



**ORDINANCE O-94-2023**

**AN ORDINANCE TO ACCEPT WATER LINE, SANITARY SEWER, STREET AND STORM SEWER IMPROVEMENTS AND APPURTENANCES THERETO FOR NOTTINGHAM TRACE, PHASE 4, AS REQUESTED BY PULTE HOMES**

**WHEREAS**, in accordance with New Albany Ordinance 77-91; and pursuant to written certification by the city engineer that the improvements and appurtenances thereto for Nottingham Trace, Phase 4, have been completed to the standards set by Codified Ordinance 1187; and

**WHEREAS**, a 2-year maintenance bond in the amount of \$69,931, and engineering inspection fee deposit in the amount of \$3,794, and a 5-year settlement bond of \$19,375 will be provided by the applicant prior to the second reading.

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

**Section 1:** The improvements and appurtenances thereto for are hereby accepted.

**Section 2.** It is hereby found and determined that all formal actions of 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 VI, Section 6.07(B) of the City of New Albany Charter, this ordinance shall take effect on and after the earliest period allowed by law.

**CERTIFIED AS ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**Attest:**

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

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

Approved as to form:

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Benjamin S. Albrecht  
Law Director

**Legislation dates:**

Prepared: 09/08/2023

Introduced: 09/19/2023

Revised:

Adopted:

Effective:

PROPOSED



**ORDINANCE O-95-2023**

**AN ORDINANCE TO ACCEPT A 5.966 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 Franklin County Auditor's Tax Parcel Numbers 220-000178 and 220-002045 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 5.966 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 \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**Attest:**

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Sloan T. Spalding  
Mayor

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Jennifer H. Mason  
Clerk of Council

**Approved as to form:**

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Benjamin S. Albrecht  
Law Director

**Legislation dates:**

Prepared: 10/05/2023

Introduced: 10/17/2023

Revised:

Adopted:

Effective:

PROPOSED

**Exhibit A - O-95-2023**

**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 **MBJ HOLDINGS, LLC**, a Delaware limited liability company having its address at 8000 Walton Parkway, Suite 120, New Albany, Ohio 43054 (“Grantor” and “Easement Beneficiary”), 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 220-000178 and 220-002045 and being more particularly described in Instrument Number 202303170025796, 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 contemplated to satisfy the requirements of permits (whether one or more, the “Permits”) to be issued in the future to Grantor by the Ohio Environmental Protection Agency (“Ohio EPA”) and by the U.S. Army Corps of Engineers (“USACE”) relating to the removal, relocation or other impacts on other waterways or wetlands in the same watershed as the Conservation Easement Area.

**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, except as stated in Section 6(a), 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, if required under or in connection with the Permits, the Ohio EPA or the USACE, as applicable. For the avoidance of doubt, the Ecological Enhancement Activities as defined in Section 6 below 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 Permits:

- 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 and easements relating thereto 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 compliance by Grantee with the 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. **Rights of Easement Beneficiary:** MBJ Holdings, LLC, as Easement Beneficiary of this Conservation Easement, reserves the following rights personally upon property conveyance:

- a. **Ecological Enhancement:** Easement Beneficiary, or its contractors, shall be permitted to enter upon the Conservation Easement Area for the purpose of and to the extent necessary to complete any restoration and enhancement activities as approved by the Ohio EPA or the USACE, as applicable, or to complete any approved mitigation plans as approved by the Ohio EPA or the USACE, as applicable, in connection with the Permits, including but not limited to the removal of invasive or noxious species, placement of a footbridge over certain approved areas within the Conservation Easement Area, widening or deepening the stream or water way, installation of rip rap, or planting of trees or other vegetation within the Conservation Easement Area. Easement Beneficiary shall also be permitted to enter upon the Conservation Easement Area as may be necessary in the future for maintenance or for monitoring activities. The above activities are collectively referred to in this Easement as “Ecological Enhancement Activities”.
- b. **Right to Entry and Access:** Easement Beneficiary shall have right to enter upon the Property for the purposes of reasonable access (both vehicular and pedestrian) to and from the public right-of-way solely for the purpose of carrying out the activities described in Section 6.a. above. Entry shall be limited to the main entrance and access shall be limited to the most direct route from the public right-of-way to the Conservation Easement Area (the “Access Route”). Such entry and access shall occur after prior reasonable notice is provided to Grantor and compliance by Grantee with the security or safety requirements of Grantor, or its tenants, contractors, employees or licensees. The Easement Beneficiary may not enter upon the Property, other than by or through the Conservation Easement Area or by or through the



Access Route, and the Easement Beneficiary may not unreasonably interfere with Grantor's (including Grantor's tenants, contractors, employees, agents, and licensees) use and quiet enjoyment of the Property. The general public is not granted access to the Property, Conservation Easement Area or Access Route under this Agreement.

- c. In no event shall Easement Beneficiary, or any contractor, employee or agent of Easement Beneficiary, have the right to enter onto the Property prior to delivery to Grantor of a Certificate of Insurance (ISO Form 20 26 or equivalent) evidencing and confirming that Easement Beneficiary has procured and has in place a Commercial General Liability Insurance Policy with limits of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate. Such insurance policy shall be issued by an insurance company licensed to do business in the State of Ohio having an A.M. Best's rating of "AVI" or above. Grantor shall be included as an Additional Insured under such Commercial General Liability Coverage. Such certificate shall provide that the insurance may not be cancelled or amended except upon thirty (30) days prior written notice to Grantor. The minimum limits of the insurance coverage to be maintained by Easement Beneficiary hereunder shall not limit Easement Beneficiary's liability under Agreement.
  
- d. Easement Beneficiary shall indemnify and defend Grantor against any and all claims for (i) personal injury or property damage arising out of or related to Easement Beneficiary's or any of its employees', agents', contractors' or consultants' presence on the Property, including any Ecological Enhancement Activities, except for those caused by the intentional misconduct or gross negligence of Grantor or any claim resulting from Easement Beneficiary's mere discovery of any condition on the Property that existed prior to Easement Beneficiary's initial entry onto the Property for purposes of this Section 6 (a "Pre-Existing Condition") and (ii) any claim brought by Grantee against Grantor arising out of or related to the Ecological Enhancement Activities of Easement Beneficiary under this Agreement, except for those caused by the intentional misconduct or gross negligence of Grantor or any Pre-Existing Condition. Easement Beneficiary shall repair damage caused by Easement Beneficiary or those acting through or on behalf of Easement Beneficiary to the Property in connection with such presence on the Property, and shall restore any damaged areas of the Property to a substantially similar condition as existed prior to Easement Beneficiary's entry thereupon within a reasonable amount of time after its entry.

- e. In no event shall Easement Beneficiary permit any mechanic's or materialmen's liens to be filed against the Property arising out of any Ecological Enhancement Activities.

7. **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 constructing (and, as necessary in the future, maintaining and replacing) stormwater drainage piping, culverts, features and/or outfalls (collectively, "**Drainage Features**"). 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 construction or maintenance of the Drainage Features, as follows:
  - A. Disturbed areas shall be seeded with the permanent, native seed mix specified for stream buffers in the plans approved by the Ohio EPA or the USACE, as applicable, in connection with the Permits;
  - 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 in the plans approved by the Ohio EPA or the USACE, as applicable, in connection with the Permits.

8. **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.

9. **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.

10. **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 8.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 reasonably necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee or Easement Beneficiary, in which case Grantee or Easement Beneficiary, as applicable, shall be responsible therefor.

11. **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 14 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.

12. **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.

13. **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.

14. **Assignment:** This Agreement is transferable by Grantee, 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 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 Grantor or Grantor's successor(s) as the owner(s) of the Property, as applicable, of a transfer or an assignment at least twenty (20) days prior to the date of such transfer or assignment and Grantee agrees 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. For the avoidance of doubt, all rights, benefits, and obligations conferred onto the Easement Beneficiary under this Agreement shall remain with the Easement Beneficiary unless otherwise expressly assigned by the Easement Beneficiary in writing. Any such assignment by Easement Beneficiary will require the consent of the Ohio EPA and the USACE.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **"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.

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

23. **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 and Easement Beneficiary has caused the execution of this Agreement to be effective as of the Effective Date.

