



**ORDINANCE O-05-2024**

**AN ORDINANCE TO AMEND CHAPTER 137.01 “SUSTAINABILITY ADVISORY BOARD ESTABLISHED; MEMBERSHIP, TERM, AND VACANCY” OF THE CITY OF NEW ALBANY, OHIO’S CODIFIED ORDINANCES AS REQUESTED BY THE CITY OF NEW ALBANY**

**WHEREAS**, a Sustainability Advisory Board was established on June 21, 2021 by Ordinance O-19-2021; and

**WHEREAS**, the Sustainability Advisory Board works closely with the New Albany – Plain Local School District, its administrators, teachers, and students, including by sponsoring student-led sustainability project grants, and expects to continue to do so in the future, and

**WHEREAS**, council wishes to amend Chapter 137 of the Codified Ordinances of the City of New Albany “Sustainability Advisory Board” to make one of the board positions specifically for a teacher from the New Albany - Plain Local School District.

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

**Section 1:** That a portion of Codified Ordinance Chapter 137 “Sustainability Advisory Board” shall be amended as follows.

137.01 – SUSTAINABILITY ADVISORY BOARD ESTABLISHED; MEMBERSHIP, TERM AND VACANCY.

(a) There is hereby created and established a Sustainability Advisory Board to be composed of nine (9) members. Seven (7) of the members shall be voting members which shall be appointed by Council. One (1) of the seven (7) voting members may be a teacher/administrator at New Albany-Plain Local Schools. Said teacher/administrator member does not have to be a resident living in the New Albany corporation limits. The eighth member shall be a Council member appointed by Council. This Council member shall be a non-voting member of the Board. The ninth member shall be a student who is a New Albany resident that is appointed by the New Albany Plain Local School Board on an annual basis before the beginning of each school year. The school district appointed member shall be a non-voting member of the Board.

Seven (7) Advisory Board members shall be appointed for three (3) year terms, with the exception of those initially appointed, whose terms shall be staggered as follows:

One year term commencing  
from date of appointment and                      three members  
ending on 6/30/22

Two year term commencing  
from date of appointment and  
ending on 6/30/23                      two members

Three year term commencing  
from date of appointment and  
ending on 6/30/24                      two members

- (b) In the event of a vacancy on the Sustainability Advisory Board, Council shall appoint a replacement to fill the un-expired term.
- (c) Four (4) voting members shall constitute a quorum.

**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 121.22 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 05 day of MARCH, 2024.

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:	02/08/2024
Introduced:	02/20/2024
Revised:	
Adopted:	03/05/2024
Effective:	04/04/2024

\* Amended by motion on the floor. See 3/5/24 minutes



ORDINANCE O-06-2024 \*

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF NEW ALBANY BY AMENDING THE ZONING MAP TO REZONE 9.9+/- ACRES OF LAND LOCATED AT THE SOUTHWEST CORNER OF JOHNSTOWN ROAD AND THOMPSON ROAD, FROM AGRICULTURE (AG) & RESIDENTIAL ESTATE DISTRICT (R-1) TO INFILL PLANNED UNIT DEVELOPMENT (I-PUD) FOR AN AREA TO BE KNOWN AS THE "OAKLAND NURSERY ZONING DISTRICT" AS REQUESTED BY OAKLAND NURSERY C/O AARON UNDERHILL ESQ. \*

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

**WHEREAS**, the New Albany Planning Commission and New Albany City Council on separate occasions have held public hearings and received public input into the amendment of the zoning ordinance; and

**WHEREAS**, pursuant to the application by Oakland Nursery c/o Aaron Underhill, the New Albany Planning Commission reviewed the proposed ordinance amendment and recommended its approval.

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

**Section 1.** Council hereby amends the zoning ordinance map of the city of New Albany to change the zoning classification of the following described site:

- A. A 9.9+/- acre site within Franklin County, located at the southwest corner of Johnstown Road (US State Route 62) and Thompson Road from its current zoning of Agriculture (AG) and Residential Estate District (R-1) to Infill Planned Unit Development (I-PUD).
- B. The zoning district's text and boundary map are hereby attached and marked Exhibit A.

**Section 2.** It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with Section 121.22 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 05 day of March, 2024.

Attest:

  
Sloan T. Spalding  
Mayor

  
Jennifer H. Mason  
Clerk of Council

Approved as to form:

  
Benjamin S. Albrecht  
Law Director

Legislation dates:	
Prepared:	01/22/2024
Introduced:	02/20/2024
Revised:	03/05/2024 by motion
Adopted:	03/05/2024
Effective:	04/04/2024

*\* Amended by motion  
on the floor. See  
3/5/24 minutes*

**OAKLAND NURSERY  
INFILL PLANNED DEVELOPMENT (I-PUD) DISTRICT**

**DEVELOPMENT STANDARDS TEXT**

**JANUARY 2, 2024**

**I. Summary:** The property which is the subject of this text consists of 9.89+/- acres located to the west/southwest of and adjacent to the intersection of Johnstown Road and Thompson Road. It contains two existing uses. A large portion of the property is unincorporated in Plain Township but is in the process of being annexed to the City. Prior to completion of the annexation it is known as Franklin County Auditor Parcel Number 220-001952. Upon annexation of that parcel, the Codified Ordinances provide that it will be designated automatically with an AG, Agricultural zoning district classification. Oakland Nursery operates a nursery, greenhouse, and related retail sales operation on that parcel. The remainder of the property within the zoning district is located on a parcel that is in the City, is zoned R-2, Single-Family Residential under the Codified Ordinances, and contains an existing single-family home (Franklin County Auditor Parcel Number 222-000297). The property owner/applicant, Oakland Nursery, Inc., desires to provide for the continued use and operation of the existing business and residential uses and to add parking within the zoning district to serve the business operations.

**II. Development Standards:** Unless otherwise specified in the submitted drawings or in this written text, the provisions of the City of New Albany Codified Ordinances shall apply to this zoning district. The standards and requirements of Chapter 1147, C-2, General Business District shall apply as the baseline standards. In the event of a conflict between this text and/or the submitted drawings and a specific provision of the Codified Ordinances, this text and/or the drawings accompanying it shall govern.

The intent of this zoning district is to allow for the continued existence of structures and improvements on the property which exist on the date when this zoning district becomes legally effective. To this end, all existing improvements to the property within this zoning district on the effective date of this text shall be considered to be legally conforming to this I-PUD zoning classification and related standards and requirements. Should existing improvements be damaged or destroyed by fire, storm, or other casualty, then they shall be permitted to be reconstructed in the same locations and with the same or similar designs of those improvements as they existed prior to the casualty event. If existing improvements in the zoning district are proposed for replacement for any reason other than the occurrence of a casualty event, then said replacement improvements shall comply with the requirements of this text unless otherwise approved by the Planning Commission as part of a final development plan application.

**III. Permitted Uses:** Permitted uses in this zoning district shall include only the following. No other permitted uses or conditional uses shall be allowed to operate in this zoning district other than as follows:

- A. Lawn and garden centers.
- B. Greenhouses.
- C. Retail sales of plants, trees, bushes, shrubbery, and similar living organisms.
- D. Retail sales of lawn and garden supplies and equipment, interior and exterior home décor, and related goods.
- E. One single-family home as an accessory use to any permitted use, restricted to housing for employees of the owner or operator of the permitted use. The use of the single-family home by occupants which are not employees of a business located within the zoning district shall not be permitted. Interior storage of supplies, materials, and goods associated with another permitted use shall only be permitted within the garage and/or barn. Exterior storage of such items shall be prohibited around the single-family home.
- F. Exterior storage of plants, trees, bushes, shrubbery, and other similar living organisms available for sale.
- G. Outdoor displays of goods for sale.
- H. Accessory structures for the storage of inventory, supplies, and equipment.
- I. Temporary outdoor festivals and events intended to draw customers to the primary uses on the site, lasting no more than three consecutive days and operating during normal business hours, with no more than one such event being permitted in any single calendar month. A special event permit shall be obtained from the City for each such festival or event.
- J. Farmer's markets, when operating in conjunction with and during the hours of operation of another permitted use.

