance of 87.17 feet to a point;  
South 52° 37' 50" East, a distance of 40.81 feet to a point;  
South 81° 42' 20" East, a distance of 366.81 feet to a point;  
South 80° 05' 09" East, a distance of 271.66 feet to a point;  
North 48° 54' 22" East, a distance of 257.65 feet to a point;  
North 82° 36' 28" East, a distance of 268.21 feet to a point;  
South 86° 00' 15" East, a distance of 455.06 feet to a point;  
North 78° 42' 06" East, a distance of 280.49 feet to a point; and

South 86° 17' 54" East, a distance of 2081.87 feet to the TRUE POINT OF BEGINNING, containing 67.547 acres, more or less.



EVANS, MECHWART, HAMBLETON & TILTON, INC.

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

HLK: td  
67\_547 20210285-VS-ESMT-CONS-01



**ORDINANCE O-11-2023**

**AN ORDINANCE TO ACCEPT A 0.666 ACRE CONSERVATION EASEMENT AS REQUESTED BY THE NEW ALBANY COMPANY, LLC**

**WHEREAS**, The New Albany Company, LLC has obtained permits from the Ohio EPA that require the protection of certain watercourses in the general vicinity of the city of New Albany; and

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

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

**WHEREAS**, the city will be the recipient (grantee) of conservation easements totaling 0.666 acres; and

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

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

**Section 1.** The city manager is hereby authorized to accept the conservation easement totaling 0.666 acres as described and depicted on Exhibit A.

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

**Section 3.** Pursuant to Article 6.07(B) of the New Albany Charter, this ordinance shall become effective thirty (30) days after adoption.


**CERTIFIED AS ADOPTED** this 7 day of FEB, 2023.

Attest:

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

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

Approved as to form:

  
\_\_\_\_\_  
Benjamin S. Albrecht  
Law Director

<b>Legislation dates:</b>	
Prepared:	01/06/2023
Introduced:	01/17/2023
Revised:	
Adopted:	02/07/2023
Effective:	03/09/2023

**CONSERVATION EASEMENT AGREEMENT**

This Conservation Easement Agreement (“Agreement”) is made to be effective on the last date of signature below (the “Effective Date”), by and between **THE NEW ALBANY COMPANY LLC**, a Delaware limited liability company having its address at 8000 Walton Parkway, Suite 120, New Albany, Ohio 43054 (“Grantor”), and **THE CITY OF NEW ALBANY, OHIO**, an Ohio municipal corporation having its address at 99 W. Main Street, New Albany, Ohio 43054 (“Grantee”).

**RECITALS:**

**WHEREAS**, Grantor is the sole owner in fee simple of certain real property known as Franklin County Auditor’s Parcel Number 222-004864-00 and being more particularly described in Instrument Number 201808070105494, which is of record with the Office of the Recorder of Franklin County, Ohio (the “Property”); and

**WHEREAS**, Grantor desires to convey to Grantee the right to preserve and protect, in perpetuity, the conservation values of that limited portion of the Property that is generally depicted in Exhibit A attached hereto and made a part hereof and is more particularly described in Exhibit B attached hereto and made a part hereof (the “Conservation Easement Area”); and

**WHEREAS**, this Agreement and the Conservation Easement (as such term is defined below) created hereby is required by a Level 3 Isolated Wetlands Permit No. DSW401217519W issued by the Ohio Environmental Protection Agency (“Ohio EPA”) on March 18, 2022 (the “Permit”). As a condition of this Permit and related application materials, wetlands and adjacent areas must be protected by a conservation easement and this Agreement is intended to satisfy this condition. In addition, the Conservation Easement Area established under this Agreement may be used to satisfy similar wetlands preservation requirements pursuant to similar permits issued or to be issued in the future to Grantor.

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

**AGREEMENT:**

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

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

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

4. **Prohibited Actions:** Subject to existing easements and encumbrances of record which affect the Conservation Easement Area and except as otherwise permitted herein, any activity on or use of the Conservation Easement Area that is inconsistent with the purposes of the Conservation Easement is strictly prohibited without the prior written consent of the Grantee and the Ohio EPA. By way of example, and not of limitation, the following activities and uses are prohibited within the Conservation Easement Area, except as otherwise permitted or required by the Permit:

- a. **Commercial Activities:** Commercial development or industrial activity;
- b. **Construction:** The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots;
- c. **Cutting Vegetation:** Any cutting of trees, ground cover or vegetation, or destroying by any means of herbicides or pesticides, other than the removal or control of invasive and noxious species;
- d. **Land Surface Alteration:** The removal of soil, sand, gravel, rock, minerals or other materials, or doing any act that would alter the topography of the Conservation Easement Area;

- e. **Dumping:** The placement of waste, garbage and unsightly or offensive materials;
- f. **Water Courses:** Dredging, straightening, filling, channeling, impeding, diverting, or otherwise altering any natural water courses, streams and adjacent riparian buffers located within the Conservation Easement Area;
- g. **Utilities:** The installation of new transmission lines for electric power, communications, water, sewer, natural gas, or petroleum products. For the avoidance of doubt, any structures or utilities existing as of the date of this Agreement are permitted to remain in the Conservation Easement Area.; and
- h. **Other Activities:** Each and every other activity or construction project which endangers the natural, scenic, biological, or ecological integrity of the Conservation Easement Area.

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

- a. **Right to Enter:** Grantee has the right to enter upon the Conservation Easement Area at reasonable times to monitor or to enforce compliance with this Agreement, provided that such entry shall occur after prior reasonable notice is provided to Grantor and appropriate consideration is given to the reasonable security or safety requirements of Grantor, or its tenants, contractors, employees or licensees. To the extent reasonably possible, entry shall be made from a public right-of-way. Grantee may not enter upon the Property (other than the Conservation Easement Area) or unreasonably interfere with Grantor's (including Grantor's tenants, contractors, employees, and licensees) use and quiet enjoyment of the Property. The general public is not granted access to the Conservation Easement Area or the Property under this Agreement.
- b. **Right to Preserve:** Grantee has the right to prevent any activity on or use of the Conservation Easement Area that is inconsistent with the terms or purposes of this Agreement. Nothing herein, however, is intended to place any restrictions on the use or development of those portions of the Property located outside of the boundaries of the Conservation Easement Area.
- c. **Right to Require Restoration:** Grantee shall have the right to require the restoration of the areas or features of the Conservation Easement Area which are damaged by any activity of Grantor (including its successors and assigns) which is inconsistent with the requirements of this

Agreement. Grantee's rights under this paragraph shall include, but shall not be limited to, the right to initiate any proceedings or actions in law or equity as are necessary to enforce the terms of this Agreement or facilitate the restoration of the Conservation Easement Area.

- d. **Signs:** Grantee shall have the right to place signs within the Conservation Easement Area which identify the land as being protected by the Conservation Easement. The number, size and content of any such signs are subject to the prior approval of the owner of the Property, which shall not be unreasonably conditioned, delayed or withheld. Grantee reserves the right to post or clearly mark the boundaries of the Conservation Easement Area at locations that are mutually agreed upon with the owner of the Conservation Easement Area.

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

- a. **Right to Convey:** Grantor shall retain the right to sell, mortgage, bequeath, donate or otherwise convey any or all portions of the Property, including, without limitation, the Conservation Easement Area. Any conveyance shall remain subject to the terms and conditions of this Agreement and the subsequent interest holder shall be bound by the terms and conditions hereof.
- b. **Right to Access:** Grantor shall retain the right to unimpeded access to the Conservation Easement Area.
- c. **Use of Property:** The portions of the Property located outside of the boundaries of the Conservation Easement Area are not subject to the restrictions of the Conservation Easement created hereunder. Grantor shall be permitted to use and develop all portions of the Property under its ownership which are located outside of the boundaries of the Conservation Easement Area without restriction.

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

- a. **Delay in Enforcement:** A delay in enforcement shall not be construed as a waiver of Grantee's rights to enforce the terms of this Agreement.



- b. **Acts Beyond Grantor's Control:** Grantee may not bring an action against Grantor and Grantor shall have no liability for modifications to the Conservation Easement Area that result from causes beyond Grantor's control. Examples include, without limitation, unintentional fires, flooding, storms, natural earth movement, trespassers, or a party's well-intentioned actions in response to an emergency which result in changes to the Conservation Easement Area. Grantor shall have no responsibility under this Agreement for such unintended modifications. Grantee may, however, bring an action against another party for modifications that impair the conservation values identified in this Agreement.
  
- c. **Notice and Demand:** If Grantee determines that a person or entity is in violation of the terms of the Conservation Easement or this Agreement, or that a violation is threatened, then Grantee shall provide written notice via certified mail to such person or entity. The written notice shall identify the violation and request corrective action to cure the violation or restore the relevant real property.
  
- d. **Failure to Act:** If, for a thirty (30) day period after the date of written notice provided pursuant to subparagraph c. above, the person or entity continues violating the terms of the Conservation Easement or this Agreement, or if the person or entity does not abate the violation or begin to implement corrective measures within the foregoing thirty (30) day period requested by Grantee, or fails to continue to diligently cure such violation until finally cured, Grantee shall be permitted to bring an action in law or in equity to enforce the terms of the Conservation Easement or this Agreement and recover any damages for the loss of the conservation values protected hereunder. Grantee is also entitled to bring an action to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Conservation Easement Area. If a court determines that the person or entity has failed to comply with the terms of the Conservation Easement or this Agreement, then Grantee may seek an order requiring the person or entity to reimburse all reasonable costs and attorneys' fees incurred by Grantee in compelling such compliance.
  
- e. **Unreasonable Litigation:** If Grantee initiates litigation against Grantor to enforce this Agreement, and if the court determines that the litigation was without reasonable cause or in bad faith, then Grantee shall reimburse Grantor for all reasonable costs and attorneys' fees incurred in defending the action.
  
- f. **Grantor's Absence:** If Grantee determines that the terms of the Conservation Easement or the Agreement is, or is reasonably expected to

be, violated, then Grantee will make a good faith effort to notify Grantor. If, through reasonable efforts, Grantor cannot be notified, and if Grantee determines that emergency circumstances exist that justify prompt action to mitigate or prevent impairment of the Conservation Easement, then Grantee may pursue its lawful remedies without prior notice and without awaiting a response from Grantor.