**GRANTOR AND EASEMENT BENEFICIARY:**

**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 \_\_\_\_\_, 2023, 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 \_\_\_\_\_, 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

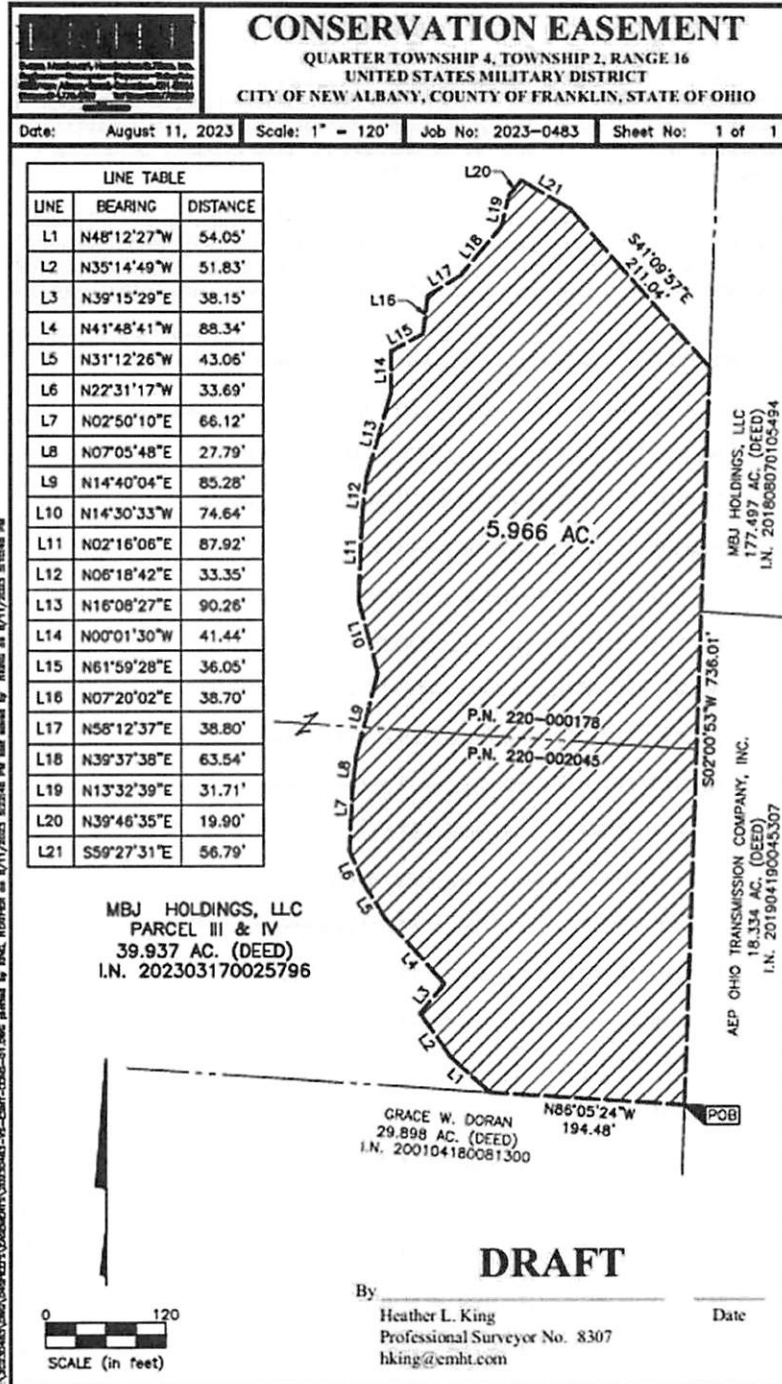


Exhibit B

Legal Description of Conservation Easement Area

**CONSERVATION EASEMENT  
5.966 ACRES**

Situated in the State of Ohio, County of Franklin, City of New Albany, located in Quarter Township 4, Township 2, Range 16, United States Military District, being on, over and across that 39.937 acre tract conveyed as Parcel III and IV to MBJ Holdings, LLC by deed of record in Instrument Number 202303170025796 (all references refer to the records of the Recorder's Office, Franklin County, Ohio) and being described as follows:

**BEGINNING** at the southeasterly corner of said 39.937 acre tract, at the northeasterly corner of that 29.898 acre tract conveyed to Grace W. Doran by deed of record in Instrument Number 200104180081300 and in the westerly line of that 18.334 acre tract conveyed to AEP Ohio Transmission Company Inc., by deed of record in Instrument Number 201904190045307;

Thence North 86° 05' 24" West, with the southerly line of said 39.937 acre tract and with the northerly line of said 29.898 acre tract, a distance of 194.48 feet to a point;

Thence across said 39.937 acre tract, the following courses and distances:

- North 48° 12' 27" West, a distance of 54.05 feet to a point;
- North 35° 14' 49" West, a distance of 51.83 feet to a point;
- North 39° 15' 29" East, a distance of 38.15 feet to a point;
- North 41° 48' 41" West, a distance of 88.34 feet to a point;
- North 31° 12' 26" West, a distance of 43.06 feet to a point;
- North 22° 31' 17" West, a distance of 33.69 feet to a point;
- North 02° 50' 10" East, a distance of 66.12 feet to a point;
- North 07° 05' 48" East, a distance of 27.79 feet to a point;
- North 14° 40' 04" East, a distance of 85.28 feet to a point;
- North 14° 30' 33" West, a distance of 74.64 feet to a point;
- North 02° 16' 06" East, a distance of 87.92 feet to a point;
- North 06° 18' 42" East, a distance of 33.35 feet to a point;
- North 16° 08' 27" East, a distance of 90.26 feet to a point;
- North 00° 01' 30" West, a distance of 41.44 feet to a point;
- North 61° 59' 28" East, a distance of 36.05 feet to a point;
- North 07° 20' 02" East, a distance of 38.70 feet to a point;
- North 58° 12' 37" East, a distance of 38.80 feet to a point;
- North 39° 37' 38" East, a distance of 63.54 feet to a point;
- North 13° 32' 39" East, a distance of 31.71 feet to a point;
- North 39° 46' 35" East, a distance of 19.90 feet to a point;
- South 59° 27' 31" East, a distance of 56.79 feet to a point; and

**CONSERVATION EASEMENT  
5.966 ACRES**

**-2-**

**South 41° 09' 57" East, a distance of 211.04 feet to a point in the easterly line of said 39.937 acre tract, the westerly line of that 177.497 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201808070105494;**

**Thence South 02° 00' 53" West, with the easterly line of said 39.937 acre tract, the westerly line of said 177.497 and 18.334 acre tracts, a distance of 736.01 feet to the POINT OF BEGINNING, containing 5.966 acres, more or less.**

**EVANS, MECHWART, HAMBLETON & TILTON, INC.**

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



**ORDINANCE O-96-2023**

**AN ORDINANCE TO ACCEPT A 16.718 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 095-111570-01.000, as detailed in the Conservation Easement Agreement; and,

**WHEREAS**, MBJ HOLDINGS, LLC desires 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 16.718 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 \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**Attest:**

---

Sloan T. Spalding  
Mayor

---

Jennifer H. Mason  
Clerk of Council

**Approved as to form:**

---

Benjamin S. Albrecht  
Law Director

**Legislation dates:**

Prepared: 10/05/2023

Introduced: 10/17/2023

Revised:

Adopted:

Effective:

PROPOSED

**Exhibit A - O-96-2023**

**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 **MBJ HOLDINGS, LLC**, a Delaware limited liability company having its address at 8000 Walton Parkway, Suite 120, New Albany, Ohio 43054 (“Grantor” and “Easement Beneficiary”), 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 Tax Parcel Number 095-111570-01.000 and being more particularly described in Instrument Number 202308250015468, 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 contemplated to satisfy the requirements of permits (whether one or more, the “Permits”) to be issued in the future to Grantor by the Ohio Environmental Protection Agency (“Ohio EPA”) and by the U.S. Army Corps of Engineers (“USACE”) relating to the removal, relocation or other impacts on other waterways or wetlands in the same watershed as the Conservation Easement Area.

**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, except as stated in Section 6(a), 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, if required under or in connection with the Permits, the Ohio EPA or the USACE, as applicable. For the avoidance of doubt, the Ecological Enhancement Activities as defined in Section 6 below 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 Permits:

- 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 and easements relating thereto 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 compliance by Grantee with the 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. **Rights of Easement Beneficiary:** MBJ Holdings, LLC, as Easement Beneficiary of this Conservation Easement, reserves the following rights personally upon property conveyance:

- a. **Ecological Enhancement:** Easement Beneficiary, or its contractors, shall be permitted to enter upon the Conservation Easement Area for the purpose of and to the extent necessary to complete any restoration and enhancement activities as approved by the Ohio EPA or the USACE, as applicable, or to complete any approved mitigation plans as approved by the Ohio EPA or the USACE, as applicable, in connection with the Permits, including but not limited to the removal of invasive or noxious species, placement of a footbridge over certain approved areas within the Conservation Easement Area, widening or deepening the stream or water way, installation of rip rap, or planting of trees or other vegetation within the Conservation Easement Area. Easement Beneficiary shall also be permitted to enter upon the Conservation Easement Area as may be necessary in the future for maintenance or for monitoring activities. The above activities are collectively referred to in this Easement as “Ecological Enhancement Activities”.
- b. **Right to Entry and Access:** Easement Beneficiary shall have right to enter upon the Property for the purposes of reasonable access (both vehicular and pedestrian) to and from the public right-of-way solely for the purpose of carrying out the activities described in Section 6.a. above. Entry shall be limited to the main entrance and access shall be limited to the most direct route from the public right-of-way to the Conservation Easement Area (the “Access Route”). Such entry and access shall occur after prior reasonable notice is provided to Grantor and compliance by Grantee with the security or safety requirements of Grantor, or its tenants, contractors, employees or licensees. The Easement Beneficiary may not enter upon the Property, other than by or through the Conservation Easement Area or by or through the

Access Route, and the Easement Beneficiary may not unreasonably interfere with Grantor's (including Grantor's tenants, contractors, employees, agents, and licensees) use and quiet enjoyment of the Property. The general public is not granted access to the Property, Conservation Easement Area or Access Route under this Agreement.