**IV. Lot, Building Size, and Setback Requirements:**

A. **Single Parcel:** The two parcels that exist within this zoning district shall be combined into a single parcel following the legally effective approval of this text. Future subdivisions of the post-combination single parcel shall be permitted if approved in accordance with the subdivision regulations of the Codified Ordinances, provided that the existing home in this zoning district must be located on a parcel that also contains a permitted use.

B. **Maximum Building Size:** No individual building or structure in this zoning district shall exceed 8,000 square feet of gross floor area.

C. **Setbacks:** Minimum setback requirements are being provided to apply to any new construction or development within this zoning district and to any expansion or modification of existing improvements within the zoning district as they exist on the date when this text becomes

legally effective. Existing improvements shall be permitted to remain in their present locations even if they do not comply with these minimum setbacks and may be replaced in these same locations if such replacement is caused by fire, storm, or other casualty event as contemplated in Section II above.

1. Johnstown Road: The minimum setback from the right-of-way of Johnstown Road shall be 25 feet for pavement and 50 feet for buildings.

2. Thompson Road: The minimum setback from the right-of-way of Thompson Road shall be 25 feet for pavement and 75 feet for future streetscape and utility easements.

3. Western Perimeter Boundary: The minimum setback from the western perimeter boundary line of this zoning district shall be 25 feet for pavement and 60 feet for buildings.

4. Southern Perimeter Boundary: The minimum setback from the southern perimeter boundary line of this zoning district shall be 25 feet for pavement and 60 feet for buildings.

5. Stream Corridor Protection: Existing structures, storage areas, and improved areas (including but not limited to paved, unpaved, and gravel areas) shall be exempt from any required setbacks of the Codified Ordinances from streams or creeks or relating to riparian corridors.

6. Interior Boundaries: Setbacks along all internal property boundaries between adjoining parcels within this zoning district shall be zero for all buildings and pavement unless otherwise specified in this text.

**V. Access, Loading, Parking and Other Traffic Commitments:**

A. Vehicular Parking: Vehicular parking shall be permitted to be provided in accordance with conditions as they exist on the date when this text is legally effective, or may be provided in accordance with the accompanying revised parking plan (the "Revised Parking Plan"), which is intended to provide parking for all permitted and accessory uses on the site other than the single-family home. The single-family home shall provide for vehicular parking within a two-car garage and shall provide for parking of at least two additional cars in the driveway. Occupants of the home shall be required to use the garage and driveway parking spaces and shall not be permitted to use other parking spaces on the site unless parking a vehicle in one of those spaces while working. Any employee of the commercial uses in this zoning district may utilize parking on the driveway for the home, but customers shall not be permitted to park in that location.

B. Vehicular Access: Vehicular access to and from the zoning district shall be provided from existing access points. These include three access points on Johnstown Road, with the northernmost of these access points having full turn movements, the middle of these access points having right-in, right-out turn movements, and the southernmost of these access points being a residential driveway. The residential driveway shall be permitted to serve only the existing home on the site and access to other uses or improvements on the site from this driveway shall be prohibited. Another vehicular access drive is located on Thompson Road near the western edge of the zoning district and has full turn movements. Use of this access point by customer traffic shall be prohibited. Internal vehicular circulation within this zoning district shall be provided in accordance with existing conditions or that which is illustrated in the Revised Parking Plan.

C. Pedestrian Access: An existing paved asphalt leisure trail exists along Johnstown Road and shall remain. No leisure trail shall be required along the south side of Thompson Road unless a major modification to site improvements is made on the site other than those which are associated with the Revised Parking Plan or the Revised Landscaping Plan. The determination of what constitutes a major modification shall be made by City staff.

D. Rights-of-Way: The property owner shall dedicate a minimum 40 feet of right-of-way or easements as measured from the Thompson Road centerline and 45 feet of right-of-way as measured from the Johnstown Road centerline along all parcel frontages. Along Thompson Road the property owner may provide 10 feet of right-of-way and a 10 foot streetscape and utility easement.

E. Traffic Study: Given that the proposed zoning district accommodates existing uses and development and upon initial approval does not propose any increase in building square footages or intensity of uses, no traffic study shall be required. However, should additional square footage for permitted or accessory uses be proposed by the property owner in the future, the City Engineer shall have the right (but not the obligation) to require a traffic impact study or less detailed traffic analysis in order to evaluate the potential impacts of the additional square footage on the public street network.

#### **VI. Buffering, Landscaping, Open Space and Screening Commitments:**

A. Existing Landscaping: Landscaping within this zoning district shall remain as it exists on the legally effective date of this text, provided, however, that landscaping shall be modified along with the installation and construction of the Revised Parking Plan in accordance with a separate accompanying plan that is titled "Revised Landscaping Plan."

B. Along Public Streets: A four-board white horse fence exists along Johnstown Road and shall remain. The white horse fence continues for a short distance along Thompson Road. No further extension of the white horse fence westward shall be required along the Thompson Road frontage based on existing conditions, such as but not limited to existing trees.



C. Parking Lot Landscaping. Landscaping within the new parking areas shown on the Revised Parking Plan shall be landscaped in accordance with the Revised Landscaping Plan and shall be exempt from any requirements for parking lot landscaping that are set forth in Codified Ordinances Chapter 1171.06(a), except that shall be screened from primary streets, residential areas, and open space by a three and one-half (3.5)-foot minimum height evergreen hedge or masonry wall, or combination of wall and plantings. The three and one-half (3.5)-foot minimum height evergreen hedge is required along the southern terminus of the parking drive aisle generally located behind the residential structure.

D. Landscape Buffer: Along the portion of the western boundary line of this zoning district which is shared with Franklin County Auditor Parcel Number 220-001797 (as it exists on the date when this text becomes legally effective), and in the area extending from the southernmost point of that shared boundary line on the west to the right-of-way of Johnstown Road on the east, a landscape buffer shall be planted in conjunction with the addition of parking spaces in accordance with the Revised Parking Plan. The buffer shall be located within the minimum required pavement setback and shall be planted with natural vegetation that is planted no closer than 3 feet from the property line, with a number and sizes of trees, shrubs, and/or other plantings which shall reach a minimum of 75% opacity at the time of fall foliage within 5 years of installation. This buffering shall be reviewed and shall be required to be approved by the City's Landscape Architect before installation and construction of the new parking spaces in accordance with the Revised Parking Plan may commence. Existing trees and vegetation may be used to assist in meeting the requirements of this paragraph. Minimum sizes at installation shall be 2 inches in caliper for ornamental trees, 2.5 inches in caliper for deciduous shade trees, and 6 feet tall for evergreen trees. Along all other perimeter boundary lines of this zoning district which are shared with parcels outside of this Zoning District, based on the existence of mature trees and vegetation near those lines either within the zoning district or on adjacent parcels, significant buffering exists and therefore Codified Ordinances Section 1171,05(c) shall not apply.