- g. **Cumulative Remedies:** The preceding remedies of Grantee are cumulative. Any or all of the remedies may be invoked by Grantee if there is an actual or threatened violation of this Agreement.

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

9. **Remediation:** If, at any time, there occurs, or has occurred, a release caused by the owner of the Conservation Easement Area and subject to Section 7.b. hereof in, on, or about the Conservation Easement Area of any substance now or hereafter defined, listed, or otherwise classified, and in excess of any amount permitted pursuant to any federal, state, or local law, regulation, or requirement, or in an amount that is hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, then the owner(s) of the Conservation Easement Area shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

10. **Cessation of Existence:** If Grantee shall cease to be authorized to acquire and hold conservation easements, then, with the prior consent of the owner of the Conservation Easement Area and the Ohio EPA, this Agreement shall become vested in another qualified entity that is eligible to acquire and hold a conservation easement under Ohio law and such vesting shall be deemed an assignment pursuant and subject to Section 13 of this Agreement. The owner of the Conservation Easement Area shall execute and deliver such documents and instruments as may be necessary to properly reflect the substitution or replacement of Grantee hereunder.

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

12. **Recordation:** Grantor shall cause this instrument to be recorded in a timely fashion in the Recorder's Office, Franklin County, Ohio, and Grantee may re-record it at any time as may be required to preserve its rights in this Agreement.

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

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

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

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

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

18. **Termination of Rights and Obligations:** A party's rights and obligations under this Agreement shall terminate upon the transfer of its interest in the Conservation Easement

Area and the owner of the Conservation Easement Area shall only be liable for acts or failures to comply with this Agreement which occur during its period of ownership. Liability for acts or failures to comply with this Agreement which occur prior to transfer shall survive any such transfer.

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

20. **“As Is” Condition:** Grantee has examined the Conservation Easement Area and agrees to accept the “AS-IS” condition of the same for purposes of this Agreement.

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

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

*[Remainder of this page intentionally left blank; Signature pages to follow]*

**IN WITNESS WHEREOF**, Grantor has caused the execution of this Agreement to be effective as of the Effective Date.

**GRANTOR:**

**THE NEW ALBANY COMPANY LLC,**  
a Delaware limited liability company

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

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF OHIO  
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of **THE NEW ALBANY COMPANY LLC**, a Delaware limited liability company, on behalf of the limited liability company. This is an acknowledgment certificate; no oath or affirmation was administered to the signer with regard to the notarial act.

\_\_\_\_\_  
Notary Public

**IN WITNESS WHEREOF**, Grantee has caused the execution of this Agreement to be effective as of the Effective Date.

**GRANTEE:**

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

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

STATE OF OHIO  
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of **The City of New Albany, Ohio**, an Ohio municipal corporation, on behalf of said municipal corporation. This is an acknowledgment certificate; no oath or affirmation was administered to the signer with regard to the notarial act.

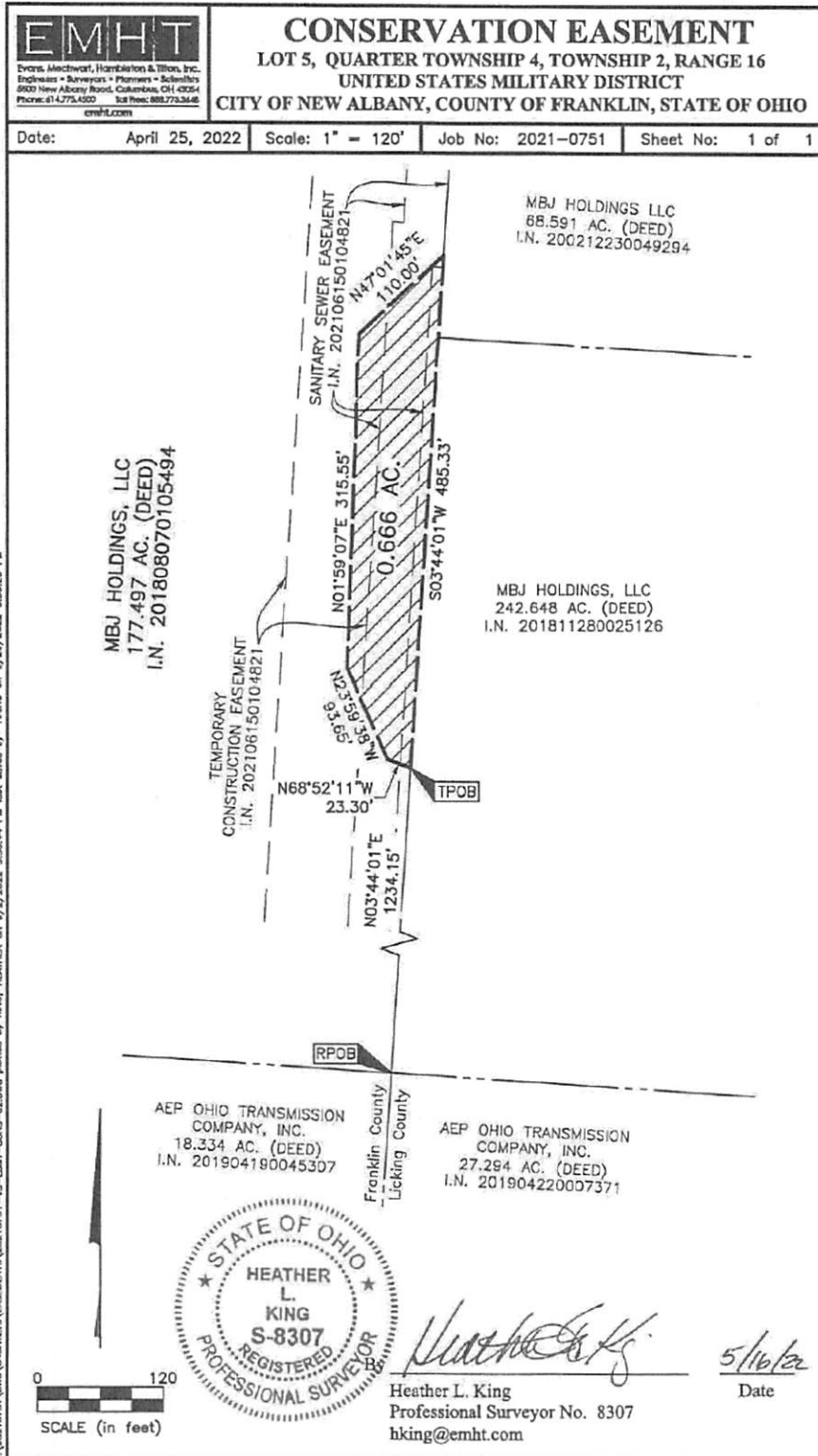
\_\_\_\_\_  
Notary Public

Approved as to Form:

\_\_\_\_\_  
Benjamin Albrecht, City Law Director

This instrument prepared by:  
The New Albany Company LLC  
8000 Walton Parkway, Suite 120  
New Albany, Ohio 43054  
(614) 939-8000

**Exhibit A**  
**Depiction of Conservation Easement Area**



J:\20210751\WORKSHEETS\EASEMENTS\20210751-16-ESMT-CONS-02.DWG plotted by KING, HEATHER on 5/16/2022 5:56:44 PM last saved by KING on 5/20/2022 6:30:28 PM

**Exhibit B**  
**Legal Description of Conservation Easement Area**

**See attached.**



**CONSERVATION EASEMENT  
0.666 ACRE**

Situated in the State of Ohio, County of Franklin, City of New Albany, in Lot 5, Quarter Township 4, Township 2, Range 16, United States Military District, being on over and across that 177.497 acre tract conveyed to MBJ Holdings LLC by deed of record in Instrument Number 201808070105494 (all references refer to the records of the Recorder's Office, Franklin County or Licking County, Ohio, as noted) and being described as follows:

Beginning, for reference, in the line common to Franklin and Licking Counties, at the common corner of said 177.497 acre tract, that 18.334 acre tract conveyed to AEP Ohio Transmission Company, Inc. by deed of record in Instrument Number 201904190045307 (Franklin County), that 27.294 acre tract conveyed to AEP Ohio Transmission Company, Inc. by deed of record in Instrument Number 201904220007371 (Licking County) and a remainder of that 242.648 acre tract conveyed to MBJ Holdings LLC by deed of record in Instrument Number 201811280025126 (Licking County);

Thence North 03° 44' 01" East, with said County line, the line common to said 177.497 and 242.648 acre tracts, a distance of 1234.15 feet to the TRUE POINT OF BEGINNING;

Thence across said 177.497 acre tract, the following courses and distances:

North 68° 52' 11" West, a distance of 23.30 feet to a point;

North 23° 59' 38" West, a distance of 93.65 feet to a point;

North 01° 59' 07" East, a distance of 315.55 feet to a point; and

North 47° 01' 45" East, a distance of 110.00 feet to said County line, the line common to said 177.497 acre tract and that 68.591 acre tract conveyed to MBJ Holdings LLC by deed of record in Instrument Number 200212230049294 (Licking County);

Thence South 03° 44' 01" West, with the east line of said 177.497 acre tract, the west line of said 68.591 and 242.648 acre tracts, being said County line, a distance of 485.33 feet to the TRUE POINT OF BEGINNING, containing 0.666 acre, more or less.



EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Heather L. King* 5/16/22  
Heather L. King  
Professional Surveyor No. 8307

HLK: td  
0\_666 ac 20210751-VS-ESM7-CONS-02



**ORDINANCE O-12-2023**

**AN ORDINANCE TO ACCEPT A 42.374 ACRE CONSERVATION EASEMENT AS REQUESTED BY THE NEW ALBANY COMPANY, LLC**

**WHEREAS**, The New Albany Company, LLC has obtained permits from the Ohio EPA that require the protection of certain watercourses in the general vicinity of the city of New Albany; and

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

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

**WHEREAS**, the city will be the recipient (grantee) of conservation easements totaling 42.374 acres; and

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

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

**Section 1.** The city manager is hereby authorized to accept the conservation easement totaling 42.374 acres as described and depicted on Exhibit A.

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

**Section 3.** Pursuant to Article 6.07(B) of the New Albany Charter, this ordinance shall become effective thirty (30) days after adoption.