- c. In no event shall Easement Beneficiary, or any contractor, employee or agent of Easement Beneficiary, have the right to enter onto the Property prior to delivery to Grantor of a Certificate of Insurance (ISO Form 20 26 or equivalent) evidencing and confirming that Easement Beneficiary has procured and has in place a Commercial General Liability Insurance Policy with limits of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate. Such insurance policy shall be issued by an insurance company licensed to do business in the State of Ohio having an A.M. Best's rating of "AVI" or above. Grantor shall be included as an Additional Insured under such Commercial General Liability Coverage. Such certificate shall provide that the insurance may not be cancelled or amended except upon thirty (30) days prior written notice to Grantor. The minimum limits of the insurance coverage to be maintained by Easement Beneficiary hereunder shall not limit Easement Beneficiary's liability under Agreement.
  
- d. Easement Beneficiary shall indemnify and defend Grantor against any and all claims for (i) personal injury or property damage arising out of or related to Easement Beneficiary's or any of its employees', agents', contractors' or consultants' presence on the Property, including any Ecological Enhancement Activities, except for those caused by the intentional misconduct or gross negligence of Grantor or any claim resulting from Easement Beneficiary's mere discovery of any condition on the Property that existed prior to Easement Beneficiary's initial entry onto the Property for purposes of this Section 6 (a "Pre-Existing Condition") and (ii) any claim brought by Grantee against Grantor arising out of or related to the Ecological Enhancement Activities of Easement Beneficiary under this Agreement, except for those caused by the intentional misconduct or gross negligence of Grantor or any Pre-Existing Condition. Easement Beneficiary shall repair damage caused by Easement Beneficiary or those acting through or on behalf of Easement Beneficiary to the Property in connection with such presence on the Property, and shall restore any damaged areas of the Property to a substantially similar condition as existed prior to Easement Beneficiary's entry thereupon within a reasonable amount of time after its entry.

- e. In no event shall Easement Beneficiary permit any mechanic's or materialmen's liens to be filed against the Property arising out of any Ecological Enhancement Activities.

7. **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 constructing (and, as necessary in the future, maintaining and replacing) stormwater drainage piping, culverts, features and/or outfalls (collectively, "**Drainage Features**"). 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 construction or maintenance of the Drainage Features, as follows:
  - A. Disturbed areas shall be seeded with the permanent, native seed mix specified for stream buffers in the plans approved by the Ohio EPA or the USACE, as applicable, in connection with the Permits;
  - 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 in the plans approved by the Ohio EPA or the USACE, as applicable, in connection with the Permits.

8. **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.

9. **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.

10. **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 8.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 reasonably necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee or Easement Beneficiary, in which case Grantee or Easement Beneficiary, as applicable, shall be responsible therefor.

11. **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 14 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.

12. **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.

13. **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.

14. **Assignment:** This Agreement is transferable by Grantee, 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 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 Grantor or Grantor's successor(s) as the owner(s) of the Property, as applicable, of a transfer or an assignment at least twenty (20) days prior to the date of such transfer or assignment and Grantee agrees 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. For the avoidance of doubt, all rights, benefits, and obligations conferred onto the Easement Beneficiary under this Agreement shall remain with the Easement Beneficiary unless otherwise expressly assigned by the Easement Beneficiary in writing. Any such assignment by Easement Beneficiary will require the consent of the Ohio EPA and the USACE.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **"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.

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

23. **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 and Easement Beneficiary has caused the execution of this Agreement to be effective as of the Effective Date.

**GRANTOR AND EASEMENT BENEFICIARY:**

**MBJ HOLDINGS, LLC,**  
a Delaware limited liability company

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

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

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

STATE OF OHIO  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, 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 \_\_\_\_\_

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

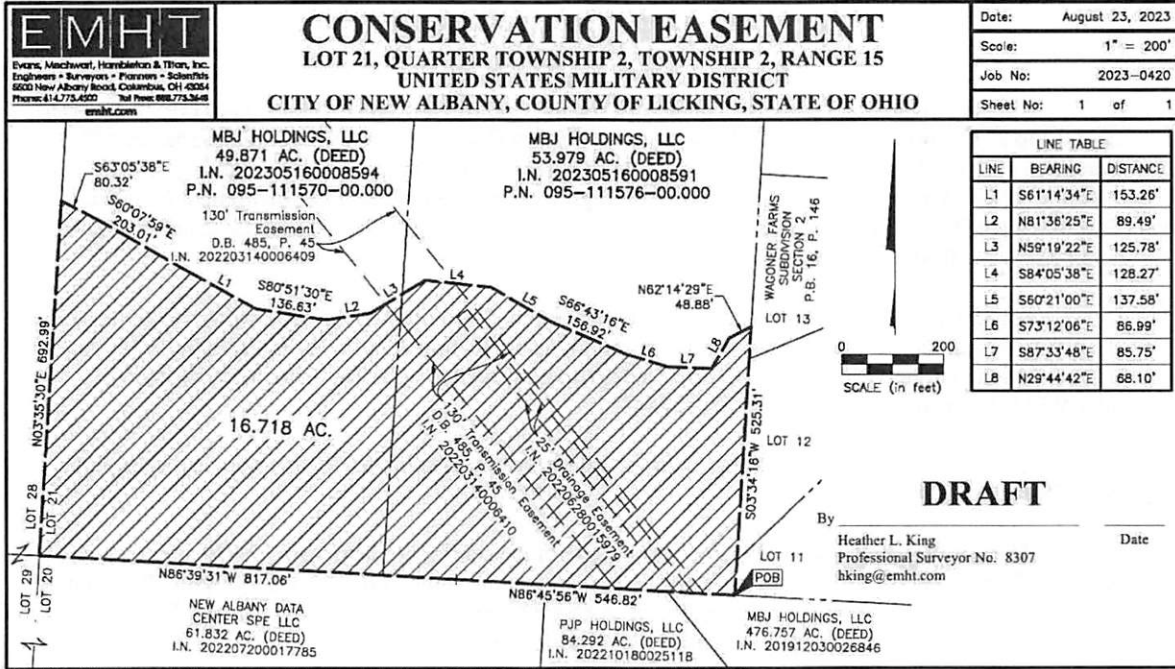


Exhibit B

Legal Description of Conservation Easement Area

**CONSERVATION EASEMENT**

**16.718 ACRES**

Situated in the State of Ohio, County of Licking, City of New Albany, located in Lot 21, Quarter Township 2, Township 2, Range 15, United States Military District, being on, over and across that 53.979 acre tract conveyed to MJB Holdings, LLC by deed of record in Instrument Number 202305160008591 and that 49.871 acre tract conveyed to MJB Holdings, LLC by deed of record in Instrument Number 202305160008594 (all references refer to the records of the Recorder's Office, Licking County, Ohio) and being described as follows:

BEGINNING at the southeasterly corner of said 53.979 acre tract, the southwesterly corner of Lot 11 of that subdivision entitled "Wagoner Farms Subdivision Section 2", of record in Plat Book 16, Page 146, and in the northerly line of that 476.757 acre tract conveyed to MJB Holdings, LLC by deed of record in Instrument Number 201912030026846;

Thence North 86° 45' 56" West, with the southerly line of said 53.979 acre tract, a distance of 546.82 feet to a point;

Thence North 86° 39' 31" West, continuing with the southerly line of said 53.979 acre tract and said 49.871 acre tract, a distance of 817.06 feet to a point at the southwesterly corner of said 49.871 acre tract, being an angle point in the easterly line of that 61.832 tract conveyed to New Albany Data Center SPE LLC by deed of record in Instrument 202207200017785;

Thence North 03° 35' 30" East, with the westerly line of said 49.871 acre tract, an easterly line of said 61.832 acre tract, a distance of 692.99 feet to a point;

Thence across said 49.871 and 53.979 acre tracts, the following courses and distances:

South 63° 05' 38" East, a distance of 80.32 feet to a point;

South 60° 07' 59" East, a distance of 203.01 feet to a point;

South 61° 14' 34" East, a distance of 153.26 feet to a point;

South 80° 51' 30" East, a distance of 136.63 feet to a point;

North 81° 36' 25" East, a distance of 89.49 feet to a point;

North 59° 19' 22" East, a distance of 125.78 feet to a point;

South 84° 05' 38" East, a distance of 128.27 feet to a point;

South 60° 21' 00" East, a distance of 137.58 feet to a point;

South 66° 43' 16" East, a distance of 156.92 feet to a point;