## VII. Miscellaneous Standards and Requirements:

### A. Signage:

1. Existing Parking: Existing signage within this zoning district shall be permitted to remain.
2. Temporary Signage: Temporary ground signs such as vertical banners and streamers shall be permitted for one consecutive 14-day period in both October and December of each calendar year.
3. New Signage: Any new signage (other than said temporary signage or replacement signage that replicates existing signs) shall conform to the requirements of the Codified Ordinances unless otherwise approved by the Planning Commission as part of an amended final development plan. A property owner or applicant may present a master signage plan to the Planning Commission for its review and approval as part of an amended final development plan which, once approved, shall govern the regulation of signage on the site.

4. **Employee Parking Signage** There shall be a temporary parking sign to indicate employees are only permitted to park vehicles in the southern terminus whenever possible.

B. **Lighting:** Existing light poles and existing light fixtures shall be permitted to remain within this zoning district. The following requirements shall apply to any new lighting:

1. **Poles:** In order to protect neighboring properties from light spillage or pollution, light poles shall be prohibited.

2. **Prohibited Lighting:** No permanent colored lights or neon lights shall be used on the exterior of any building.

C. **Utilities:** All new utilities in this zoning district shall be installed underground.

D. **Final Development Plans:** Due to the fact that this zoning district contains long-existing buildings, structures, and uses, there shall be no requirement for the review and approval of a final development plan application for the site in its present condition. The applicant has provided, along with this text and related application materials, previous site plans that were approved by Plain Township in the years 2000, 2001, 2011, 2015, and 2018, as well as a Private Site Improvement Plan from 2012 that allowed for internal vehicular circulation improvements to be constructed. These plans shall be used to document existing site conditions as of the legally effective date of this text.

Modifications or additions to improvements in this the zoning district which are to be made in accordance with the Revised Parking Plan and the Revised Landscaping Plan shall be reviewed at the staff level at the time of relevant permitting to ensure compliance of new or modified improvements with those plans. A final development plan application shall not be required to be reviewed or approved for improvements that are to be made in accordance with those two plans.

E. **Variances:** Extraordinary circumstances may exist making a strict enforcement of the applicable development standards of this text or the Zoning Ordinance unreasonable and, therefore, the procedure for variance from development standards is provided to allow the flexibility necessary to adapt to changed or unusual conditions, both foreseen and unforeseen, under circumstances which do not ordinarily involve a change of the primary use of the land or structure permitted. The procedures and requirements of Chapter 1113, Variances of the Codified Ordinances shall be followed in cases of variances. The Planning Commission shall hear requests for variances in this zoning district.

**OAKLAND NURSERY I-PUD  
ZONING DISTRICT**

**Information concerning specific Code requirements for  
rezoning submittal by Oakland Nursery, Inc.**

Per C.O. 1111.03(c), a written statement of the existing use and zoning district.

Response: The existing use of the property is for a commercial nursery, lawn, and garden center with a greenhouse and associated storage and operations. A home also exists on the subject property. The commercial portions of the zoning district are in the process of being annexed to the City from Plan Township. The existing zoning of this portion of the site in the Township is SCPD, Select Planned Commercial District. Upon annexation, the Codified Ordinances automatically will apply the AG, Agricultural zoning district classification to that property. The existing home on the site is located within the City and is zoned R-2, single-family residential.

Per C.O. 1111.03(d), a written statement of the proposed use and zoning district.

Response: The existing use of the property is for a commercial nursery, lawn, and garden center with a greenhouse and associated storage and operations. A home also exists on the subject property. The permitted uses on the property will remain the same as have been operating on the site for over 25 years. An I-PUD zoning designation is being requested for the site in order to provide appropriate rights, standards, and requirements to accommodate existing conditions.

Per C.O. 1111.03(g), a statement as to how the proposed zoning amendment will impact adjacent and proximate properties.

Response: The proposed zoning amendment will have little impact on adjacent and proximate properties. This rezoning is necessary based on the annexation of the portions of the site on which commercial uses currently operate as Oakland Nursery. Upon annexation, the Codified Ordinances automatically provide that property is placed into the Ag, Agricultural zoning classification. Therefore, a rezoning is necessary to provide appropriate zoning use rights and development standards to accommodate existing uses and conditions. In addition, the zoning district will include a parcel that is already within the City which is under common ownership with the commercial property and contains an existing home in which employees of Oakland Nursery already reside. The two parcels will be combined, allowing the home to continue to be occupied by employees as an accessory use to the commercial uses, and also providing the opportunity to add commercial parking spaces within the zoning district.

Neighboring properties will not be affected by any changes in use of the properties. Where new parking is to be constructed, the adjacent residential property will be buffered in accordance with commitments that are set forth in the zoning text. In addition, the zoning text will prohibit the installation of light poles in order to protect the adjacent owner.

Per C.O. 1111.03(h) and 1159.07(b)(2)(H), a written statement regarding the potential impact of the proposed use on the student population of the local school district(s).

Response: The proposed use of and intensity of development on the property within the zoning district is not changing. Therefore, there will be no impact on the school district or the student population.

Per C.O. 1111.03(i), any deed restrictions, easements, covenants and encumbrances to be imposed to control the use, development and maintenance of the area to be rezoned.

Response: None, other than those which may exist at the time of the filing of this application.

Per C.O. 1159.07(b)(2)(F) The schedule of site development, construction of structures and associated facilities. Such schedule shall include the proposed use or reuse of existing features such as topography, streets, easements and natural areas.