**CERTIFIED AS ADOPTED** this 7 day of Feb, 2023.

**Attest:**



Sloan T. Spalding  
Mayor



Jennifer H. Mason  
Clerk of Council

**Approved as to form:**



Benjamin S. Albrecht  
Law Director

**Legislation dates:**

Prepared: 01/06/2023

Introduced: 01/17/2023

Revised:

Adopted: 02/07/2023

Effective: 03/09/2023

**CONSERVATION EASEMENT AGREEMENT**

This Conservation Easement Agreement (“Agreement”) is made to be effective on the last date of signature below (the “Effective Date”), by and between **THE NEW ALBANY COMPANY LLC**, a Delaware limited liability company having its address at 8000 Walton Parkway, Suite 120, New Albany, Ohio 43054 (“Grantor”), and **THE CITY OF NEW ALBANY, OHIO**, an Ohio municipal corporation having its address at 99 W. Main Street, New Albany, Ohio 43054 (“Grantee”).

**RECITALS:**

**WHEREAS**, Grantor is the sole owner in fee simple of certain real property known as Licking County Auditor’s Parcel Numbers 094-106404-00.000, 094-106494-00.002, and 094-108192-00.000 and being more particularly described in Instrument Numbers 201811280025126, 201805020008526, and 200212230049294, which are of record with the Office of the Recorder of Licking County, Ohio (the “Property”); and

**WHEREAS**, Grantor desires to convey to Grantee the right to preserve and protect, in perpetuity, the conservation values of that limited portion of the Property that is generally depicted in Exhibit A attached hereto and made a part hereof and is more particularly described in Exhibit B attached hereto and made a part hereof (the “Conservation Easement Area”); and

**WHEREAS**, this Agreement and the Conservation Easement (as such term is defined below) created hereby is required by a Level 3 Isolated Wetlands Permit No. DSW401217519W issued by the Ohio Environmental Protection Agency (“Ohio EPA”) on March 18, 2022 (the “Permit”). As a condition of this Permit and related application materials, wetlands and adjacent areas must be protected by a conservation easement and this Agreement is intended to satisfy this condition. In addition, the Conservation Easement Area established under this Agreement may be used to satisfy similar wetlands preservation requirements pursuant to similar permits issued or to be issued in the future to Grantor.

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

## **AGREEMENT:**

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

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

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

4. **Prohibited Actions:** Subject to existing easements and encumbrances of record which affect the Conservation Easement Area and except as otherwise permitted herein, any activity on or use of the Conservation Easement Area that is inconsistent with the purposes of the Conservation Easement is strictly prohibited without the prior written consent of the Grantee and the Ohio EPA. By way of example, and not of limitation, the following activities and uses are prohibited within the Conservation Easement Area, except as otherwise permitted or required by the Permit:

- a. **Commercial Activities:** Commercial development or industrial activity;
- b. **Construction:** The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots;
- c. **Cutting Vegetation:** Any cutting of trees, ground cover or vegetation, or destroying by any means of herbicides or pesticides, other than the removal or control of invasive and noxious species;
- d. **Land Surface Alteration:** The removal of soil, sand, gravel, rock, minerals or other materials, or doing any act that would alter the topography of the Conservation Easement Area;

- e. **Dumping:** The placement of waste, garbage and unsightly or offensive materials;
- f. **Water Courses:** Dredging, straightening, filling, channeling, impeding, diverting, or otherwise altering any natural water courses, streams and adjacent riparian buffers located within the Conservation Easement Area;
- g. **Utilities:** The installation of new transmission lines for electric power, communications, water, sewer, natural gas, or petroleum products. For the avoidance of doubt, any structures or utilities existing as of the date of this Agreement are permitted to remain in the Conservation Easement Area; and
- h. **Other Activities:** Each and every other activity or construction project which endangers the natural, scenic, biological, or ecological integrity of the Conservation Easement Area.

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

- a. **Right to Enter:** Grantee has the right to enter upon the Conservation Easement Area at reasonable times to monitor or to enforce compliance with this Agreement, provided that such entry shall occur after prior reasonable notice is provided to Grantor and appropriate consideration is given to the reasonable security or safety requirements of Grantor, or its tenants, contractors, employees or licensees. To the extent reasonably possible, entry shall be made from a public right-of-way. Grantee may not enter upon the Property (other than the Conservation Easement Area) or unreasonably interfere with Grantor's (including Grantor's tenants, contractors, employees, and licensees) use and quiet enjoyment of the Property. The general public is not granted access to the Conservation Easement Area or the Property under this Agreement.
- b. **Right to Preserve:** Grantee has the right to prevent any activity on or use of the Conservation Easement Area that is inconsistent with the terms or purposes of this Agreement. Nothing herein, however, is intended to place any restrictions on the use or development of those portions of the Property located outside of the boundaries of the Conservation Easement Area.
- c. **Right to Require Restoration:** Grantee shall have the right to require the restoration of the areas or features of the Conservation Easement Area which are damaged by any activity of Grantor (including its successors and assigns) which is inconsistent with the requirements of this

Agreement. Grantee's rights under this paragraph shall include, but shall not be limited to, the right to initiate any proceedings or actions in law or equity as are necessary to enforce the terms of this Agreement or facilitate the restoration of the Conservation Easement Area.

- d. **Signs:** Grantee shall have the right to place signs within the Conservation Easement Area which identify the land as being protected by the Conservation Easement. The number, size and content of any such signs are subject to the prior approval of the owner of the Property, which shall not be unreasonably conditioned, delayed or withheld. Grantee reserves the right to post or clearly mark the boundaries of the Conservation Easement Area at locations that are mutually agreed upon with the owner of the Conservation Easement Area.

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

- a. **Right to Convey:** Grantor shall retain the right to sell, mortgage, bequeath, donate or otherwise convey any or all portions of the Property, including, without limitation, the Conservation Easement Area. Any conveyance shall remain subject to the terms and conditions of this Agreement and the subsequent interest holder shall be bound by the terms and conditions hereof.
- b. **Right to Access:** Grantor shall retain the right to unimpeded access to the Conservation Easement Area.
- c. **Use of Property:** The portions of the Property located outside of the boundaries of the Conservation Easement Area are not subject to the restrictions of the Conservation Easement created hereunder. Grantor shall be permitted to use and develop all portions of the Property under its ownership which are located outside of the boundaries of the Conservation Easement Area without restriction.

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

- a. **Delay in Enforcement:** A delay in enforcement shall not be construed as a waiver of Grantee's rights to enforce the terms of this Agreement.

- b. **Acts Beyond Grantor's Control:** Grantee may not bring an action against Grantor and Grantor shall have no liability for modifications to the Conservation Easement Area that result from causes beyond Grantor's control. Examples include, without limitation, unintentional fires, flooding, storms, natural earth movement, trespassers, or a party's well-intentioned actions in response to an emergency which result in changes to the Conservation Easement Area. Grantor shall have no responsibility under this Agreement for such unintended modifications. Grantee may, however, bring an action against another party for modifications that impair the conservation values identified in this Agreement.
  
- c. **Notice and Demand:** If Grantee determines that a person or entity is in violation of the terms of the Conservation Easement or this Agreement, or that a violation is threatened, then Grantee shall provide written notice via certified mail to such person or entity. The written notice shall identify the violation and request corrective action to cure the violation or restore the relevant real property.
  
- d. **Failure to Act:** If, for a thirty (30) day period after the date of written notice provided pursuant to subparagraph c. above, the person or entity continues violating the terms of the Conservation Easement or this Agreement, or if the person or entity does not abate the violation or begin to implement corrective measures within the foregoing thirty (30) day period requested by Grantee, or fails to continue to diligently cure such violation until finally cured, Grantee shall be permitted to bring an action in law or in equity to enforce the terms of the Conservation Easement or this Agreement and recover any damages for the loss of the conservation values protected hereunder. Grantee is also entitled to bring an action to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Conservation Easement Area. If a court determines that the person or entity has failed to comply with the terms of the Conservation Easement or this Agreement, then Grantee may seek an order requiring the person or entity to reimburse all reasonable costs and attorneys' fees incurred by Grantee in compelling such compliance.
  
- e. **Unreasonable Litigation:** If Grantee initiates litigation against Grantor to enforce this Agreement, and if the court determines that the litigation was without reasonable cause or in bad faith, then Grantee shall reimburse Grantor for all reasonable costs and attorneys' fees incurred in defending the action.
  
- f. **Grantor's Absence:** If Grantee determines that the terms of the Conservation Easement or the Agreement is, or is reasonably expected to



be, violated, then Grantee will make a good faith effort to notify Grantor. If, through reasonable efforts, Grantor cannot be notified, and if Grantee determines that emergency circumstances exist that justify prompt action to mitigate or prevent impairment of the Conservation Easement, then Grantee may pursue its lawful remedies without prior notice and without awaiting a response from Grantor.

- g. **Cumulative Remedies:** The preceding remedies of Grantee are cumulative. Any or all of the remedies may be invoked by Grantee if there is an actual or threatened violation of this Agreement.

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

9. **Remediation:** If, at any time, there occurs, or has occurred, a release caused by the owner of the Conservation Easement Area and subject to Section 7.b. hereof in, on, or about the Conservation Easement Area of any substance now or hereafter defined, listed, or otherwise classified, and in excess of any amount permitted pursuant to any federal, state, or local law, regulation, or requirement, or in an amount that is hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, then the owner(s) of the Conservation Easement Area shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

10. **Cessation of Existence:** If Grantee shall cease to be authorized to acquire and hold conservation easements, then, with the prior consent of the owner of the Conservation Easement Area and the Ohio EPA, this Agreement shall become vested in another qualified entity that is eligible to acquire and hold a conservation easement under Ohio law and such vesting shall be deemed an assignment pursuant and subject to Section 13 of this Agreement. The owner of the Conservation Easement Area shall execute and deliver such documents and instruments as may be necessary to properly reflect the substitution or replacement of Grantee hereunder.

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

12. **Recordation:** Grantor shall cause this instrument to be recorded in a timely fashion in the Recorder's Office, Licking County, Ohio, and Grantee may re-record it at any time as may be required to preserve its rights in this Agreement.