South 73° 12' 06" East, a distance of 86.99 feet to a point;

**South 87° 33' 48" East, a distance of 85.75 feet to a point;**

**North 29° 44' 42" East, a distance of 68.10 feet to a point; and**

**North 62° 14' 29" East, a distance of 48.88 feet to a point in the easterly line of said 53.979 acre tract, the westerly line of said "Wagoner Farms Subdivision Section 2";**

**Thence South 03° 34' 16" West, with the easterly line of said 53.979 acre tract, the westerly line of said "Wagoner Farms Subdivision Section 2", a distance of 525.31 feet to the POINT OF BEGINNING, containing 16.718 acres, more or less.**

**EVANS, MECHWART, HAMBLETON & TILTON, INC.**

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



**ORDINANCE O-97-2023**

**AN ORDINANCE TO ACCEPT A RIGHT OF WAY DEDICATION OF 0.784 ACRES ALONG BABBITT ROAD AS REQUESTED BY MBJ HOLDINGS, LLC**

**WHEREAS**, MBJ Holdings, LLC, the sole grantor and owner of certain real property within the City of New Albany, desires to dedicate a portion of said property for public right-of-way purposes; and,

**WHEREAS**, the proposed right of way dedication, totaling 0.784 acres, comprises tracts of real property described and depicted in Exhibit A, and is intended by the grantee, the city of New Albany, to be held and used as a public right-of-way; and,

**WHEREAS**, the said right of way dedication is located in the Franklin County and identified by Tax Parcel Numbers 222-005362, 222-005364, 222-005361, and 222-005360, with prior instrument references including Instrument Numbers 202303170025796 and 202308220085718 as per the records of the Recorder's Office, Franklin County, Ohio; and,

**WHEREAS**, the city engineer and planning manager have reviewed the proposed right of way dedication and have determined that this dedication is in alignment with the city's infrastructure and development goals; and,

**WHEREAS**, it is in the city's best interest to accept this dedication of right of way, as it aligns with the planning goals of the City of New Albany.

**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 a right of way dedication of 0.784 acres as described and depicted in 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 \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**Attest:**

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

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

**Approved as to form:**

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

**Legislation dates:**

Prepared: 10/05/2023

Introduced: 10/17/2023

Revised:

Adopted:

Effective:

**Exhibit A - O-97-2023**

**LIMITED WARRANTY DEED  
(O.R.C. 5302.07 - 5302.08)**

KNOW ALL MEN BY THESE PRESENTS that **MBJ HOLDINGS, LLC**, a Delaware limited liability company (the “**Grantor**”), for good and valuable consideration paid, grants, with limited warranty covenants, to **THE CITY OF NEW ALBANY, OHIO**, an Ohio municipal corporation (the “**Grantee**”), whose tax-mailing address is 99 West Main Street, New Albany, Ohio 43054, the real property more particularly described as follows:

**Property:** Those certain tracts of real property comprised of 0.119± acre and 0.665± acre situated in the City of New Albany, County of Franklin, and State of Ohio and being more particularly described on Exhibit A (collectively, the “**Property**”) and depicted on Exhibit B, each of which are attached hereto and made a part hereof.

**Tax Parcel Numbers:** 222-005362, 222-005364, 222-005361, and 222-005360.

**Prior Instrument References:** Instrument Numbers 202303170025796 and 202308220085718, both of the Recorder’s Office, Franklin County, Ohio.

**THE PROPERTY IS INTENDED BY GRANTEE TO BE HELD FOR USE AS PUBLIC RIGHT-OF-WAY.**

The conveyance made hereunder is subject to all covenants, conditions, easements, restrictions, reservations, and other matters of record in the Office of the Recorder, Franklin County, Ohio.

*[SIGNATURE AND ACKNOWLEDGMENT ON THE FOLLOWING PAGE]*

IN WITNESS WHEREOF, Grantor has caused this Limited Warranty Deed to be executed by its duly authorized signatory to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2023.

**GRANTOR:**

**MBJ HOLDINGS, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Brent B. Bradbury, Treasurer

STATE OF OHIO            )  
  ) SS:  
COUNTY OF FRANKLIN )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2023, by Brent B. Bradbury, the Treasurer 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.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

This instrument prepared by  
and after recording return to:  
MBJ Holdings, LLC  
8000 Walton Parkway, Suite 120  
New Albany, OH 43054



**Exhibit A**

**Legal Description of Property**

**See attached.**

**0.119 ACRE**

Situated in the State of Ohio, County of Franklin, City of New Albany, located in Quarter Township 4, Township 2, Range 16, United States Military District, being part of that 39.937 acre tract conveyed as Parcel III and IV to MBJ Holdings, LLC by deed of record in Instrument Number 202303170025796 (all references refer to the records of the Recorder's Office, Franklin County, Ohio) and being more particularly described as follows:

Beginning, for reference, at Franklin County Geodetic Survey monument number 1213 found at an angle point in the centerline of Babbitt Road (variable width);

Thence North 03° 31' 54" East, with the centerline of said Babbitt Road, a distance of 1015.98 feet to a magnetic nail set at a southwesterly corner of said 39.937 acre tract, the northwesterly corner of that 1.331 acre tract conveyed to Alice R. Farber by deed of record in Instrument Number 200104120076595, being the TRUE POINT OF BEGINNING;

Thence North 03° 31' 54" East, with the centerline of said Babbitt Road, the westerly line of said 39.937 acre tract, (passing a railroad spike found at 2.84 feet) a total distance of 172.46 feet to a magnetic nail set in a northerly line of said 39.937 acre tract, the southerly line of that 0.201 acre tract conveyed to Franklin County Commissioners by deed of record in Official Record 10186105;

Thence South 86° 28' 06" East, with a northerly line of said 39.937 acre tract, the southerly line of said 0.201 acre tract, a distance of 30.00 feet to an iron pin set;

Thence South 03° 31' 54" West, across said 39.937 acre tract, a distance of 172.64 feet to an iron pin set in the southerly line of said 39.937 acre tract, the northerly line of said 1.331 acre tract;

Thence North 86° 07' 12" West, with the southerly line of said 39.937 acre tract, the northerly line of said 1.331 acre tract, a distance of 30.00 feet the TRUE POINT OF BEGINNING, containing 0.119 acre, more or less, of which 0.079 acre is in the current right-of-way occupied.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

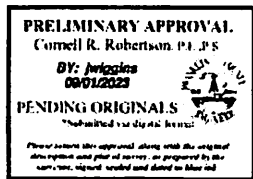
Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

The bearings shown hereon are based on the Ohio State Plane Coordinate System, South Zone, NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FRANK80 and FRANK180, having a bearing of North 85° 57' 24" West, as established by the Franklin County Engineering Department using Global Positioning System procedures and equipment.

This description is based on an actual field survey performed by or under the direct supervision of Heather L. King, Professional Surveyor Number 8307, in May of 2023.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Heather L. King* 9/5/23  
Heather L. King  
Professional Surveyor Number 8307



**0.665 ACRE**

Situated in the State of Ohio, County of Franklin, City of New Albany, located in Quarter Township 4, Township 2, Range 16, United States Military District, being part of that 15 acre tract conveyed as Parcel I, that 7.7 acre tract conveyed as Parcel II and that 39.937 acre tract conveyed as Parcel III and IV to MBJ Holdings, LLC by deed of record in Instrument Number 202303170025796, and that 0.500 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 202308220085718 (all references refer to the records of the Recorder's Office, Franklin County, Ohio) and being more particularly described as follows:

Beginning, for reference, at Franklin County Geodetic Survey monument number 1211 found at the centerline intersection of Babbitt Road (variable width) with East Dublin Granville Road (variable width);

Thence South 03° 35' 33" West, with the centerline of said Babbitt Road, (passing Franklin County Geodetic Survey monument number 1216 found at 1720.02 feet), a total distance of 2718.22 to a magnetic nail set at the westerly common corner of said 15 acre tract and that 5 acre tract conveyed to Julianna DiIullo, Trustee, by deed of record in Instrument Number 201106230078705, being the TRUE POINT OF BEGINNING;

Thence South 86° 23' 36" East, with the northerly line of said 15 acre tract, the southerly line of said 5 acre tract, (passing a 1 inch iron pin found at 25.02 feet), a total distance of 30.00 feet to an iron pin set;

Thence South 03° 35' 33" West, across said 15 acre, 0.500 acre, and 7.7 acre tracts, a distance of 729.10 feet to an iron pin set;

Thence South 03° 31' 54" West, across said 39.937 acre tract, a distance of 236.70 feet to an iron pin set in the northerly line of that 0.201 acre tract conveyed to Franklin County Commissioners by deed of record in Official Record 10186105;

Thence North 86° 28' 06" West, with a southerly line of said 39.937 acre tract, the northerly line of said 0.201 acre tract, a distance of 30.00 feet to a magnetic nail set in the centerline of said Babbitt Road;

Thence North 03° 31' 54" East, with the centerline of said Babbitt Road, the westerly line of said 39.937 acre tract, a distance of 236.94 feet to Franklin County Geodetic Survey Monument Number 1212 found at the westerly common corner of said 39.937 acre and 7.7 acre tracts;

Thence North 03° 35' 33" East, continuing with the centerline of said Babbitt Road and with the westerly line of said 7.7 acre, 0.500 acre and 15 acre tracts, a distance of 728.90 feet to the TRUE POINT OF BEGINNING, containing 0.665 acre, more or less. Of said 0.665 acre tract, 0.248 acre is part of said 15 acre tract (Parcel Number 222-005362), 0.085 is part of said 0.500 acre tract (Parcel Number 222-005364), 0.169 acre is part of said 7.7 acre tract (Parcel Number 222-005361), and 0.163 acre is part of said 39.937 acre tract (Parcel Number 222-005360). Of said 0.665 acre tract within the present right-of-way of said Babbitt Road, 0.165 acre is part of said 15 acre tract (Parcel Number 222-005362), 0.056 acre is part of said 0.500 acre tract (Parcel Number 222-005364), 0.113 acre is part of said 7.7 acre tract (Parcel Number 222-005361), and 0.109 acre is part of said 39.937 acre tract (Parcel Number 222-005360).