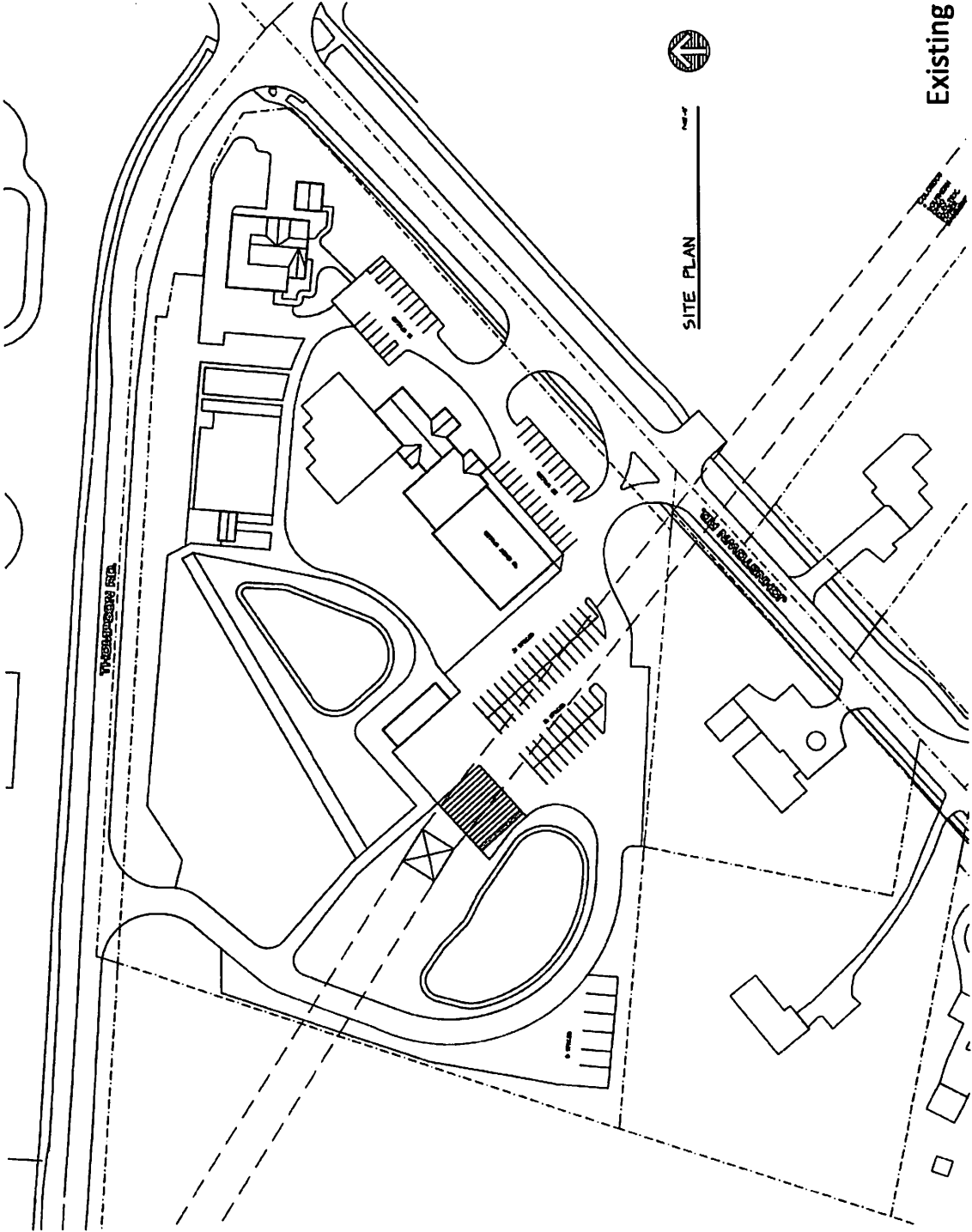
Response: The site is already developed. The only proposed change to improvements on the site is the addition of paved parking spaces. These improvements are expected to be undertaken in the spring and summer of 2024.

Per C.O. 1159.07(b)(2)(J) Verification that an application, if required, has been submitted to the Ohio Environmental Protection Agency in compliance with Section 401 of the Clean Water Act in which anyone who wishes to discharge dredged or fill material into waters of the United States must obtain a Water Quality Certification Permit from the Ohio Environmental Protection Agency. In the case of an isolated wetland either a general state or individual state isolated wetland permit must be obtained from the Ohio Environmental Protection Agency (Sections 6111.021. - 6111.024 of House Bill 231).

Response: No such application is required.

Per C.O. 1159.07(b)(2)(K) Verification that an application, if required, has been submitted to the U.S. Army Corps of Engineers, in compliance with Section 404 of the Clean Water Act in which anyone who wishes to discharge dredged or fill material into waters of the United States must obtain either a nationwide or individual permit from the U.S. Army Corps of Engineers.

Response: No such application is required..



Existing Site Plan



SITE PLAN

DATE	NO.	REV.	BY

DESIGN ARCHITECTS  
 72 MILL ST. - CANTON, OH 43230  
 TEL (614) 840-0265  
 FAX (614) 840-0268  
 WWW.DSARCHITECTS.COM

DAVID ANS BURNETT  
 ORIGINAL PLAN  
 321 JONHTOWN ROAD  
 NEW ALBANY, OH 43054





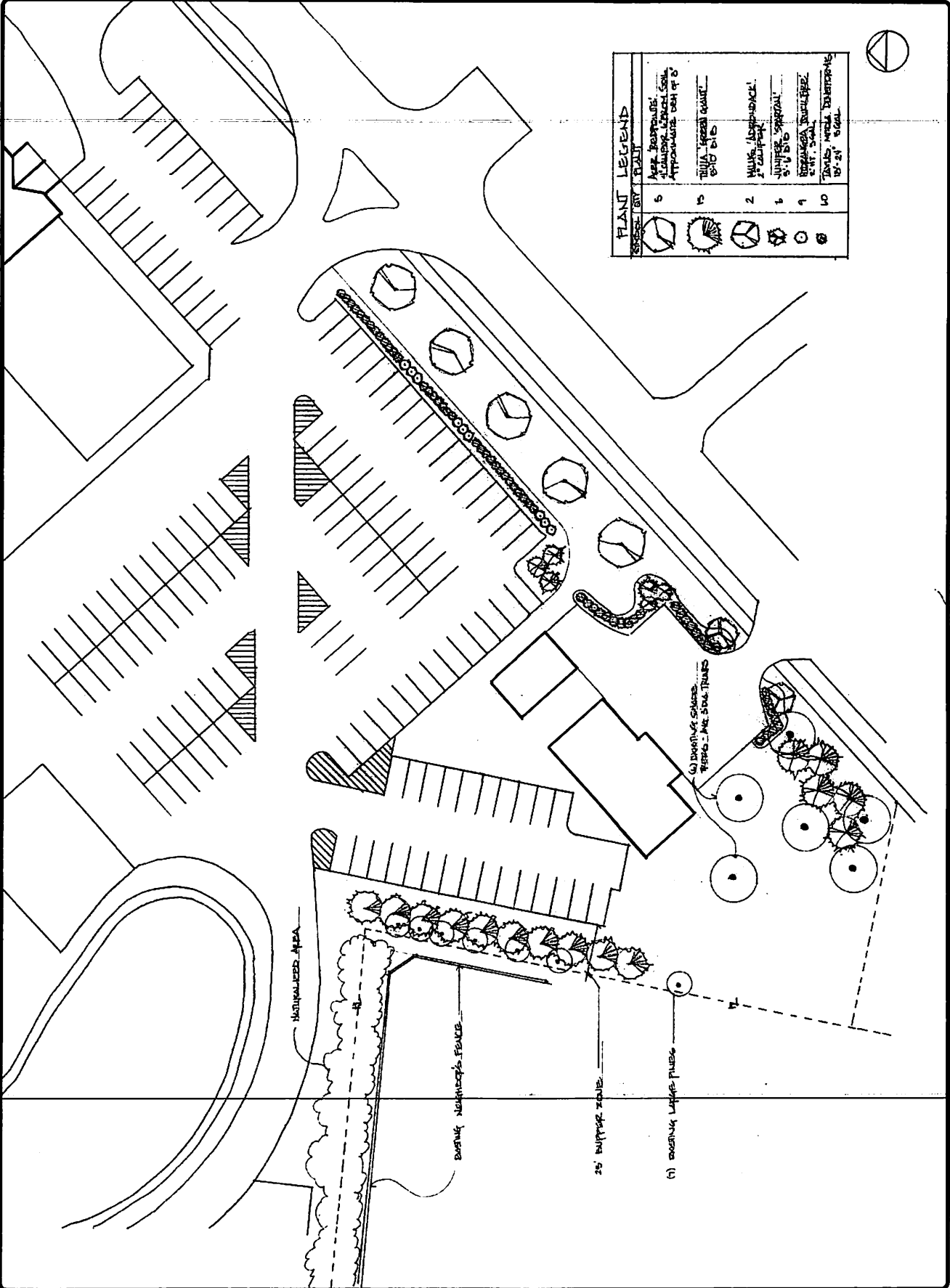
DATE	12/14/11
REVISED	
BY	
CHKD	
APP	

Oakland Nurseries  
 5211 Johnson Rd  
 New Albany, OH 43054  
 Faxing Plan

landscape architecture  
 site planning  
 construction management  
 1188 Oakland Park Avenue  
 Columbus, Ohio 43226  
 (614) 288-8848



DATE	12/14/11
SCALE	1" = 20'-0"
PROJECT	
NO.	