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

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

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

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

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

18. **Termination of Rights and Obligations:** A party's rights and obligations under this Agreement shall terminate upon the transfer of its interest in the Conservation Easement

Area and the owner of the Conservation Easement Area shall only be liable for acts or failures to comply with this Agreement which occur during its period of ownership. Liability for acts or failures to comply with this Agreement which occur prior to transfer shall survive any such transfer.

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

20. **“As Is” Condition:** Grantee has examined the Conservation Easement Area and agrees to accept the “AS-IS” condition of the same for purposes of this Agreement.

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

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

*[Remainder of this page intentionally left blank; Signature pages to follow]*

**IN WITNESS WHEREOF**, Grantor has caused the execution of this Agreement to be effective as of the Effective Date.

**GRANTOR:**

**THE NEW ALBANY COMPANY LLC,**  
a Delaware limited liability company

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

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF OHIO  
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of **THE NEW ALBANY COMPANY LLC**, a Delaware limited liability company, on behalf of the limited liability company. This is an acknowledgment certificate; no oath or affirmation was administered to the signer with regard to the notarial act.

\_\_\_\_\_  
Notary Public

**IN WITNESS WHEREOF**, Grantee has caused the execution of this Agreement to be effective as of the Effective Date.

**GRANTEE:**

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

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

STATE OF OHIO  
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of **The City of New Albany, Ohio**, an Ohio municipal corporation, on behalf of said municipal corporation. This is an acknowledgment certificate; no oath or affirmation was administered to the signer with regard to the notarial act.

\_\_\_\_\_  
Notary Public

**Approved as to Form:**

\_\_\_\_\_  
Benjamin Albrecht, City Law Director

This instrument prepared by:  
The New Albany Company LLC  
8000 Walton Parkway, Suite 120  
New Albany, Ohio 43054  
(614) 939-8000

Exhibit A  
Depiction of Conservation Easement Area

See attached.



**CONSERVATION EASEMENT**  
**SECTION 16, TOWNSHIP 2, RANGE 15**  
**UNITED STATES MILITARY DISTRICT**  
**CITY OF NEW ALBANY, COUNTY OF LICKING, STATE OF OHIO**

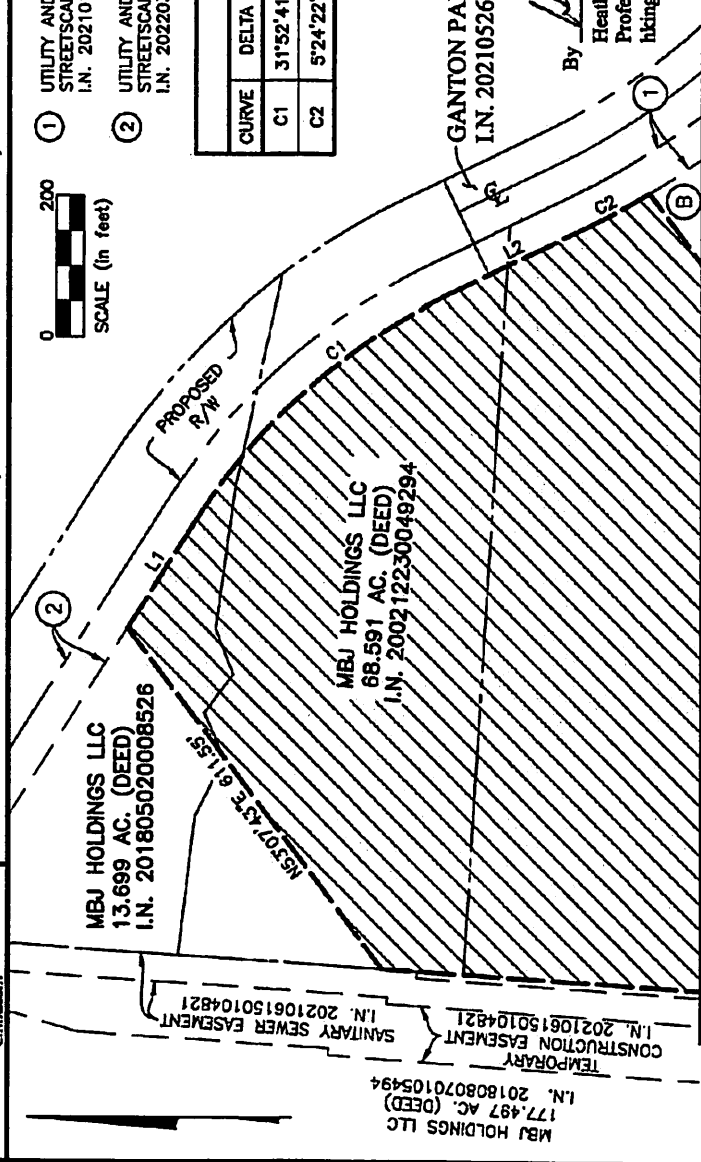
Date: May 16, 2022  
 Scale: 1" = 200'  
 Job No: 2021-0751  
 Sheet No: 2 of 2



- ① UTILITY AND STREETScape EASEMENT  
 I.N. 202101040000050
- ② UTILITY AND STREETScape EASEMENT  
 I.N. 202203090000038

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S57°40'01"E	180.38'
L2	S25°47'21"E	213.46'

CURVE TABLE					
CURVE	DELTA	RADIUS	ARC	CH. BEARING	CH. DIST.
C1	31°52'41"	900.00'	500.74'	S41°43'41"E	494.31'
C2	5°24'22"	1100.00'	103.79'	S28°29'31"E	103.75'



By: *Heather L. King*  
 Heather L. King  
 Professional Surveyor No. 8307  
 hking@emh.com

Date: 5/16/22

STATE OF OHIO  
 REGISTERED PROFESSIONAL SURVEYOR  
 HEATHER L. KING  
 S-8307

GANTON PARKWAY  
 I.N. 202105260015825

24\20210751\DWG\04582EER\CONSERVATION\20210751-16-8307-2018-07.DWG plotted by TARA HEATHNER on 9/2/2023 8:58:30 PM Text saved by HMC on 9/2/2023 8:48:41 PM

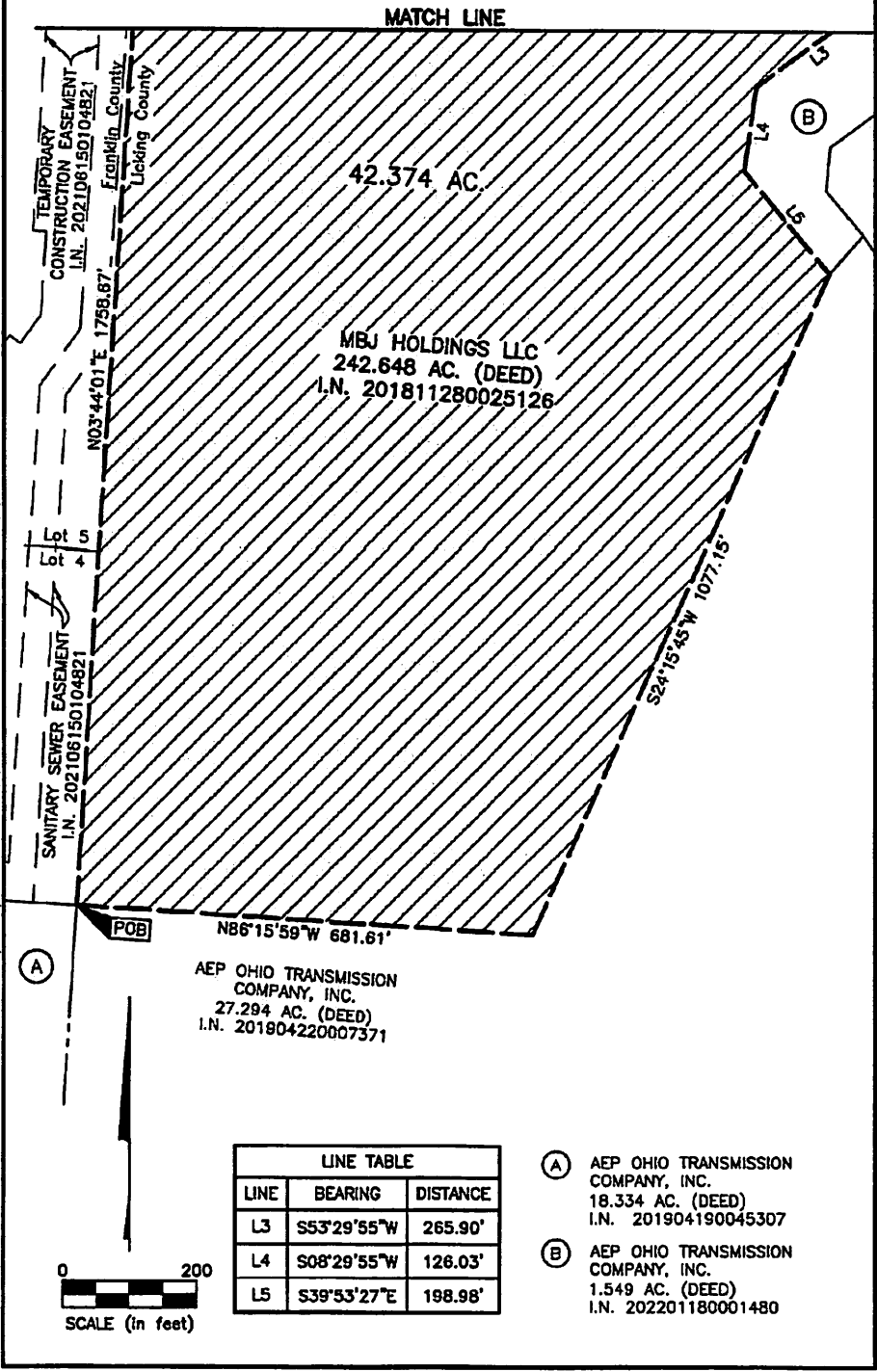


Duane, Mechwart, Henshaw & Tilton, Inc.  
 Engineers • Surveyors • Planners • Scientists  
 3000 New Albany Road, Columbus, OH 43264  
 Phone: 614.779.3300 Fax: 614.779.3444  
 emht.com

# CONSERVATION EASEMENT

SECTION 16, TOWNSHIP 2, RANGE 15  
 UNITED STATES MILITARY DISTRICT  
 CITY OF NEW ALBANY, COUNTY OF LICKING, STATE OF OHIO

Date: May 16, 2022 Scale: 1" = 200' Job No: 2021-0751 Sheet No: 1 of 2



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Exhibit B

Legal Description of Conservation Easement Area

See attached.