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

The bearings shown hereon are based on the Ohio State Plane Coordinate System, South Zone, NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FRANK80 and FRANK180, having a bearing of North 85° 57' 24" West, as established by the

0.665 ACRE

-2-

Franklin County Engineering Department using Global Positioning System procedures and equipment.

This description is based on an actual field survey performed by or under the direct supervision of Heather L. King, Professional Surveyor Number 8307, in May of 2023.

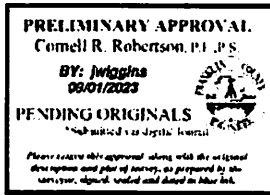


EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Heather L. King* 9/5/23

Heather L. King  
Professional Surveyor Number 8307

HLK: md  
0\_665 ac 20230403-V5-BNDY-04



**Exhibit B**

**Depiction of Property**

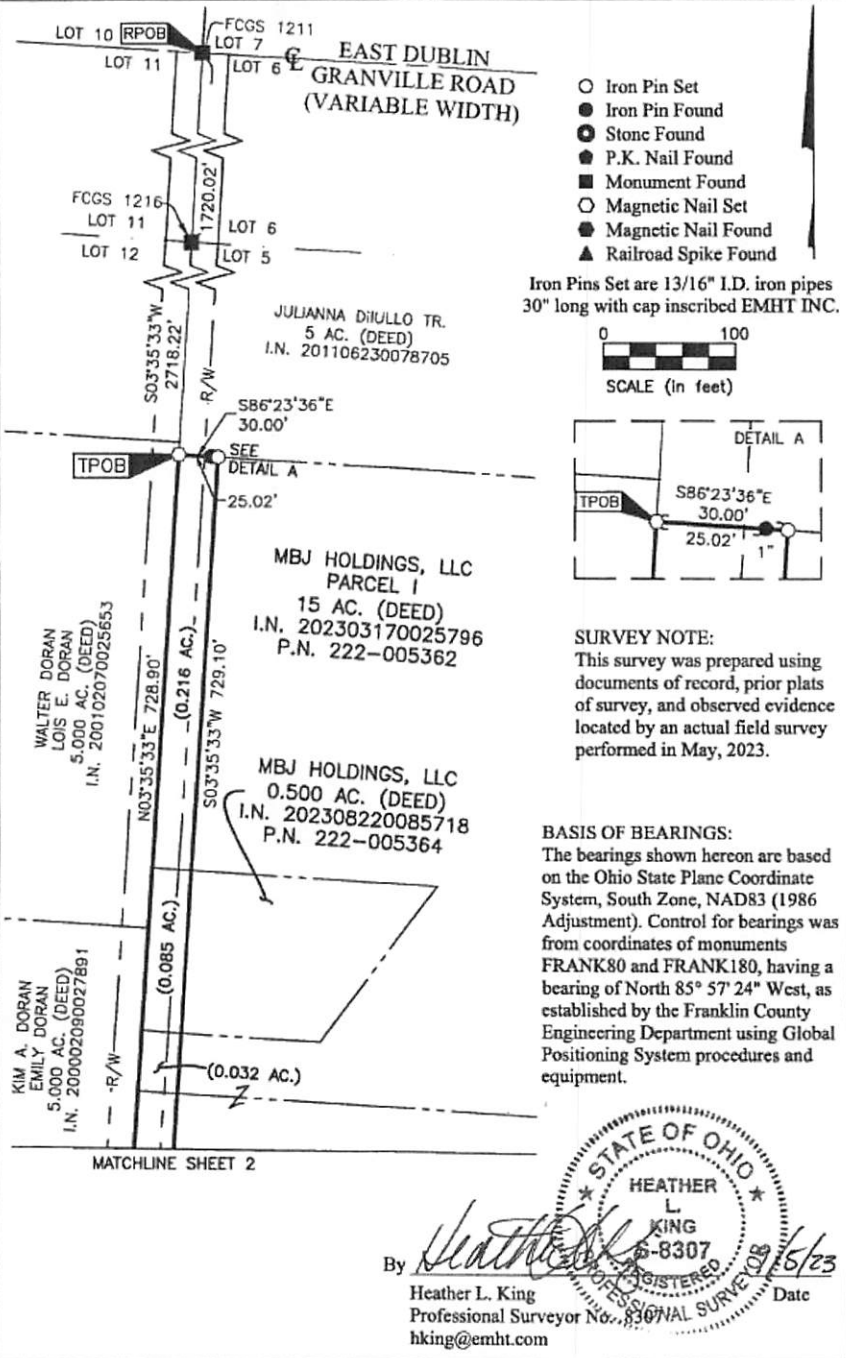
**See attached.**



# SURVEY OF ACREAGE PARCEL

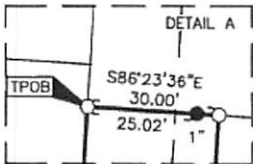
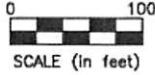
QUARTER TOWNSHIP 4, TOWNSHIP 2, RANGE 16  
 UNITED STATES MILITARY DISTRICT  
 CITY OF NEW ALBANY, COUNTY OF FRANKLIN, STATE OF OHIO

Date: August 28, 2023 Scale: 1" = 100' Job No: 2023-0403 Sheet No: 1 of 2



- Iron Pin Set
- Iron Pin Found
- Stone Found
- P.K. Nail Found
- Monument Found
- Magnetic Nail Set
- Magnetic Nail Found
- ▲ Railroad Spike Found

Iron Pins Set are 13/16" I.D. iron pipes  
 30" long with cap inscribed EMHT INC.



**SURVEY NOTE:**  
 This survey was prepared using documents of record, prior plats of survey, and observed evidence located by an actual field survey performed in May, 2023.

**BASIS OF BEARINGS:**  
 The bearings shown hereon are based on the Ohio State Plane Coordinate System, South Zone, NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FRANK80 and FRANK180, having a bearing of North 85° 57' 24" West, as established by the Franklin County Engineering Department using Global Positioning System procedures and equipment.



By *Heather L. King*  
 Heather L. King  
 Professional Surveyor No. 8307  
 Date 8/28/23  
 hking@emht.com

1:\2023\0403\EMHT\0403\0403-15-2023-0403.dwg plotted by HNSG, HNSG on 8/29/2023 10:48:51 AM last saved by HNSG on 8/29/2023 10:48:37 AM