SYMBOL	PLANT LEGEND
(Symbol: Circle with diagonal lines)	5 ASPER TREES
(Symbol: Circle with horizontal lines)	4 ASPER TREES
(Symbol: Circle with vertical lines)	3 ASPER TREES
(Symbol: Circle with cross-hatch)	2 ASPER TREES
(Symbol: Circle with dots)	1 ASPER TREES
(Symbol: Circle with solid fill)	0 ASPER TREES

THIS DRAWING IS THE EXCLUSIVE PROPERTY OF OAKLAND DESIGN ASSOCIATES AND SHALL NOT BE REPRODUCED, TRANSMITTED, OR OTHERWISE USED WITHOUT THEIR WRITTEN PERMISSION.



**ORDINANCE O-07-2024**

**AN ORDINANCE TO ACCEPT A 21.47 ACRE CONSERVATION EASEMENT AS REQUESTED BY MBJ HOLDINGS, LLC**

**WHEREAS**, MBJ HOLDINGS, LLC is the sole owner in fee simple of certain real property known as Licking County Auditor's Tax Parcel Number 094-107502-00.000 as described in the Conservation Agreement; and

**WHEREAS**, MBJ HOLDINGS, LLC wishes to convey a Conservation Easement Area to the city of New Albany to ensure the conservation and protection of the aforementioned real property; and

**WHEREAS**, this Conservation Easement Agreement aligns with the requirements of permits from the Ohio Environmental Protection Agency ("Ohio EPA") and the U.S. Army Corps of Engineers ("USACE") to safeguard specific waterways or wetlands; and

**WHEREAS**, it benefits the city to accept this Conservation Easement to protect the ecological integrity of the mentioned real property.

**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 21.47 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 council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with Section 121.22 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 05 day of March, 2024.



**Attest:**

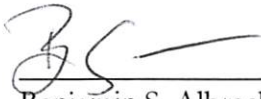


Sloan T. Spalding  
Mayor



Jennifer H. Mason  
Clerk of Council

**Approved as to form:**



Benjamin S. Albrecht  
Law Director

**Legislation dates:**

Prepared: 02/09/2024

Introduced: 02/20/2024

Revised:

Adopted: 03/05/2024

Effective: 04/04/2024

**CONSERVATION EASEMENT AGREEMENT**

This Conservation Easement Agreement (“Agreement”) is made to be effective on the last date of signature below (the “Effective Date”), by and between **MBJ HOLDINGS, LLC**, a Delaware limited liability company having its address at 8000 Walton Parkway, Suite 120, 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 Number 094-107502-00.000 and being more particularly described in Instrument Number 200002020003279, which is 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. DSW401185918 issued by the Ohio Environmental Protection Agency (“Ohio EPA”) on November 14, 2018 and by a Nationwide Permit No. 39, Permit No. LHR-2018-690-SCR-Unnamed Tributary to Blacklick Creek dated September 20, 2018 as issued by the U.S. Army Corps of Engineers (“USACE”) (together, the “Permits”). As a condition of the Permits 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:** Any activity on or use of the Conservation Easement Area that is inconsistent with the purposes of the Conservation Easement is strictly prohibited; provided, however, for the avoidance of doubt, the maintenance, removal and restoration of the Access Roadway (as hereinafter defined) shall in no event be considered inconsistent with the purposes of the Conservation Easement. 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. Grantee shall not have the right to permit others to enter the Conservation Easement Area. The general public is not granted access to the Conservation Easement Area or the Property under this Agreement.
- b. **Right to Preserve:** Grantee has the right to prevent any activity on or use of the Conservation Easement Area that is inconsistent with the terms or purposes of 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.
- d. **Limited Encroachments:** Grantor shall be permitted to encroach onto the Conservation Easement Area for the purpose of maintaining (and, as necessary in the future, removing and restoring) a temporary access roadway and appurtenant facilities (collectively, the "Access Roadway")

that exists within the Conservation Easement Area. Grantor shall also be permitted to encroach onto the Conservation Easement Area for the purpose of constructing (and, as necessary in the future, maintaining and replacing) stormwater drainage piping, culverts, features and/or outfalls (collectively, "Drainage Features"). The Drainage Features shall not exceed twenty feet (20') in width. Limited construction activities and removal of vegetation within the Conservation Easement Area shall be permitted in association with such limited encroachment. Upon the future removal of the Access Roadway and/or construction of Drainage Features, Grantor shall restore (i) grades to be consistent with the surrounding land, (ii) vegetation within the area occupied by the Access Roadway, and (iii) any other vegetation within the Conservation Easement Area that has been damaged or removed in association with the limited encroachment, as follows:

- A. Disturbed areas shall be seeded with the permanent, native seed mix specified for buffers and disturbed areas in that certain plan titled Beech Road Pooled Mitigation Site Phase 2 Final Mitigation Plan and prepared by Evans, Mechwart, Hambleton & Tilton, Inc. (the "Final Wetland Mitigation Plan");
- B. Bare root trees and shrubs shall be installed at a density of 600/acre, of which at least 300/ac must be trees; and
- C. Trees and shrubs shall be chosen from the plant list specified for upland buffers in the Final Wetland Mitigation Plan.

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:**

**MBJ HOLDINGS, 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 \_\_\_\_\_, 2024, by \_\_\_\_\_, the \_\_\_\_\_ of **MBJ HOLDINGS, 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 \_\_\_\_\_, 2024, 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.