**CONSERVATION EASEMENT  
42.374 ACRES**

Situated in the State of Ohio, County of Licking, City of New Albany, in Section 16, Township 2, Range 15, United States Military District, being on over and across that 242.648 acre tract conveyed to MBJ Holdings LLC by deed of record in Instrument Number 201811280025126, the remainder of that 68.591 acre tract conveyed to MBJ Holdings LLC by deed of record in Instrument Number 200212230049294, and that 13.699 acre tract conveyed to MBJ Holdings LLC by deed of record in Instrument Number 201805020008526 (all references refer to the records of the Recorder's Office, Licking or Franklin County, Ohio, as noted) and being described as follows:

BEGINNING in the line common to Licking and Franklin Counties, at the common corner of a remainder of said 242.648 acre tract, that 27.294 acre tract conveyed to AEP Ohio Transmission Company, Inc. by deed of record in Instrument Number 201904220007371 (Licking County), that 18.334 acre tract conveyed to AEP Ohio Transmission Company, Inc. by deed of record in Instrument Number 201904190045307 (Franklin County), and that 177.497 acre tract conveyed to MBJ Holdings LLC by deed of record in Instrument Number 201808070105494 (Franklin County), being in the line common to said Licking and Franklin Counties;

Thence North 03° 44' 01" East, with said County line, the westerly line of 242.648 and 68.591 acre tract, the easterly line of said 177.497 acre tract, a distance of 1758.67 feet to a point;

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

North 53° 07' 43" East, a distance of 611.55 feet to a point in that Utility and Streetscape Easement of record in Instrument Number 202203090006038 (Licking County);

South 57° 40' 01" East, with said Easement, a distance of 180.38 feet to a point of curvature;

With said easement and that Utility and Streetscape Easement of record in Instrument Number 202101040000050 (Licking County), with the arc of a curve to the right, having a central angle of 31° 52' 41", a radius of 900.00 feet, an arc length of 500.74 feet, a chord bearing of South 41° 43' 41" East and chord distance of 494.31 feet to a point of tangency;

South 25° 47' 21" East, with said Easement, a distance of 213.46 feet to a point of curvature; and

With said Easement, with the arc of a curve to the left, having a central angle of 05° 24' 22", a radius of 1100.00 feet, an arc length of 103.79 feet, a chord bearing of South 28° 29' 31" East and chord distance of 103.75 feet to a point at the northerly corner of that 1.549 acre tract conveyed to AEP Ohio Transmission Company, Inc. by deed of record in Instrument Number 202201180001480 (Licking County);

Thence with the line common to a remainder of said 242.648 acre tract and said AEP Ohio Transmission Company tracts, the following courses and distances:

South 53° 29' 55" West, a distance of 265.90 feet to a point;

South 08° 29' 55" West, a distance of 126.03 feet to a point;

South 39° 53' 27" East, a distance of 198.98 feet to a point;

Thence South 24° 15' 45" West, a distance of 1077.15 feet to a point; and

Thence North 86° 15' 59" West, with said common line, a distance of 681.61 feet to the POINT OF BEGINNING, containing 42.374 acres, more or less.



EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Heather L. King* 5/16/22

Heather L. King  
Professional Surveyor No. 8307

HLK:ld  
42\_374 ac 20210751-VS-ESMT-CONS-01



**ORDINANCE O-13-2023**

**AN ORDINANCE TO ACCEPT A 9.417 ACRE CONSERVATION EASEMENT AS REQUESTED BY ROMANELLI AND HUGHES BUILDING COMPANY**

**WHEREAS**, Romanelli and Hughes Building Company has obtained permits from the Ohio EPA that require the protection of certain watercourses in the general vicinity of the city of New Albany; and

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

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

**WHEREAS**, the city will be the recipient (grantee) of conservation easements totaling 9.417 acres; and

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

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

**Section 1.** The city manager is hereby authorized to accept the conservation easement totaling 9.417 acres as described and depicted on Exhibit A.


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

**Section 3.** Pursuant to Article 6.07(B) of the New Albany Charter, this ordinance shall become effective thirty (30) days after adoption.

CERTIFIED AS ADOPTED this 7 day of Feb, 2023.

**Attest:**

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

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

**Approved as to form:**

  
\_\_\_\_\_  
Benjamin S. Albrecht  
Law Director

<b>Legislation dates:</b>	
Prepared:	01/06/2023
Introduced:	01/17/2023
Revised:	
Adopted:	02/07/2023
Effective:	03/09/2023

**CONSERVATION EASEMENT AGREEMENT**

This Conservation Easement Agreement (“Agreement”) is made to be effective on the last date of signature below (the “Effective Date”), by and between **ROMANELLI & HUGHES BUILDING COMPANY**, an Ohio corporation having its address at 148 West Schrock Road, Westerville, Ohio 43081 (“Grantor”), and **THE CITY OF NEW ALBANY, OHIO**, an Ohio municipal corporation having its address at 99 W. Main Street, New Albany, Ohio 43054 (“Grantee”).

**RECITALS:**

**WHEREAS**, Grantor is the sole owner in fee simple of certain real property known as Franklin County Auditor’s Tax Parcel Numbers 010-300543 and 545-300521 and being more particularly described in Instrument Number 201907090083168, which is of record with the Recorder’s Office, Franklin County, Ohio (the “Property”); and

**WHEREAS**, Grantor desires to convey to Grantee the right to preserve and protect, in perpetuity, the conservation values of that limited portion of the Property that is generally depicted in Exhibit A attached hereto and made a part hereof and is more particularly described in Exhibit B attached hereto and made a part hereof (the “Conservation Easement Area”); and

**WHEREAS**, this Agreement and the Conservation Easement (as such term is defined below) created hereby is required by the conditional approval of the Stormwater Drainage Manual Type III Variance Request issued to Grantor by the City of Columbus on January 8, 2018 (the “Variance”). As a condition of this Variance and related application materials, a watercourse and adjacent areas must be protected by a conservation easement and this Agreement is intended to satisfy this condition.

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

## **AGREEMENT:**

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

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

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

4. **Prohibited Actions:** Any activity on or use of the Conservation Easement Area that is inconsistent with the purposes of the Conservation Easement is strictly prohibited. By way of example, and not of limitation, the following activities and uses are prohibited within the Conservation Easement Area, except as otherwise permitted or required by the Variance:

- a. **Commercial Activities:** Commercial development or industrial activity;
- b. **Construction:** The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots;
- c. **Cutting Vegetation:** Any cutting of trees, ground cover or vegetation, or destroying by any means of herbicides or pesticides, other than the removal or control of invasive and noxious species;
- d. **Land Surface Alteration:** The removal of soil, sand, gravel, rock, minerals or other materials, or doing any act that would alter the topography of the Conservation Easement Area;
- e. **Dumping:** The placement of waste, garbage and unsightly or offensive materials;

- f. **Water Courses:** Dredging, straightening, filling, channeling, impeding, diverting, or otherwise altering any natural water courses, streams and adjacent riparian buffers located within the Conservation Easement Area;
- g. **Utilities:** The installation of new transmission lines for electric power, communications, water, sewer, natural gas or petroleum products. For the avoidance of doubt, any structures or utilities existing as of the date of this Agreement are permitted to remain in the Conservation Easement Area.; and
- h. **Other Activities:** Each and every other activity or construction project which endangers the natural, scenic, biological, or ecological integrity of the Conservation Easement Area.

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

- a. **Right to Enter:** Grantee has the right to enter upon the Conservation Easement Area at reasonable times to monitor or to enforce compliance with this Agreement, provided that such entry shall occur after prior reasonable notice is provided to Grantor and appropriate consideration is given to the reasonable security or safety requirements of Grantor, or its tenants, contractors, employees or licensees. To the extent reasonably possible, entry shall be made from a public right-of-way. Grantee may not enter upon the Property (other than the Conservation Easement Area) or unreasonably interfere with Grantor's (including Grantor's tenants, contractors, employees, and licensees) use and quiet enjoyment of the Property. The general public is not granted access to the Conservation Easement Area or the Property under this Agreement.
- b. **Right to Preserve:** Grantee has the right to prevent any activity on or use of the Conservation Easement Area that is inconsistent with the terms or purposes of this Agreement. Nothing herein, however, is intended to place any restrictions on the use or development of those portions of the Property located outside of the boundaries of the Conservation Easement Area.
- c. **Right to Require Restoration:** Grantee shall have the right to require the restoration of the areas or features of the Conservation Easement Area which are damaged by any activity of Grantor (including its successors and assigns) which is inconsistent with the requirements of this Agreement. Grantee's rights under this paragraph shall include, but shall not be limited to, the right to initiate any proceedings or actions in law or

equity as are necessary to enforce the terms of this Agreement or facilitate the restoration of the Conservation Easement Area.

- d. **Signs:** Grantee shall have the right to place signs within the Conservation Easement Area which identify the land as being protected by the Conservation Easement. The number, size and content of any such signs are subject to the prior approval of the owner of the Property, which shall not be unreasonably conditioned, delayed or withheld. Grantee reserves the right to post or clearly mark the boundaries of the Conservation Easement Area at locations that are mutually agreed upon with the owner of the Conservation Easement Area.

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

- a. **Right to Convey:** Grantor shall retain the right to sell, mortgage, bequeath, donate or otherwise convey any or all portions of the Property, including, without limitation, the Conservation Easement Area. Any conveyance shall remain subject to the terms and conditions of this Agreement and the subsequent interest holder shall be bound by the terms and conditions hereof.
- b. **Right to Access:** Grantor shall retain the right to unimpeded access to the Conservation Easement Area.
- c. **Use of Property:** The portions of the Property located outside of the boundaries of the Conservation Easement Area are not subject to the restrictions of the Conservation Easement created hereunder. Grantor shall be permitted to use and develop all portions of the Property under its ownership which are located outside of the boundaries of the Conservation Easement Area without restriction.