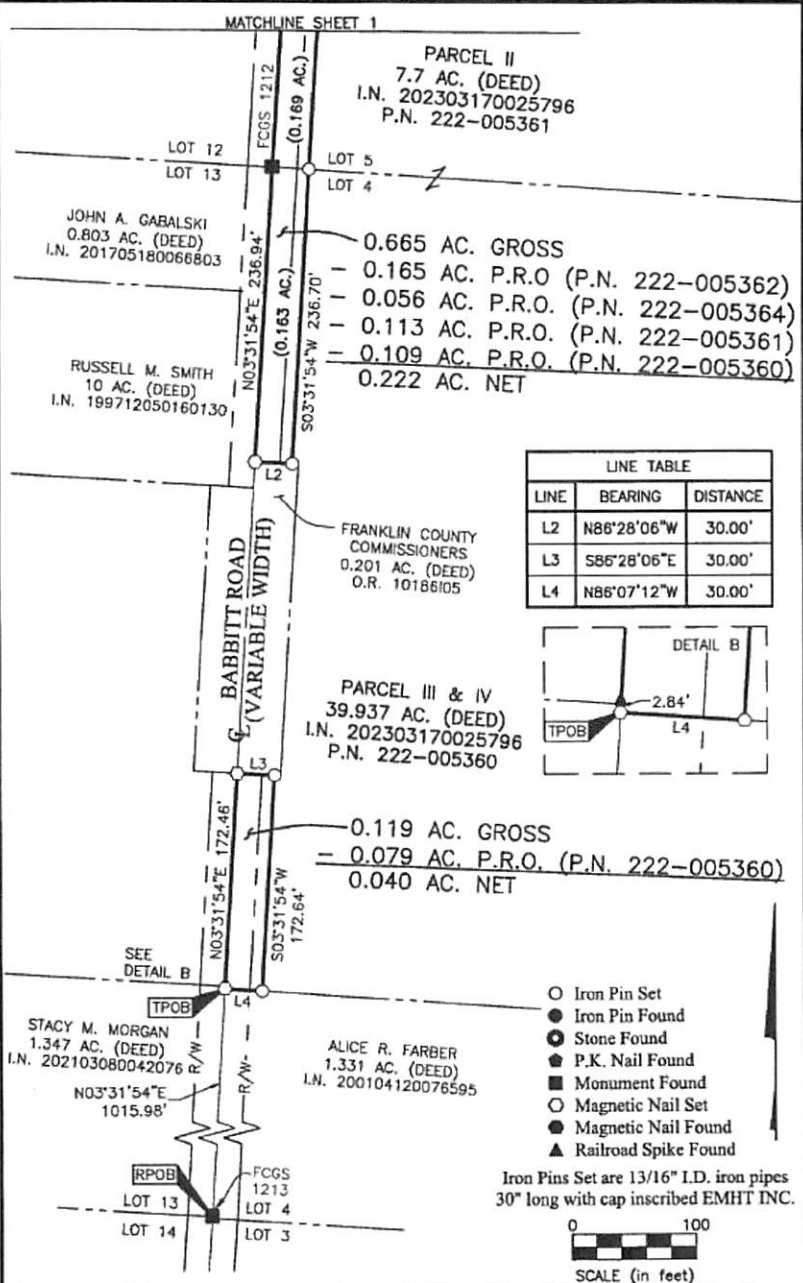


# SURVEY OF ACREAGE PARCEL

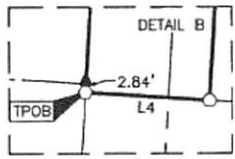
QUARTER TOWNSHIP 4, TOWNSHIP 2, RANGE 16  
UNITED STATES MILITARY DISTRICT  
CITY OF NEW ALBANY, COUNTY OF FRANKLIN, STATE OF OHIO

Date: August 28, 2023    Scale: 1" = 100'    Job No: 2023-0403    Sheet No: 2 of 2

AS 20230403 09P5 04P51275 BOUNDARY 20230403-VE-B07-04-DWG plotted by KMC, KEATNER on 8/8/2023 10:48:37 AM

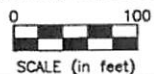


LINE TABLE		
LINE	BEARING	DISTANCE
L2	N86°28'06"W	30.00'
L3	S86°28'06"E	30.00'
L4	N86°07'12"W	30.00'



- Iron Pin Set
- Iron Pin Found
- Stone Found
- P.K. Nail Found
- Monument Found
- Magnetic Nail Set
- Magnetic Nail Found
- ▲ Railroad Spike Found

Iron Pins Set are 13/16" I.D. iron pipes  
30" long with cap inscribed EMHT INC.





**ORDINANCE O-98-2023**

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF NEW ALBANY BY AMENDING THE ZONING MAP TO REZONE 84.736+/- ACRES OF LAND LOCATED ON THE WEST SIDE OF HARRISON ROAD NW AND THE SOUTH SIDE OF JUG STREET ROAD NW, FROM AGRICULTURAL (AG) TO LIMITED GENERAL EMPLOYMENT (L-GE) FOR AN AREA TO BE KNOWN AS THE "JUG STREET SOUTH EXPANSION ZONING DISTRICT" AS REQUESTED BY JACK B. REYNOLDS, III**

**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 Jackson B. Reynolds, III, 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 84.736+/- acre site within Licking County, located on the west side of Harrison Road NW and the south side of Jug Street Road NW, from its current zoning of Agricultural (AG) to Limited General Employment (L-GE).
- B. The zoning district's limitation 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 \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Attest:

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

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

Approved as to form:

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

**Legislation dates:**

Prepared: 10/05/2023

Introduced: 10/17/2023

Revised:

Adopted:

Effective:

PROPOSED

**JUG STREET SOUTH EXPANSION ZONING DISTRICT**

**LIMITATION (L-GE) TEXT**

**October 2, 2023**

The Jug Street South Zoning District (hereinafter, the “Zoning District”) consists of approximately 84.736 acres located to the Harrison West south of and adjacent to Jug Street and west of Harrison Road. This rezoning serves to extend the same or similar zoning and development standards to property being annexed to the City as currently apply to much of the developed and undeveloped land in its general vicinity.

**I. Zoning Designation: L-GE, Limited General Employment District**

**II. Permitted Uses:** The permitted and conditional uses contained and described in the Codified Ordinances of the City of New Albany, GE, General Employment District, Sections 1153.02 and 1153.03, provided that conditional uses are approved in accordance with Chapter 1115, Conditional Uses. The following uses from these code sections shall be prohibited:

- A. Industrial product sales (See Section 1153.03(a)(1));
- B. Industrial service (See Section 1153.03(a)(2));
- C. Mini-warehouses (See Section 1153.03(a)(4)(c)). For purposes of clarification, this prohibition only applies to such facilities that are made available for rental to the general public;
- D. Personal service (See Section 1153.03(b)(2)) and retail product sales and service (See Section 1153.03(b)(3)), except that such uses shall be allowed as accessory uses to a permitted use in this Zoning District;
- E. Vehicle services (See Section 1153.03(B)(4));
- F. Radio/television broadcast facilities (See Section 1153.0(c)(1));
- G. Sexually-oriented businesses (See Section 1153.03(c)(3)); and
- H. Off-premises signs (See Section 1153.03(c)(2)).

**III. Lot and Setback Commitments:**

A. Lot Coverage: There shall be a maximum lot coverage in this Zoning District of 75%.

B. Setbacks:

1. Jug Street: There shall be a minimum pavement setback of 50 feet and a minimum building setback of 100 feet from the Jug Street right-of-way.

2. Harrison Road: There shall be a minimum pavement setback of 50 feet and a minimum building setback of 100 feet from the Harrison Road right-of-way.

3. Perimeter Boundaries: There shall be a minimum pavement and building setback of 25 feet from any perimeter boundary of this Zoning District that is not adjacent to a public right-of-way.

4. Elimination of Setbacks: In the event that a parcel located within this Zoning District and an adjacent parcel located within or outside of this Zoning District (i) come under common ownership or control, (ii) area zoned to allow compatible non-residential uses, and (iii) are combined into a single parcel, then any minimum building, pavement, or landscaping setbacks set forth in this text as they apply to common property lines shall no longer apply with respect to these parcels.

5. Other Public Rights-of-Way: There shall be a minimum pavement setback of 25 feet and a minimum building setback of 50 feet from the right-of-way of any other public street that is not specifically addressed in this text.

#### **IV. Architectural Standards:**

**A. Building Height:** The maximum building height for structures in this Zoning District shall be 85 feet, subject to Section 1165.03 of the Codified Ordinances.

**B. Service and Loading Areas:** Service areas and loading areas shall be screened in accordance with the Codified Ordinances.

#### **C. Building Design:**

1. Building designs shall not mix architectural elements or ornamental from different styles.
2. Buildings shall be required to employ a comparable use of materials on all elevations.
3. The number, location, spacing, and spaces of windows and door openings shall be carefully considered. Primary entrances to buildings shall be made sufficiently prominent that they can be easily identified from a distance.
4. For office buildings and complexes, achieving a human or pedestrian scale is of less concern. When achieving such a scale is desired, it may be achieved by careful attention to width of facades, size and spacing of window and door openings, and floor to floor heights on exterior walls.
5. All elevations of a building that are visible from a public right-of-way shall receive similar treatment in terms of style, materials, and design so that such elevations are not of a lesser visual character than any other.
6. Use of elements such as shutters, cupolas, dormers, and roof balustrades shall be avoided in building designs that are not based on traditional American architectural styles. Such elements may be employed only when they are common elements of a specific style, and this style shall be replicated in its entirety. When shutters are employed, even if they are non-operable, they must be sized and mounted in a way that gives the appearance of operability.
7. Elements such as meter boxes, utility conduits, roof and wall projections such as vent and exhaust piles, basement window enclosures, and trash containers shall be designed, located, or screened so as to minimize their visibility and visual impact from off-site. Solar energy systems shall be excluded from the requirements of this section.
8. Accessory or ancillary buildings, whether attached or detached, shall be similar design, materials and construction as the nearest primary structure. Fenestration themes that employ windows, panels and piers that are consistent with the architectural vocabulary of the building are encouraged. Accessory structures, generators, storage tanks, trash receptacles or any other similar improvement must be located behind a building façade that does not front on a public right-of-way.