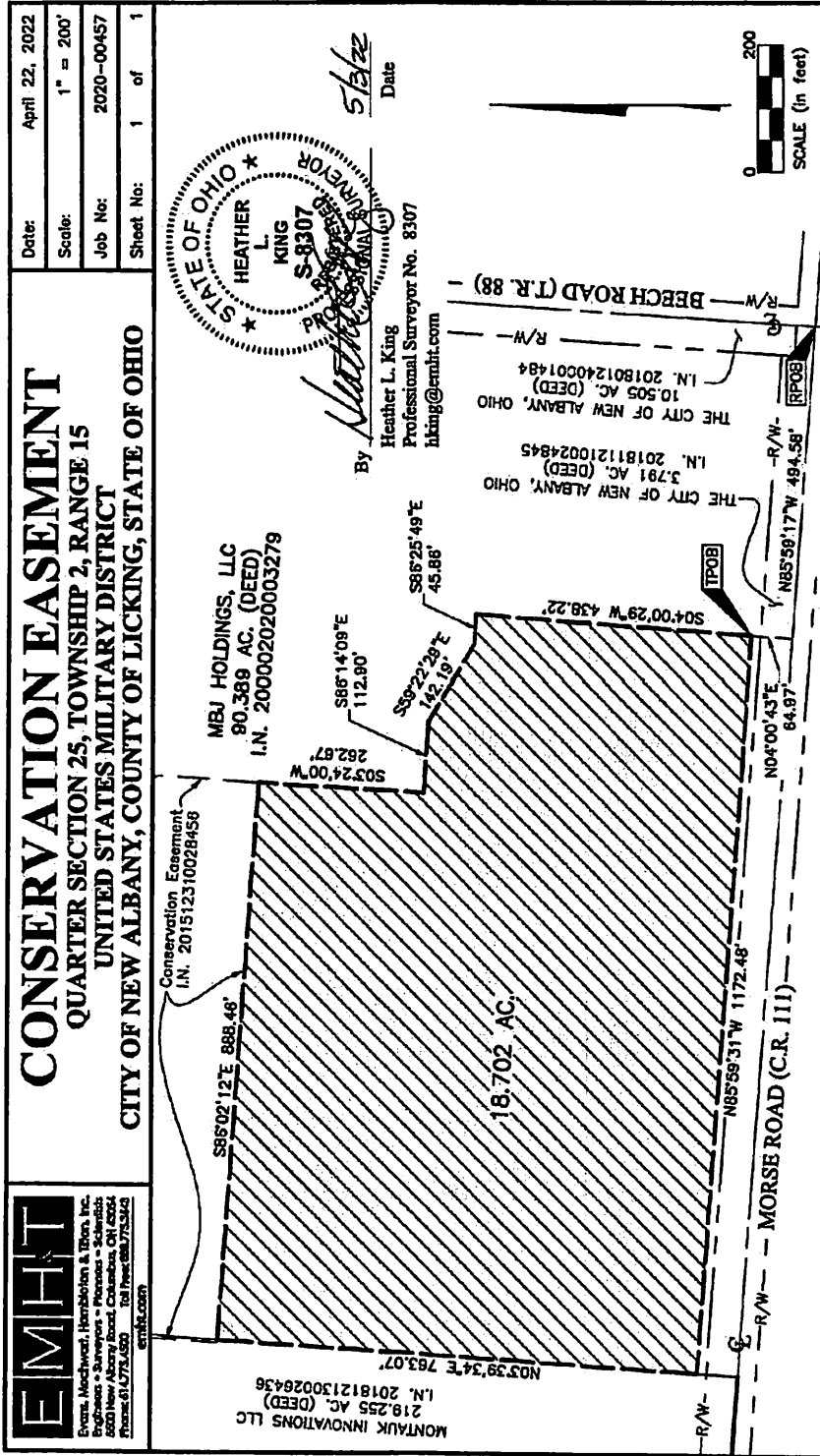
\_\_\_\_\_  
Notary Public

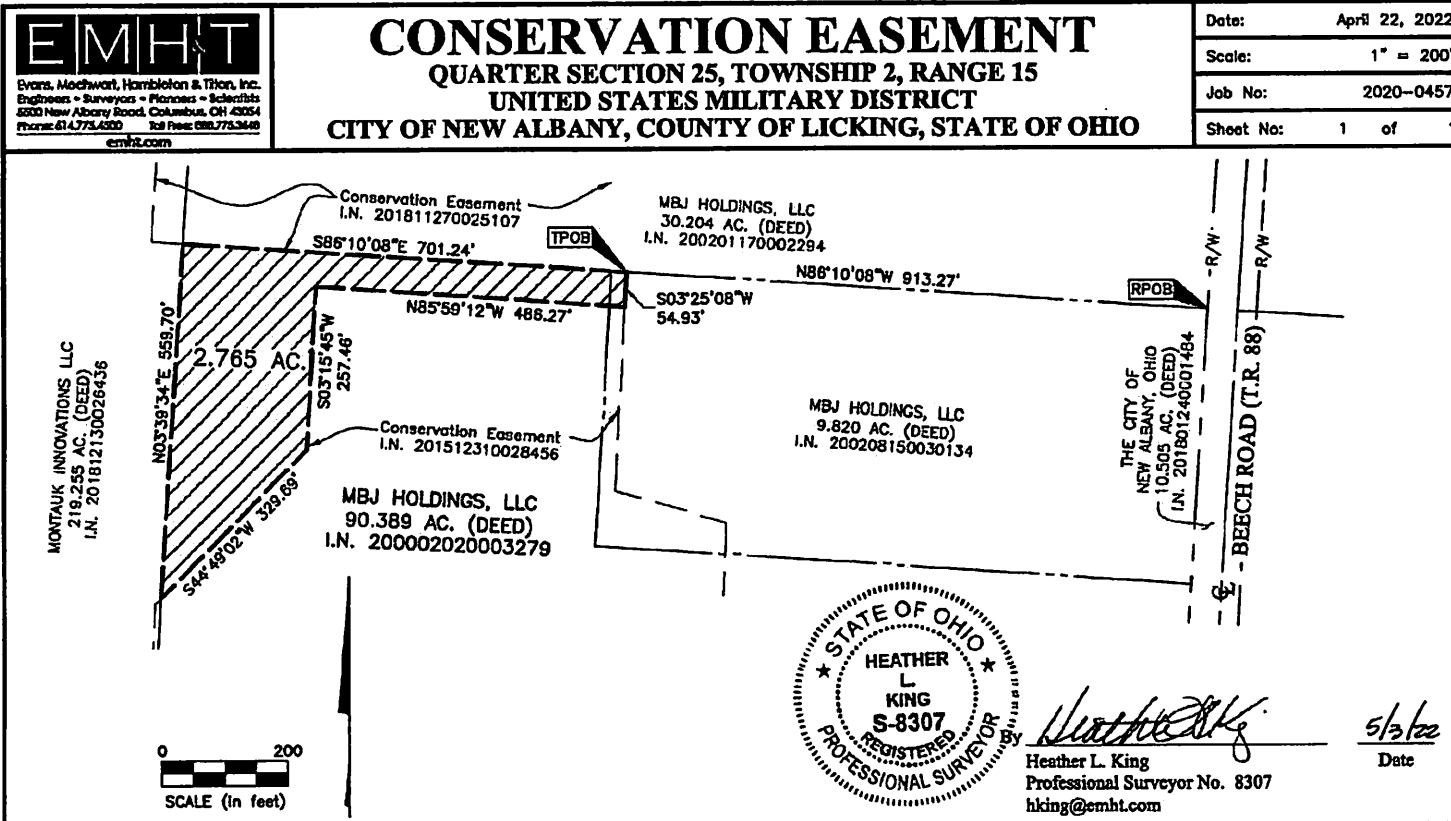
**Approved as to Form:**

\_\_\_\_\_  
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**





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

**See attached.**

**CONSERVATION EASEMENT  
18.702 ACRES**

Situated in the State of Ohio, County of Licking, City of New Albany, located in Quarter Section 25, Township 2, Range 15, United States Military District, being, on, over and across that 90.389 acre tract conveyed to MJB Holdings LLC by deed of record in Instrument Number 200002020003279, (all references refer to the records of the Recorder's Office, Licking County, Ohio) being described as follows:

Beginning, for reference, at the centerline intersection of Beech Road (Township Road 88) with Morse Road (County Road 111), being the southeasterly corner of that 3.791 acre tract conveyed to The City of New Albany, Ohio by deed of record in Instrument Number 201811210024845;

Thence North 85° 59' 17" West, with the centerline of said Morse Road, a distance of 494.58 feet to a point;

Thence North 04° 00' 43" East, across the right-of-way of said Morse Road and partially across said 90.389 acre tract, a distance of 64.97 feet to the TRUE POINT OF BEGINNING;

Thence North 85° 59' 31" West, across said 90.389 acre tract, a distance of 1172.48 feet to the line common to said 90.389 acre tract and that 219.255 acre tract conveyed to Montauk Innovations LLC by deed of record in Instrument Number 201812130026436;

Thence North 03° 39' 34" East, with said common line, a distance of 763.07 feet to a point in the southerly line of an existing conservation easement of record in Instrument Number 201512310028456;

Thence across said 90.389 acre tract, the following courses and distances:

South 86° 02' 12" East, with the southerly line of said existing conservation easement, a distance of 888.46 feet to a point;

South 03° 24' 00" West, a distance of 262.67 feet to a point;

South 86° 14' 09" East, a distance of 112.90 feet to a point;

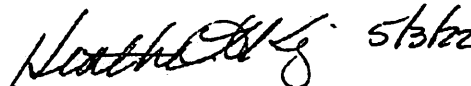
South 59° 22' 29" East, a distance of 142.19 feet to a point;

South 86° 25' 49" East, a distance of 45.86 feet to a point; and

South 04° 00' 29" West, a distance of 438.22 feet to the TRUE POINT OF BEGINNING, containing 18.702 acres, more or less.