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

- a. **Delay in Enforcement:** A delay in enforcement shall not be construed as a waiver of Grantee's rights to enforce the terms of this Agreement.
- b. **Acts Beyond Grantor's Control:** Grantee may not bring an action against Grantor and Grantor shall have no liability for modifications to the



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

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

determines that emergency circumstances exist that justify prompt action to mitigate or prevent impairment of the Conservation Easement, then Grantee may pursue its lawful remedies without prior notice and without awaiting a response from Grantor.

- g. **Cumulative Remedies:** The preceding remedies of Grantee are cumulative. Any or all of the remedies may be invoked by Grantee if there is an actual or threatened violation of this Agreement.

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

9. **Remediation:** If, at any time, there occurs, or has occurred, a release caused by the owner of the Conservation Easement Area and subject to Section 7.b. hereof in, on, or about the Conservation Easement Area of any substance now or hereafter defined, listed, or otherwise classified, and in excess of any amount permitted pursuant to any federal, state, or local law, regulation, or requirement, or in an amount that is hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, then the owner(s) of the Conservation Easement Area shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

10. **Cessation of Existence:** If Grantee shall cease to be authorized to acquire and hold conservation easements, then, with the prior consent of the owner of the Conservation Easement Area, this Agreement shall become vested in another qualified entity that is eligible to acquire and hold a conservation easement under Ohio law and such vesting shall be deemed an assignment pursuant and subject to Section 13 of this Agreement. The owner of the Conservation Easement Area shall execute and deliver such documents and instruments as may be necessary to properly reflect the substitution or replacement of Grantee hereunder.

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

12. **Recordation:** Grantor shall cause this instrument to be recorded in a timely fashion in the Recorder's Office, Franklin County, Ohio, and Grantee may re-record it at any time as may be required to preserve its rights in this Agreement.

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

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

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

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

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

18. **Termination of Rights and Obligations:** A party's rights and obligations under this Agreement shall terminate upon the transfer of its interest in the Conservation Easement Area and the owner of the Conservation Easement Area shall only be liable for acts or failures to

comply with this Agreement which occur during its period of ownership. Liability for acts or failures to comply with this Agreement which occur prior to transfer shall survive any such transfer.

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

20. **“As Is” Condition:** Grantee has examined the Conservation Easement Area and agrees to accept the “AS-IS” condition of the same for purposes of this Agreement.

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

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

*[Remainder of this page intentionally left blank; Signature pages to follow]*

**IN WITNESS WHEREOF**, Grantor has caused the execution of this Agreement to be effective as of the Effective Date.

**GRANTOR:**

**ROMANELLI & HUGHES BUILDING COMPANY,**  
an Ohio corporation

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

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF OHIO  
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of **ROMANELLI & HUGHES BUILDING COMPANY**, an Ohio corporation, on behalf of the corporation. This is an acknowledgment certificate; no oath or affirmation was administered to the signer with regard to the notarial act.

\_\_\_\_\_  
Notary Public

**IN WITNESS WHEREOF**, Grantee has caused the execution of this Agreement to be effective as of the Effective Date.

**GRANTEE:**

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

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

STATE OF OHIO  
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of **The City of New Albany, Ohio**, an Ohio municipal corporation, on behalf of said municipal corporation. This is an acknowledgment certificate; no oath or affirmation was administered to the signer with regard to the notarial act.

\_\_\_\_\_  
Notary Public

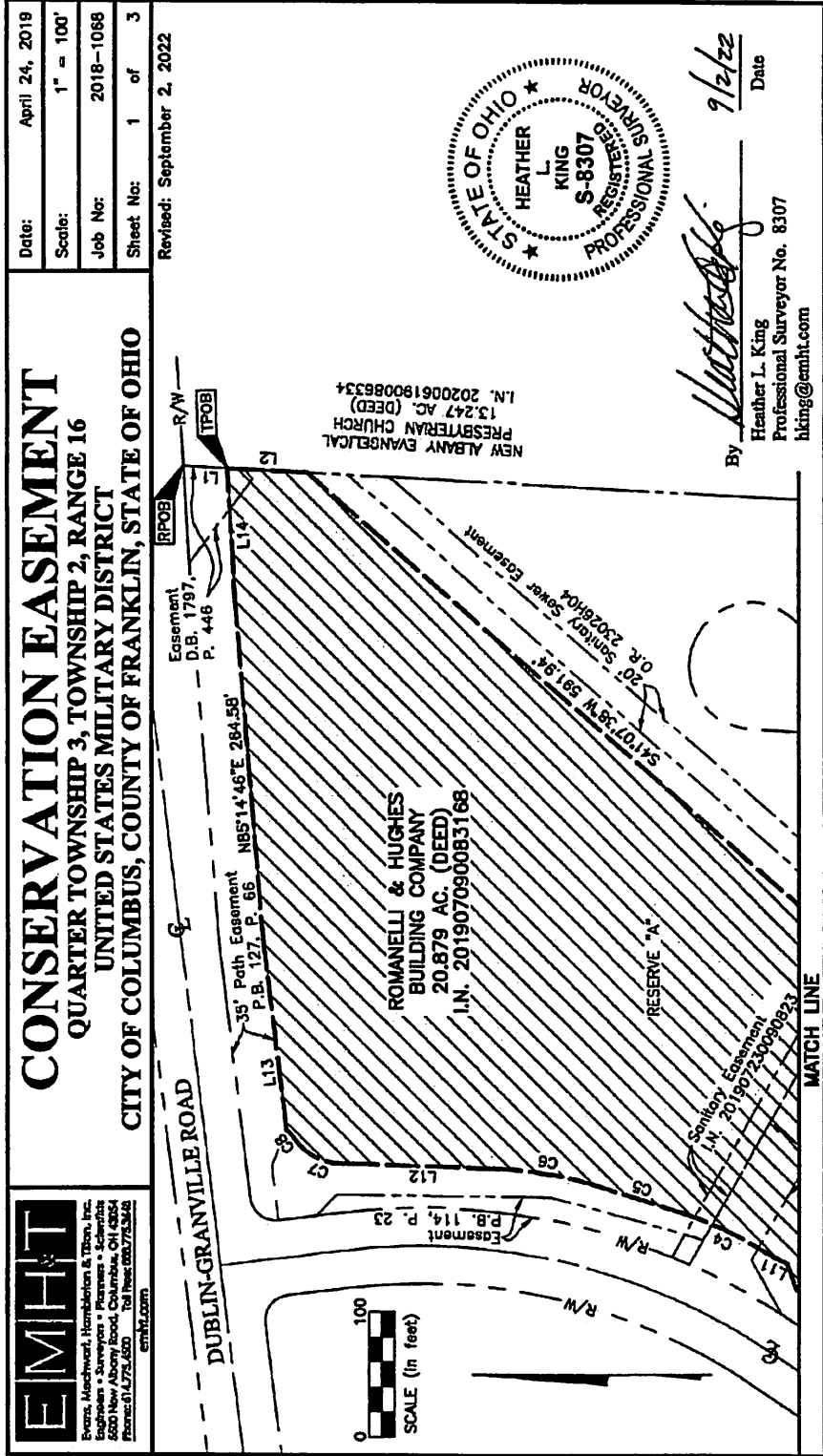
**Approved as to Form:**

\_\_\_\_\_  
Benjamin Albrecht, City Law Director

This instrument prepared by:  
The New Albany Company LLC  
8000 Walton Parkway, Suite 120  
New Albany, Ohio 43054  
(614) 939-8000

Exhibit A

Depiction of Conservation Easement Area





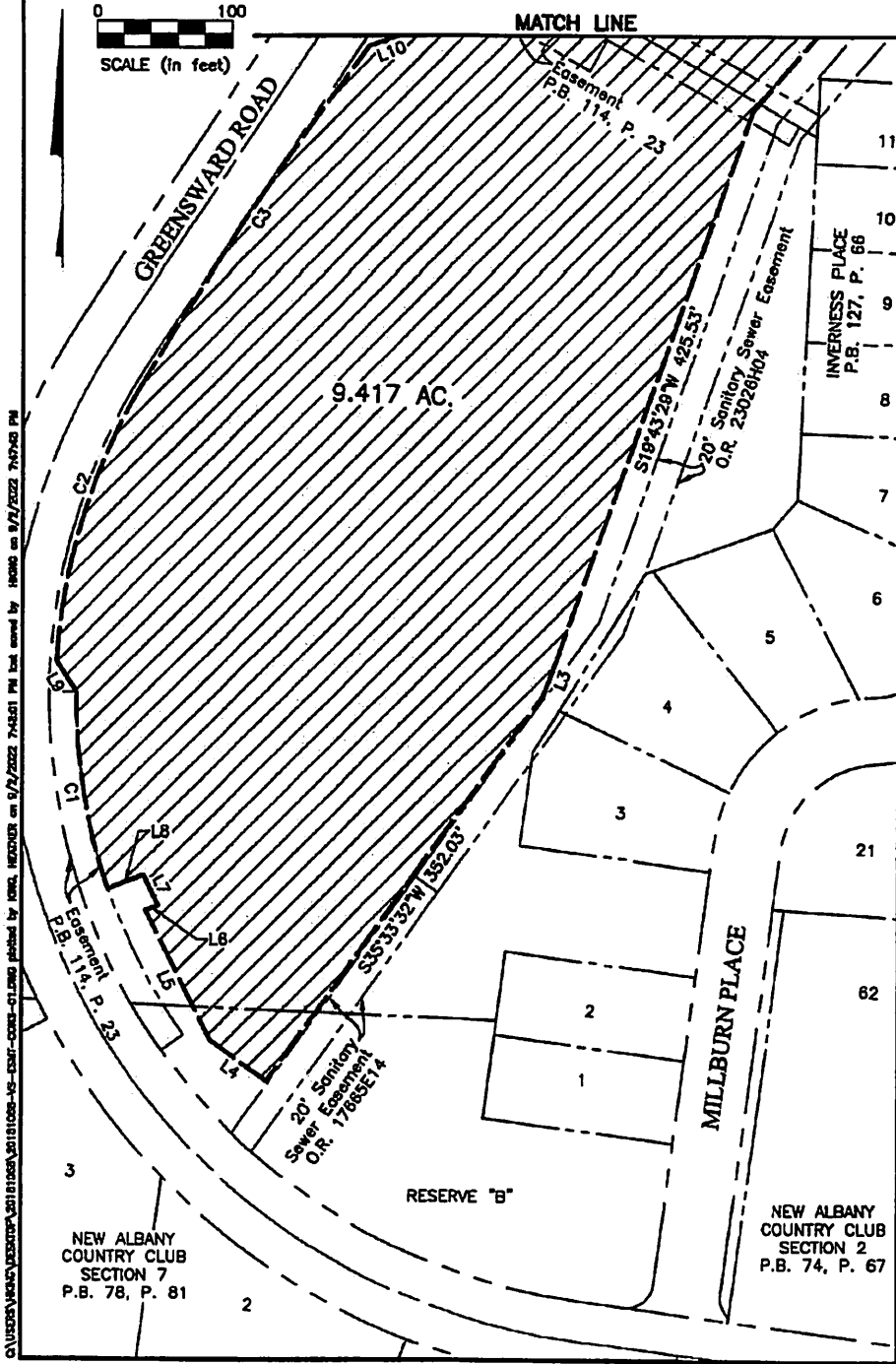
Engrs. Measuring, Horizontal & Vertical Inc.  
 Engineers • Surveyors • Planners • Architects  
 6920 New Albany Road, Columbus, OH 43224  
 Phone 614.775.4222 Fax 614.775.5146  
 emht.com