#### **D. Building Form:**

1. All building elevations shall be designed to be compatible with each other and to reflect a consistent design approach.
2. Gable or hip roofs shall be avoided unless a building design replicates a traditional American architectural style that employs such roof forms. In non-stylistic contemporary designs, low or flat roofs may be employed. Roof visibility shall be minimized.

#### **E. Materials:**

1. Exterior building materials shall be appropriate for contemporary suburban designs and shall avoid overly reflective surfaces. Traditional materials such as, but not limited to, wood, stone, brick, and concrete shall be permitted, and contemporary materials such as, but not limited to, aluminum, metal, glass, stucco, or cementitious fiberboard (e.g., Hardie Plank or equivalent) shall be permitted on buildings not employing traditional styles.

Architectural precast concrete panels and/or poured-in-place concrete tilt-up panels shall be permitted. The use of reflective or mirrored glass shall be prohibited.

2. Prefabricated metal buildings and untreated masonry block structures are prohibited. Notwithstanding the foregoing, ancillary structures built and operated for the purposes of enclosing equipment and which are not occupied by tenants or persons on a regular basis may be constructed using pre-engineered metal.

3. Generally, the quantity of materials selected for a building shall be minimized.

4. Loading docks are not required to have the same degree of finish as a main entry unless they are visible from a public right-of-way.

5. Additional Standards for Uses Not Governed by DGRs: Buildings that are constructed to accommodate certain uses are not governed by the City's Design Guidelines and Requirements (DGRs). For example, buildings that are constructed for the operation of warehousing and/or distribution uses are not subject to the DGRs and can present challenges in meeting the community standard for architectural design. Such buildings are necessarily large and typically include long walls that together form a square or rectangular box. The goal for the development of buildings that are not subject to the DGRs is to balance the practical needs of these buildings with the desire to provide exterior designs that are attractive and complimentary to the architecture that will be found elsewhere in this Zoning District.

Architecture by its nature is a subjective medium, meaning that the adoption of strict objective standards in all instances may not provide the best means for achieving appropriate design. In recognition of this fact, the standards set forth herein provide guidelines and suggestions for designing buildings that are not subject to the DGRs in an effort to set expectations for the quality of architecture that will be expected for these structures. On the other hand, these standards are meant to allow for some flexibility to encourage innovative design provided that the spirit and intent of these provisions are met.

In conjunction with an application for a certificate of appropriateness for each building or structure in this Zoning District that is not subject to or governed by the DGRs, the applicant shall be required to submit to the City illustrations of the proposed exterior design of the building or structure for review and approval by the Design Review Committee contemplated in Section 1157.08(a)(1)(D) of the City Code. In designing such buildings, the user or applicant shall consider the following, which are intended to set a level of expectations for the quality of design.

a. Architectural design for all portions of a building or structure that are visible from a public right-of-way (excluding public rights-of-way whose primary purpose is to accommodate truck traffic or service loading areas) shall meet the community standard in terms of quality while considering the unique nature of the use(s) that will be found therein.

b. Uninterrupted blank wall facades shall be prohibited to the extent that they are visible from a public right-of-way (excluding public rights-of-way whose primary purpose is to accommodate truck traffic or service loading areas) shall meet the community standard in terms of quality while considering the unique nature of the use(s) that will be found therein.

c. The use of one or more architectural or design elements may be used to soften the aesthetics of the building, such as but not limited to canopies, porticos, overhangs, arches, outdoor patios, community spaces, or similar devices.

d. Contemporary exterior designs, while not required, shall be utilized where appropriate to enhance the aesthetics of the building and to lessen its visual impact when viewed from public rights-of-way.

6. Roof-Mounted Equipment: Complete screening of all roof-mounted equipment shall be required on all four sides of buildings with materials that are consistent and harmonious with the building's facade and character. Such screening shall be provided in order to screen the equipment from off-site view and to buffer sound generated by such equipment.

**V. Access, Parking, Site Circulation, and Traffic Commitments:**

A. **Street Improvements:** The developer shall work with the City Manager or his designee to determine the appropriate timing and phasing of street improvements at entrances from Jug Street and Harrison Road.

B. **Access Points:** Subject to other provisions in this text, on public rights-of-way which exist on the date of this text the number, locations, and spacing of curb cuts shall be determined and approved by the City Manager or his designee in consultation with the developer at the time that a certificate of appropriateness is issued for a project in this Zoning District.

C. **Parking and Loading:** Parking and loading spaces shall be provided for each use per Chapter 1167 of the Codified Ordinances of the City of New Albany.

D. **Right-of-Way:** The developer shall dedicate right-of-way for Jug Street to the City for a distance of 30 feet as measured from the centerline of Jug Street and 40 feet as measured from the centerline of Harrison Road.

VI. **Buffering, Landscaping, Open Space, and Screening:** A landscaping plan shall be approved as part of the City's review of a certificate of appropriateness application for each portion of this Zoning District that is proposed for development. The following landscaping requirements shall apply to this Zoning District:

A. **Tree Preservation:** Standard tree preservation practices will be in place to preserve and protect trees during all phases of construction, including the installation of snow fencing at the drip line.

B. **Landscaping Along Jug Street and Harrison Road:** Within the required minimum pavement setback along Jug Street and Harrison Road, the developer shall use reasonable efforts within the context of the site development plan to preserve existing trees to provide a buffer between the public street and development within this Zoning District. If reasonable efforts cannot be made to preserve trees within the buffer, an additional 1 tree per 25 feet of frontage are required to be installed in addition to the street trees required. Landscaping within the pavement setback shall be coordinated and consistent. Trees shall be randomly planted to create a naturalized appearance. Trees shall be of native species. Evergreen trees or shrubs shall not be permitted in the area between the buffer landscape and the edge of street pavement. For landscaping which is not used to meet zoning text, codified ordinance and street tree requirements, the minimum caliper of tree material may be reduced to 1" caliper to gain additional plant material.

1. **Beech Road North Landscape Plan:** Landscaping for the Jug Street right of way shall adhere the guidelines found in the Beech Road North Landscape Plan as adopted by the City of New Albany.

C. A standard New Albany white four-board horse fence may (but shall not be required to) be provided within the public right-of-way.

D. **Stormwater Management:** Wet and dry stormwater basins shall conform to the standards set forth in Section 1171.08 of the Codified Ordinances of the City of New Albany.

E. **Street Trees:** A street tree row shall be established along Jug Street and Harrison Road and shall contain one (1) tree for every thirty (30) feet of road frontage. Trees may be grouped or regularly spaced. Street trees shall be located within the right-of-way. Minimum street tree size at installation shall be three (3) caliper inches. This requirement may be waived in areas where existing vegetation occurs, subject to approval of the City Landscape Architect.

F. **Parking Areas:** Within this Zoning District, there shall be no less than one (1) tree planted for every ten (10) parking spaces located therein. At least five percent (5%) of the vehicular use area shall be landscaped or green space (or tree areas). Parking lots shall be designed to accommodate parking lot islands with tree(s) at the end of the parking aisles.

G. **Pedestrian Circulation:** An 8-foot wide asphalt leisure trail is required to be installed along the Jug Street and Harrison Road frontage of the site.

H. Minimum On-Site Tree Sizes: Unless otherwise set forth herein, minimum tree size at installation shall be no less than two and one half (2 ½) inches in caliper for shade trees, six (6) feet in height for evergreen trees, two (2) inches in caliper for ornamental trees, and thirty (30) inches in height for shrubs. Caliper shall be measured six (6) inches above grade.

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

J. Security Fencing: All security fencing shall be coordinated and consistent between sites. All security fencing shall be black decorative Ameristar fencing or black vinyl coated chain link fencing.

VII. Lighting:

A. All parking lot and private driveway lighting shall be cut-off type fixtures and down cast. Parking lot lighting shall be from a controlled source in order to minimize light spillage beyond the boundaries of the site.

B. All parking lot lighting shall be of the same light source type and style. Building, pedestrian, and landscaping may be incandescent or metal halide, or may be LED if the LED lighting temperature is at least 4,000 Kelvin and no more than 6,000 Kelvin to ensure that the lighting color is white.

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

D. Lighting details shall be included in the landscape plan which is subject to review and approval by the City Landscape Architect.