EVANS, MECHWART, HAMBLETON & TILTON, INC.

  
Heather L. King  
Professional Surveyor No. 8307



**CONSERVATION EASEMENT  
2.765 ACRES**

Situated in the State of Ohio, County of Licking, City of New Albany, located in Quarter Section 25, Township 2, Range 15, United States Military District, being, on, over and across that 9.820 acre tract conveyed to MBJ Holdings LLC by deed of record in Instrument Number 200208150030134 and that 90.389 acre tract conveyed to MBJ Holdings LLC by deed of record in Instrument Number 200002020003279, (all references refer to the records of the Recorder's Office, Licking County, Ohio) being described as follows:

Beginning, for reference, in the westerly right-of-way line of Beech Road (Township Road 88), in the westerly line of that 10.505 acre tract conveyed to The City of New Albany, Ohio by deed of record in Instrument Number 201801240001484, at the common corner of the remainder of said 9.820 acre tract and the remainder of that 30.204 acre tract conveyed to MBJ Holdings LLC by deed of record in Instrument Number 200201170002294;

Thence North 86° 10' 08" West, with the line common to said 9.820 and 30.204 acre tracts, with the southerly line of an existing conservation easement of record in Instrument Number 201811270025107, a distance of 913.27 feet to the TRUE POINT OF BEGINNING;

Thence South 03° 25' 08" West, across said 9.820 acre tract, a distance of 54.93 feet to a point at the northeast corner of an existing conservation easement of record in Instrument Number 201512310028456;

Thence across said 9.820 and 90.389 acre tracts, with the perimeter of said existing conservation easement (I.N. 201512310028456), the following courses and distances:

North 85° 59' 12" West, a distance of 486.27 feet to a point;

South 03° 15' 45" West, a distance of 257.46 feet to a point; and

South 44° 49' 02" West, a distance of 329.69 feet to the line common to said 90.389 acre tract and that 219.255 acre tract conveyed to Montauk Innovations LLC by deed of record in Instrument Number 201812130026436;

Thence North 03° 39' 34" East, with said common line, a distance of 559.70 feet to a point at the westerly common corner of said 90.389 acre and 30.204 acre tracts, being in the southerly line of said existing conservation easement (I.N. 201811270025107);

Thence South 86° 10' 08" East, with the northerly line of said 90.389 and 9.850 acre tracts, the southerly line of said 30.204 acre tract and said conservation easement (I.N. 201811270025107), a distance of 701.24 feet to the TRUE POINT OF BEGINNING, containing 2.765 acres, more or less.



EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Heather L. King* 5/13/22  
Heather L. King  
Professional Surveyor No. 8307



**ORDINANCE O-09-2024**

**APPROPRIATION AMENDMENT ORDINANCE**

**AN ORDINANCE TO AMEND APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES DURING THE FISCAL YEAR ENDING DECEMBER 31, 2024, FOR THE ECONOMIC DEVELOPMENT – NEW ALBANY COMMUNITY AUTHORITY FUND IN THE AMOUNT OF THREE MILLION SIXTY THOUSAND DOLLARS \$3,060,000.00, AND DECLARING AN EMERGENCY TO WAIVE THE SECOND READING**

**WHEREAS**, in December 2023, the 2024 Annual Budget Program and the related permanent appropriations were adopted by council; and

**WHEREAS**, since the adoption of the 2024 Annual Budget Program, funding and expenditures planned for the Economic Development – New Albany Community Authority (NACA) special revenue fund have been updated to include a distribution to the New Albany Community Improvement Corporation to relocate Innovate New Albany, the city’s incubator for technology startups, entrepreneurs and small businesses; and

**WHEREAS**, council desires to distribute funds received from the New Albany Community Authority Economic Development fund to the New Albany Community Improvement Corporation to provide funding for lease improvements and related purchase of furniture, fixtures and equipment and other startup operating costs related to relocating Innovate New Albany; and

**WHEREAS**, it is necessary to adjust the 2024 appropriations to ensure compliance with budgetary requirements and provide for the distribution to the New Albany Community Improvement Corporation; and

**WHEREAS**, this ordinance constitutes an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the city, and for the further reasons that this ordinance is required to be immediately effective to ensure the availability of funds and to meet the urgent time requirements related to relocating Innovate New Albany.

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

**Section 1.** Council hereby authorizes a supplemental appropriation of the unappropriated balance of the Economic Development – NACA fund to increase appropriations by \$3,060,000 within the Community Development department, operating and contract services category.

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

**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 by reason of the emergency set forth in the preamble hereto, this ordinance shall be in full force and effect immediately upon passage.

CERTIFIED AS ADOPTED this 05 day of MARCH, 2024.

**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:	02/23/2024
Revised:	03/01/2024
Introduced:	03/05/2024
Revised:	
Adopted:	03/05/2024
Effective:	03/05/2024



**RESOLUTION R-05-2024**

**A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO REQUEST AND ACCEPT THE SUM OF NINE MILLION DOLLARS (\$9,000,000.00) FROM THE NEW ALBANY COMMUNITY AUTHORITY ECONOMIC DEVELOPMENT FUND FOR ECONOMIC DEVELOPMENT PROJECTS AND INCENTIVES**

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

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

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

**WHEREAS**, the Council of the City of New Albany has determined that economic incentives have been earned by various companies located in the New Albany International Business Park; and

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

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

**Section 1:** The City Manager is authorized and hereby directed to request that the New Albany Community Authority (“the Authority”) disburse the sum of nine million dollars (\$9,000,000.00) from the Authority’s Economic Development Fund to the City for payment of expenditures listed in the recitals above and as listed in Exhibit A.

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

**Section 3:** The City Manager and Director of Finance are further authorized to enter into any agreements as may be necessary and appropriate for facilitating the request and acceptance.

**Section 4.** It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this ordinance were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

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


CERTIFIED AS ADOPTED this 05 day of MARCH, 2024.

Attest:

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

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

Approved as to form:

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

**Legislation dates:**

Prepared:	02/23/2024
Introduced:	03/05/2024
Revised:	
Adopted:	03/05/2024
Effective:	03/05/2024

## Exhibit A – R-05-2024

List of Projects/Services to be funded through Community Authority Resolution and authority to allocate remaining resources to other approved projects.