# CONSERVATION EASEMENT

QUARTER TOWNSHIP 3, TOWNSHIP 2, RANGE 16  
 UNITED STATES MILITARY DISTRICT  
 CITY OF COLUMBUS, COUNTY OF FRANKLIN, STATE OF OHIO

Date: April 24, 2019 Scale: 1" = 100' Job No: 2018-1088 Sheet No: 2 of 3

Revised: September 2, 2022







Evans, Mechwart, Hambleton & Titon, Inc.  
 Engineers • Surveyors • Planners • Scientists  
 6622 New Albany Road, Columbus, OH 43254  
 Phone: 614.773.4500 Fax: 614.773.3648  
 emht.com

**CONSERVATION EASEMENT**  
 QUARTER TOWNSHIP 3, TOWNSHIP 2, RANGE 16  
 UNITED STATES MILITARY DISTRICT  
 CITY OF COLUMBUS, COUNTY OF FRANKLIN, STATE OF OHIO

Date: April 24, 2019 Scale: 1" = 100' Job No: 2018-1068 Sheet No: 3 of 3

Revised: September 2, 2022

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S03°00'21"W	35.21'
L2	S03°00'21"W	63.53'
L3	S20°25'53"W	31.34'
L4	N54°11'15"W	51.65'
L5	N26°22'45"W	107.12'
L6	N69°02'48"E	10.05'
L7	N26°22'45"W	25.11'

LINE TABLE		
LINE	BEARING	DISTANCE
L8	S69°02'48"W	28.29'
L9	N32°24'45"W	27.30'
L10	N70°09'35"E	51.78'
L11	N25°51'38"E	14.20'
L12	N02°03'39"E	117.72'
L13	N83°05'21"E	152.40'
L14	N86°41'10"E	106.70'

CURVE TABLE					
CURVE	DELTA	RADIUS	ARC	CH. BEARING	CH. DIST.
C1	19°45'33"	430.00'	148.29'	N09°19'49"W	147.56'
C3	6°34'30"	2621.80'	300.86'	N34°02'25"E	300.70'
C4	13°57'11"	317.50'	77.32'	N25°22'23"E	77.13'
C5	1°23'45"	3081.17'	75.07'	N17°41'54"E	75.07'
C6	14°56'22"	299.53'	78.10'	N09°31'50"E	77.88'
C7	49°38'53"	49.75'	43.11'	N20°02'33"E	41.77'
C8	9°04'53"	105.44'	16.71'	N51°36'30"E	16.70'

C:\USERS\VRINGO\DESKTOP\20181006A\_20181006-XS-EMT-CONS-01.DWG plotted by MRC, HEADQUARTERS on 9/7/2022 7:48:02 PM last saved by HONG on 9/7/2022 7:47:48 PM

Exhibit B  
Legal Description of Conservation Easement Area  
CONSERVATION EASEMENT  
9.417 ACRES

Situated in the State of Ohio, County of Franklin, City of Columbus, in Quarter Township 3, Township 2, Range 16, United States Military Lands, being on, over, and across Reserve "A" and Reserve "B" of that subdivision entitled "Inverness Place", of record in Plat Book 127, Page 66, being part of that 20.879 acre tract conveyed to Romanelli & Hughes Building Company by deed of record in Instrument Number 201907090083168 (all references refer to the records of the Recorder's Office, Franklin County, Ohio) and more particularly bounded and described as follows:

Beginning, for reference, at the northwesterly corner of that 13.247 acre tract conveyed to New Albany Evangelical Presbyterian Church by deed of record in Instrument Number 202006190086334, in the southerly right-of-way line of Dublin-Granville Road;

Thence South 03° 00' 21" West, with the westerly line of said 13.247 acre tract, a distance of 35.21 feet to the northeasterly corner of said Reserve "A", the TRUE POINT OF BEGINNING for this description:

Thence South 03° 00' 21" West, with the easterly line of said Reserve "A", said westerly line, a distance of 63.53 feet to a point;

Thence across said Reserve "A" and Reserve "B", the following courses and distances:

South 41° 07' 38" West, a distance of 591.94 feet to a point;

South 19° 43' 29" West, a distance of 425.53 feet to a point;

South 20° 25' 53" West, a distance of 31.34 feet to a point;

South 35° 33' 32" West, a distance of 352.03 feet to a point;

North 54° 11' 15" West, a distance of 51.65 feet to a point;

North 26° 22' 45" West, a distance of 107.12 feet to a point;

North 69° 02' 48" East, a distance of 10.05 feet to a point;

North 26° 22' 45" West, a distance of 25.11 feet to a point;

South 69° 02' 48" West, a distance of 28.29 feet to a point on the arc of a curve;

With the arc of a curve to the right, having a central angle of 19° 45' 33", a radius of 430.00 feet, an arc length of 148.29 feet, a chord bearing of North 09° 19' 49" West and chord distance of 147.56 feet to a point of non-tangency;

North 32° 24' 45" West, a distance of 27.30 feet to a point on the arc of a curve;

With the arc of a curve to the right, having a central angle of 27° 05' 19", a radius of 455.05 feet, an arc length of 215.14 feet, a chord bearing of North 17° 12' 31" East and chord distance of 213.14 feet to a point of compound curvature;

With the arc of a curve to the right, having a central angle of 06° 34' 30", a radius of 2621.80 feet, an arc length of 300.86 feet, a chord bearing of North 34° 02' 25" East and chord distance of 300.70 feet to a point of non-tangency;

North 70° 09' 35" East, a distance of 51.78 feet to a point;

North 25° 51' 38" East, a distance of 14.20 feet to a point on the arc of a curve;

With the arc of a curve to the left, having a central angle of 13° 57' 11", a radius of 317.50 feet, an arc length of 77.32 feet, a chord bearing of North 25° 22' 23" East and chord distance of 77.13 feet to a point of compound curvature;

**CONSERVATION EASEMENT  
9.417 ACRES**

-2-

With the arc of a curve to the left, having a central angle of  $01^{\circ} 23' 45''$ , a radius of 3081.17 feet, an arc length of 75.07 feet, a chord bearing of North  $17^{\circ} 41' 54''$  East and chord distance of 75.07 feet to a point of compound curvature;

With the arc of a curve to the left, having a central angle of  $14^{\circ} 56' 22''$ , a radius of 299.53 feet, an arc length of 78.10 feet, a chord bearing of North  $09^{\circ} 31' 50''$  East and chord distance of 77.88 feet to a point of tangency;

North  $02^{\circ} 03' 39''$  East, a distance of 117.72 feet to a point on the arc of a curve;

With the arc of a curve to the right, having a central angle of  $49^{\circ} 38' 53''$ , a radius of 49.75 feet, an arc length of 43.11 feet, a chord bearing of North  $20^{\circ} 02' 33''$  East and chord distance of 41.77 feet to a point on the arc of a curve;

With the arc of a curve to the left, having a central angle of  $09^{\circ} 04' 53''$ , a radius of 105.44 feet, an arc length of 16.71 feet, a chord bearing of North  $51^{\circ} 36' 30''$  East and chord distance of 16.70 feet to a point of non-tangency;

North  $83^{\circ} 05' 21''$  East, a distance of 152.40 feet to a point;

North  $85^{\circ} 14' 46''$  East, a distance of 264.58 feet to a point; and

North  $86^{\circ} 41' 10''$  East, a distance of 106.70 feet to the TRUE POINT OF BEGINNING, containing 9.417 acres of land, more or less.



EVANS, MECHWART, HAMBLETON & TILTON, INC.

Heather L. King  
Professional Surveyor No. 8307

9/12/22

Date

MAK:sy  
9\_417 ac 20181068-VS-CONS-01.doc



**RESOLUTION R-08-2023**

**A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MIDSTATES RECREATION FOR THE PURCHASE OF PLAYGROUND EQUIPMENT FOR TAYLOR FARM PARK THROUGH A COOPERATIVE PURCHASING AGREEMENT AS AUTHORIZED IN CODIFIED ORDINANCE 123.121(b)**

**WHEREAS**, the City of New Albany is currently developing a destination park called Taylor Farm Park as outlined in the New Albany Parks Framework Plan with the first phase of the park under construction and the second phase scheduled to begin later this year; and

**WHEREAS**, the second phase of the park includes the completion of the boardwalk system, community gardens, restroom facilities, wildlife habitats, and a playground area; and

**WHEREAS**, Midstates Recreation is part of the Sourcewell Cooperative Purchasing Program as an authorized representative of a company named Playpower/Playworld, and the city has obtained competitive pricing from Midstates Recreation through the Sourcewell contract for the installation of the playground equipment for a price of \$1,580,931.07; and

**WHEREAS**, Codified Ordinance 123.121(b) states that as an alternative to competitive bidding, the city manager shall have the authority to obtain goods and/or services for which funds have been appropriated through cooperative purchasing programs; and

**WHEREAS**, the equipment has a considerable lead time for delivery and ordering at this time will help to advance the construction and opening of this area of the park, and

**WHEREAS**, the funding for the construction of the Taylor Farm Phase 2 which includes the playground was approved in the 2023 Capital Improvement Budget.