1. To pay costs of incentives for previously approved projects in an amount not to exceed \$2,500,000, in support of economic development;
2. To pay CIC operating costs in an amount not to exceed \$185,000, in support of economic development;
3. To pay for local economic development organizations', Rev1 Ventures and Mid-Ohio Development Exchange (MODE), partnership funding and membership, respectively, in an amount not to exceed \$45,000, in support of economic development;
4. To pay costs of professional services including, but not limited to, engineering, plan design and legal counsel, for economic development projects, in an amount not to exceed \$235,000;
5. To pay for shuttle service in 2024 for business park employees between the COTA Park and Ride and their places of employment, in an amount not to exceed \$500,000, in support of economic development;
6. To pay for the business park annual streetlight/signal maintenance and painting program in an amount not to exceed \$35,000, in support of economic development;
7. To pay for capital costs including the design, construction, furniture, fixtures, equipment and relocation for Innovate New Albany in an amount not to exceed \$3,000,000, in support of economic development;
8. To pay for the reimbursement of locally funded expenditures related to the Dragonfly project and related infrastructure improvements in an amount not to exceed \$2,000,000, in support of economic development;
9. To pay for the Ganton Parkway extension design services in an amount not to exceed \$500,000, in support of economic development.



**RESOLUTION R-06-2024**

**A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO ANY AND ALL CONTRACTS FOR THE PURCHASE AND UPFITTING OF A ONE-TON DUMP TRUCK**

**WHEREAS**, Council desires to make capital equipment investments as necessary to provide delivery of essential municipal services such as snow and ice control; and

**WHEREAS**, the City of New Albany needs to replace a one-ton dump truck that is nearing the end of its useful life; and

**WHEREAS**, the public service department will use the truck to support the city's year-round maintenance operations, including snow and ice removal; and

**WHEREAS**, the City of New Albany will purchase the subject chassis through pricing provided in the City of Columbus contact #PO235894; and

**WHEREAS**, the City of New Albany will purchase the subject truck upfitting through the Sourcewell contract #080818-HPI; and

**WHEREAS**, the total cost of the subject one-ton dump truck is \$171,404; and

**WHEREAS**, funding for this purchase was approved in the 2024 Capital Equipment budget and provided for in the Annual Appropriations Ordinance.

**NOW, THEREFORE**, be it resolved by the Council of the City of New Albany, Counties of Franklin and Licking, State of Ohio, that;

**Section 1.** The city manager is hereby authorized and directed to enter into any and all contracts for the purchase and upfitting of a one-ton dump truck.


**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 council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

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

CERTIFIED AS ADOPTED this 05 day of March, 2024.

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:	02/24/2024
Introduced:	03/05/2024
Revised:	
Adopted:	03/05/2024
Effective:	03/05/2024





**RESOLUTION R-07-2024**

**A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ADVERTISE, BID, AWARD AND EXECUTE CONTRACTS RELATED TO THE RECONSTRUCTION OF SOUTH HARLEM ROAD**

**WHEREAS**, Council desires to make infrastructure improvements that maintain the city's roadway network to a high standard; and

**WHEREAS**, the existing roadway does not meet current design standards regarding stormwater drainage and roadway geometry; and

**WHEREAS**, these conditions present safety concerns, result in the premature degradation of pavement and lead to increased maintenance frequency and cost to the city; and

**WHEREAS**, the proposed roadway improvement will reconstruct a majority of the roadway between James River Road and US 62, introduce an appropriately sized drainage system and implement changes to the roadway geometry for enhanced vehicular and pedestrian safety; and

**WHEREAS**, the engineer's construction cost estimate for the project is \$2.3M; and

**WHEREAS**, the engineer's estimate of supporting soft costs during construction is \$500,000; and

**WHEREAS**, funding for this project was approved in the 2024 Capital Improvement budget and provided for in the Annual Appropriations Ordinance.

**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 and directed to advertise, bid, award and execute all contractual documents necessary to support the reconstruction of South Harlem Road.

**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 121.22 of the Ohio Revised Code.

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

CERTIFIED AS ADOPTED this 05 day of March, 2024.

Attest:

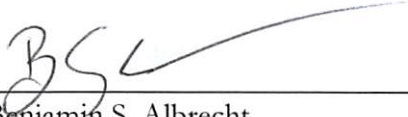


Sloan T. Spalding  
Mayor



Jennifer H. Mason  
Clerk of Council

Approved as to form:



Benjamin S. Albrecht  
Law Director

**Legislation dates:**

Prepared: 02/23/2024

Introduced: 03/05/2024

Revised:

Adopted: 03/05/2024

Effective: 03/05/2024



**RESOLUTION R-08-2024**

**A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ADVERTISE, BID, AWARD AND EXECUTE CONTRACTS RELATED TO THE CONSTRUCTION OF A SOUTHBOUND DROP RIGHT TURN LANE ALONG SR605 BETWEEN CHATHAM GREEN DRIVE AND KARDULES FIELDS WAY**

**WHEREAS**, Council desires to make infrastructure improvements that implement necessary safety enhancements to the city's roadway network; and

**WHEREAS**, the parking area on the school campus across from Chatham Green Drive is a designated student pick-up and drop-off location; and

**WHEREAS**, due to the significant volume of traffic resulting from this activity, vehicles are consistently filling the designated lane interior to the school campus and backing up onto SR605 each school day; and

**WHEREAS**, the backup condition obstructs the through movement of traffic traveling southbound on SR605 and creates a variety of vehicular and pedestrian safety concerns; and

**WHEREAS**, the proposed southbound drop right turn lane will provide additional vehicular stacking space within the public right of way to safely accommodate the backup onto SR605 and reestablish an unobstructed southbound through movement along SR605; and

**WHEREAS**, the engineer's construction cost estimate for the project is \$1.3M; and

**WHEREAS**, the engineer's estimate of supporting soft costs during construction is \$300,000; and

**WHEREAS**, funding for this project was approved in the 2024 Capital Improvement budget and provided for in the Annual Appropriations Ordinance.

**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 and directed to advertise, bid, award and execute all contractual documents necessary to support the construction of a southbound drop right turn lane and related improvements generally located along SR605 between Chatham Green Drive and Kardules Fields Way.

**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 121.22 of the Ohio Revised Code.

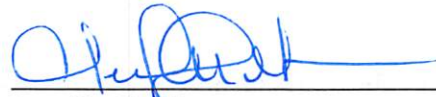
**Section 3.** Pursuant to Article 6.07(A) of the New Albany Charter, this resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this 05 day of March, 2024.

**Attest:**

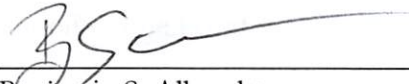


Sloan T. Spalding  
Mayor



Jennifer H. Mason  
Clerk of Council

**Approved as to form:**



Benjamin S. Albrecht  
Law Director

**Legislation dates:**

Prepared:	02/23/2024
Introduced:	03/05/2024
Revised:	
Adopted:	03/05/2024
Effective:	03/05/2024



**RESOLUTION R-09-2024**

**A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MIDSTATES RECREATION FOR THE PURCHASE AND INSTALLATION OF SUN SAILS FOR TAYLOR FARM PARK PLAYGROUND 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 open and the second phase under construction; and

**WHEREAS**, the park contains a playground area with equipment for children from ages 2 to 12 and is located in an open area of the park which receives direct sun in the summer months; and

**WHEREAS**, sun sails are proposed over a portion of the playground to provide shade and a comfortable play environment; 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 \$213,562.50; 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 funding for the installation of sun sails at the playground was approved in the 2024 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 and installation of sun sails at Taylor Farm Park Playground as set forth in the Sourcewell Cooperative Purchasing Program construction contract no. 010521-LTS-8 at a price not to exceed \$213,562.50.

**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.

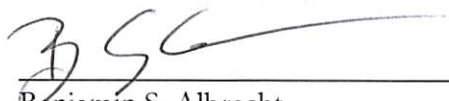
CERTIFIED AS ADOPTED this 08 day of March, 2024.

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:	02/23/2024
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