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

**Section 1:** The city manager is hereby authorized to enter into a contract with Midstates Recreation for the purchase of playground equipment and construction of the playground at Taylor Farm as set forth in the Sourcewell Cooperative Purchasing Program construction contract no. 010521-LTS-8 at a price not to exceed \$1,580,931.07.

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

were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 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.

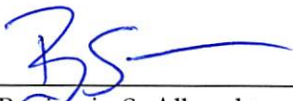
CERTIFIED AS ADOPTED this 7 day of Feb, 2023.

**Attest:**

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

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

**Approved as to form:**

  
\_\_\_\_\_  
Benjamin S. Albrecht  
Law Director

<b>Legislation dates:</b>	
Prepared:	01/09/2023
Introduced:	02/07/2023
Revised:	
Adopted:	02/07/2023
Effective:	02/07/2023



## RESOLUTION R-09-2023

### **A RESOLUTION DECLARING INTENT TO APPROPRIATE PROPERTY AND EASEMENTS FOR THE PUBLIC PURPOSE OF MAKING, REPAIRING, IMPROVING, OR CONSTRUCTING CLOVER VALLEY ROAD NW AS EXTENDED TO JOIN WITH AND EXTEND TO INTERSECTING ROADS WHICH ARE AND SHALL BE OPEN TO THE PUBLIC WITHOUT CHARGE**

**WHEREAS**, the City of New Albany has the authority and power under the constitution, statutes, and laws of the State of Ohio, and the additional authority of the City under its charter to construct and repair roads and make road and street improvements, acquire necessary real property and interests therein, including temporary and permanent right-of-way and appurtenances thereto, and enter into agreements with other political subdivisions for the exercise of any and all powers, performance of any function or rendering of any service necessary to improve, construct, repair, and maintain street and road improvements and their appurtenances; and

**WHEREAS**, Intel Corporation is in the process of constructing a \$20 billion+ chip manufacturing project in New Albany on property between Clover Valley Road NW on the west, Mink Street NW on the east, and abutting and south of Green Chapel Road NW; and

**WHEREAS**, the city has determined that constructing, improving, making and repairing portions of Clover Valley Road NW as extended at the intersections and certain access points to join with improved and existing intersecting roads and as lengthened to intersect with Mink Street, all of which are and shall be open to the public, without charge, (the "Clover Valley Road Project") is necessary and essential and will contribute to the promotion of the health, safety, public convenience and welfare of the people and City of New Albany and the traveling public.

**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 considers it necessary and declares its intention to appropriate, for the public purpose of constructing, improving, making, and repairing roads, which shall be open to the public, without charge, the fee simple interests and permanent and temporary easements in and to the real property and interests therein identified and described in the attached Exhibit A for the construction, repair and improvement of Clover Valley Road NW as extended at the intersections and certain access points to join with and extend to improved and existing roadways.

**Section 2.** The city manager is authorized and directed to cause written notice of the passage of this Resolutions to be given to the owner(s) of, person(s) in possession of, or person having an interest

of record in the property sought to be appropriated, or to the authorized agent of the owner or such other persons. The notice shall be served and returned according to law.

**Section 3.** It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**Section 4.** Pursuant to Article VI, Section 6.07(A) of the charter of the City of New Albany, and Ohio Revised Code Section 719.05, this resolution shall take effect upon adoption.


CERTIFIED AS ADOPTED this 7 day of FEB, 2023.

Attest:

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

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

Approved as to form:

  
\_\_\_\_\_  
Benjamin S. Albrecht  
Law Director

<b>Legislation dates:</b>	
Prepared:	01/26/2023
Introduced:	02/07/2023
Revised:	
Adopted:	02/07/2023
Effective:	02/07/2023

## **RESOLUTION R-09-2023**

### **EXHIBIT A**

This resolution of intent to appropriate includes the acquisition of real property and property interests from multiple property owners and properties. Each property owner, legal descriptions and depictions of the owner's real property intended to be appropriated and the owner's interest therein intended to be appropriated is identified, described, and depicted in the detailed Exhibit A which, due to its volume is on file and available from the City of New Albany Clerk's office and is not attached hereto in its entirety.





**RESOLUTION R-10-2023**

**A RESOLUTION DECLARING INTENT TO APPROPRIATE PROPERTY AND EASEMENTS FOR THE PUBLIC PURPOSE OF MAKING, REPAIRING, IMPROVING, OR CONSTRUCTING GREEN CHAPEL ROAD NW AS EXTENDED TO JOIN WITH INTERSECTING ROADS WHICH ARE AND SHALL BE OPEN TO THE PUBLIC WITHOUT CHARGE**

**WHEREAS**, the City of New Albany has the authority and power under the constitution, statutes, and laws of the State of Ohio, and the additional authority of the City under its charter to construct and repair roads and make road and street improvements, acquire necessary real property and interests therein, including temporary and permanent right-of-way and appurtenances thereto, and enter into agreements with other political subdivisions for the exercise of any and all powers, performance of any function or rendering of any service necessary to improve, construct, repair, and maintain street and road improvements and their appurtenances; and

**WHEREAS**, Intel Corporation is in the process of constructing a \$20 billion+ chip manufacturing project in New Albany on property between Clover Valley Road NW on the west, Mink Street NW on the east, and abutting and south of Green Chapel Road NW; and

**WHEREAS**, the city has determined that improving, making and repairing portions of Green Chapel Road NW as extended at the intersections and certain access points to join with improved and existing intersecting roads, all of which are and shall be open to the public, without charge, (the “Green Chapel Road Project”) is necessary and essential and will contribute to the promotion of the health, safety, public convenience and welfare of the people and City of New Albany and the traveling public.

**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 considers it necessary and declares its intention to appropriate, for the public purpose of improving, making, and repairing roads, which shall be open to the public, without charge, the fee simple interests and permanent and temporary easements in and to the real property and interests therein identified and described in the attached Exhibit A for the construction, repair and improvement of Green Chapel Road NW as extended at the intersections and certain access points to join with improved and existing roadways.

**Section 2.** The city manager is authorized and directed to cause written notice of the passage of this Resolutions to be given to the owner(s) of, person(s) in possession of, or person having an interest of record in the property sought to be appropriated, or to the authorized agent of the owner or such other persons. The notice shall be served and returned according to law.


**Section 3.** It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**Section 4.** Pursuant to Article VI, Section 6.07(A) of the charter of the City of New Albany, and Ohio Revised Code Section 719.05, this resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this 7 day of Feb, 2023.

**Attest:**

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

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

**Approved as to form:**

  
\_\_\_\_\_  
Benjamin S. Albrecht  
Law Director

<b>Legislation dates:</b>	
Prepared:	01/27/2023
Introduced:	02/07/2023
Revised:	
Adopted:	02/07/2023
Effective:	02/07/2023

## **RESOLUTION R-10-2023**

### **EXHIBIT A**

This resolution of intent to appropriate includes the acquisition of real property and property interests from multiple property owners and properties. Each property owner, legal descriptions and depictions of the owner's real property intended to be appropriated and the owner's interest therein intended to be appropriated is identified, described, and depicted in the detailed Exhibit A which, due to its volume is on file and available from the City of New Albany Clerk's office and is not attached hereto in its entirety.



## RESOLUTION R-11-2023

### **A RESOLUTION DECLARING INTENT TO APPROPRIATE PROPERTY AND EASEMENTS FOR THE PUBLIC PURPOSE OF MAKING, REPAIRING, IMPROVING OR CONSTRUCTING MINK STREET AS EXTENDED TO JOIN WITH INTERSECTING ROADS WHICH ARE AND SHALL BE OPEN TO THE PUBLIC WITHOUT CHARGE**

**WHEREAS**, the City of New Albany has the authority and power under the constitution, statutes, and laws of the State of Ohio, and the additional authority of the city under its charter to construct and repair roads and make road and street improvements, acquire necessary real property and interests therein, including temporary and permanent right-of-way and appurtenances thereto, and enter into agreements with other political subdivisions for the exercise of any and all powers, performance of any function or rendering of any service necessary to improve, construct, repair and maintain street and road improvements and their appurtenances; and

**WHEREAS**, Intel Corporation is in the process of constructing a \$20 billion+ chip manufacturing project in New Albany on property between Clover Valley Road NW on the west, Mink Street NW on the east, and abutting and south of Green Chapel Road; and

**WHEREAS**, the city has determined that improving, making and repairing portions of Mink Street as extended at the intersections and certain access points to join with improved and existing intersecting roads, all of which are and shall be open to the public, without charge, (the "Mink Street Project") is necessary and essential and will contribute to the promotion of the health, safety, public convenience and welfare of the people and City of New Albany and the traveling public.

**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 considers it necessary and declares its intention to appropriate, for the public purpose of improving, making and repairing roads, which shall be open to the public, without charge, the fee simple interests and permanent and temporary easements in and to the real property and interests therein identified and described in the attached Exhibit A for the construction, repair and improvement of Mink Street as extended at the intersections and certain access points to join with improved and existing roadways.

**Section 2.** The city manager is authorized and directed to cause written notice of the passage of this Resolutions to be given to the owner(s) of, person(s) in possession of, or person having and interest of record in the property sought to be appropriated, or to the authorized agent of the owner or such other persons. The notice shall be served and returned according to law.

**Section 3.** It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**Section 4.** Pursuant to Article VI, Section 6.07(A) of the charter of the City of New Albany, and Ohio Revised Code Section 719.05, this resolution shall take effect upon adoption.


CERTIFIED AS ADOPTED this 7 day of Feb, 2023.

**Attest:**

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

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

**Approved as to form:**

  
\_\_\_\_\_  
Benjamin S. Albrecht  
Law Director

<b>Legislation dates:</b>	
Prepared:	01/27/2023
Introduced:	02/07/2023
Revised:	
Adopted:	02/07/2023
Effective:	02/07/2023

## **RESOLUTION R-11-2023**

### **EXHIBIT A**

This resolution of intent to appropriate includes the acquisition of real property and property interests from multiple property owners and properties. Each property owner, legal descriptions and depictions of the owner's real property intended to be appropriated and the owner's interest therein intended to be appropriated is identified, described, and depicted in the detailed Exhibit A which, due to its volume is on file and available from the City of New Albany Clerk's office and is not attached hereto in its entirety.