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

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

G. Street lighting must meet the City standards and specifications.

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

IX. Utilities: All new utilities installed solely to serve this Zoning District shall be installed underground.

# REZONING OF 84.736± ACRES

MARKET VALUE	DESCRIPTION

LOCATION MAP AND BACKGROUND DRAWING  
Not to Scale

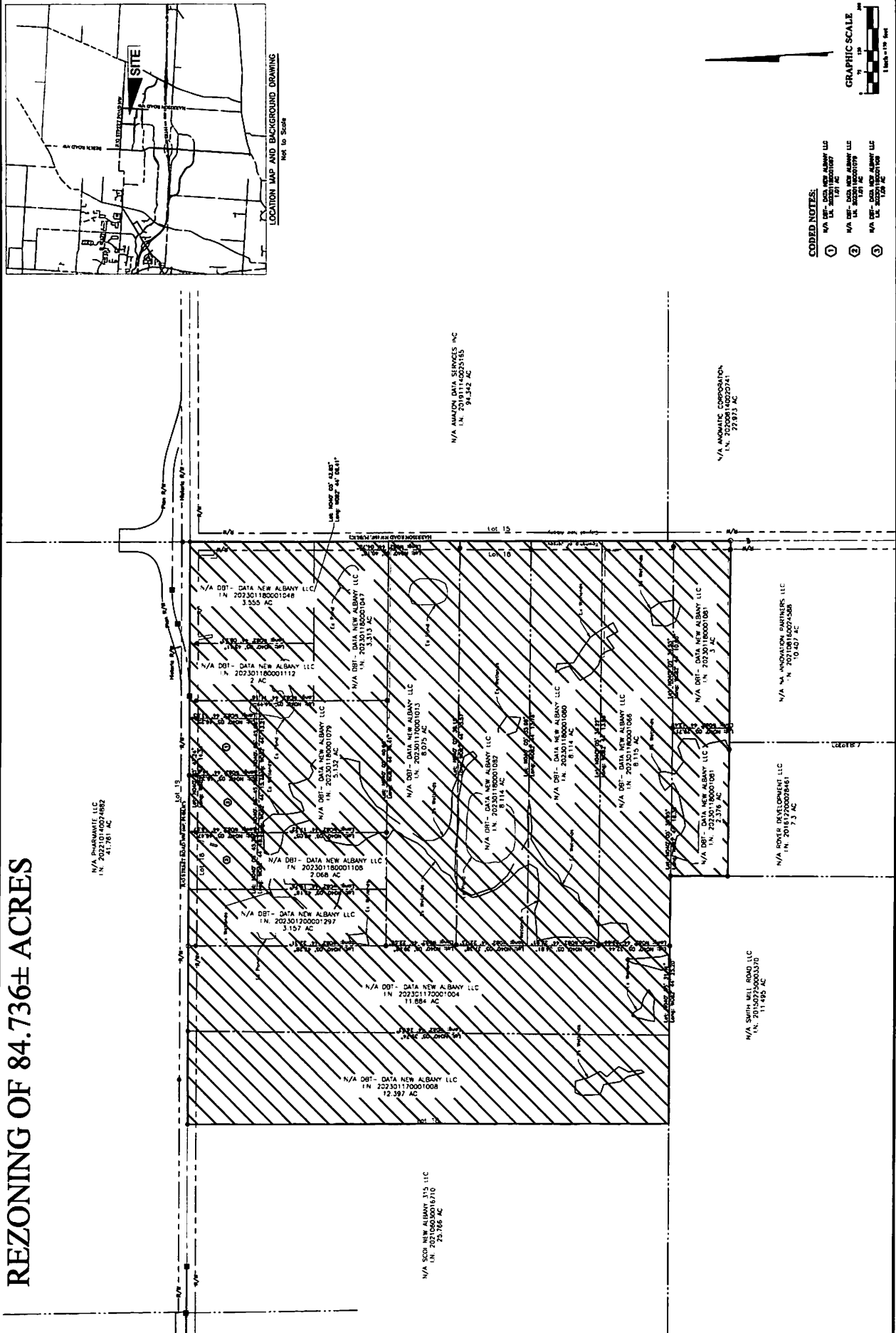
CITY OF NEW ALBANY, OHIO  
FOR  
EXHIBIT  
JUG STREET & HARRISON ROAD PROPERTIES  
ZONING EXHIBIT

DATE	August 16, 2023
SCALE	1" = 150'
JOB NO.	20230489
SHEET	1/1



**CODED NOTES:**

- ① N/A DBT - DATA NEW ALBANY LLC  
IN 202301180001048  
3.555 AC
- ② N/A DBT - DATA NEW ALBANY LLC  
IN 202301180001079  
5.132 AC
- ③ N/A DBT - DATA NEW ALBANY LLC  
IN 202301180001112  
2.068 AC



2023/08/16 11:13 AM (09:09) 2023/08/16 11:13 AM (09:09) 2023/08/16 11:13 AM (09:09) 2023/08/16 11:13 AM (09:09) 2023/08/16 11:13 AM (09:09)



ORDINANCE O-99-2023

**AN ORDINANCE TO DECLARE THE IMPROVEMENT TO CERTAIN PARCELS OF REAL PROPERTY TO BE A PUBLIC PURPOSE, EXEMPT 100% OF THAT IMPROVEMENT FROM REAL PROPERTY TAXATION, REQUIRE THE OWNERS OF THOSE PARCELS TO MAKE SERVICE PAYMENTS IN LIEU OF TAXES, PROVIDE FOR THE DISTRIBUTION OF THE APPLICABLE PORTION OF THOSE SERVICE PAYMENTS TO THE NEW ALBANY-PLAIN LOCAL SCHOOL DISTRICT AND THE EASTLAND-FAIRFIELD CAREER & TECHNICAL SCHOOLS, ESTABLISH A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND FOR THE DEPOSIT OF THE REMAINDER OF THOSE SERVICE PAYMENTS, SPECIFY THE PUBLIC INFRASTRUCTURE IMPROVEMENTS THAT DIRECTLY BENEFIT THOSE PARCELS, AND APPROVE AND AUTHORIZE THE EXECUTION OF ONE OR MORE TAX INCREMENT FINANCING AGREEMENTS**

**WHEREAS**, Sections 5709.40, 5709.42 and 5709.43 of the Ohio Revised Code (collectively, the "TIF Statutes") authorize this Council to declare the improvement to certain parcels of real property located within the City of New Albany, Ohio (the "City") to be a public purpose and exempt from taxation, require the owner of those parcels to make service payments in lieu of taxes, provide for the distribution of the applicable portion of those service payments to the New Albany-Plain Local School District and the Eastland-Fairfield Career & Technical Schools, (each, a "School District"), establish a municipal public improvement tax increment equivalent fund for the deposit of the remainder of those service payments and specify public infrastructure improvements made, to be made or in the process of being made that directly benefit, or that once made will directly benefit, those parcels; and

**WHEREAS**, the parcels of real property identified and depicted in Exhibit A attached hereto (each, as now or hereafter configured on the tax list and duplicate of real and public utility property, a "Parcel", and collectively, the "Parcels") are located in the City, and this Council has determined to declare the Improvement (as defined in Section 1 of this Ordinance) to each Parcel to be a public purpose; and

**WHEREAS**, this Council has determined that it is necessary and appropriate and in the best interest of the City to exempt from taxation one hundred percent (100%) of the Improvement to each Parcel as permitted and provided in Section 5709.40(B) of the Ohio Revised Code for thirty (30) years and to simultaneously direct and require the current and future owner of each Parcel (each such owner individually, an "Owner," and collectively, the "Owners") to make annual Service Payments (as defined in Section 2 of this Ordinance); and



**WHEREAS**, the City has determined that a portion of the Service Payments shall be paid directly to each School District in an amount equal to the real property taxes that the School District would have received if the Improvement to the Parcels had not been exempted from taxation pursuant to this Ordinance; and

**WHEREAS**, pursuant to Section 5709.43(A) of the Ohio Revised Code, this Council has determined to establish a municipal public improvement tax increment equivalent fund in which there shall be deposited the remaining Service Payments distributed to the City; and

**WHEREAS**, this Council has determined to designate the public infrastructure improvements described in Exhibit B attached hereto (the "*Public Infrastructure Improvements*") as public infrastructure improvements made, to be made or in the process of being made that directly benefit, or that once made will directly benefit, the Parcels; and

**WHEREAS**, this Council has determined to provide for the execution and delivery of one or more Tax Increment Financing Agreements (each, a "*TIF Agreement*"), which will more fully provide for the collection of Service Payments; and

**WHEREAS**, notice of this proposed Ordinance has been delivered to the Board of Education Eastland-Fairfield Career & Technical Schools in accordance with, and within the time periods prescribed by, Sections 5709.40 and 5709.83 of the Ohio Revised Code and in furtherance of the commitment made by the City in the Compensation Agreements entered into between the Board of Education of the New Albany-Plain Local School District, and the City;

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

**Section 1.** Authorization of Tax Exemption. Pursuant to and in accordance with the provisions of Section 5709.40(B) of the Ohio Revised Code, one hundred percent (100%) of the increase in assessed value of each Parcel that is used or to be used for non-residential purposes and that would first appear on the tax list and duplicate of real and public utility property after the effective date of this Ordinance (which increase in assessed value is hereinafter referred to as the "*Improvement*", as further defined in Section 5709.40(A) of the Ohio Revised Code) is hereby declared to be a public purpose and shall be exempt from taxation for a period commencing with the first tax year that begins after the effective date of this Ordinance and in which an Improvement attributable to a new structure on that Parcel first appears on the tax list and duplicate of real and public utility property for that Parcel and ending on the earlier of (a) thirty (30) years after such commencement or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Statutes. The real property tax exemption granted pursuant to this Section and the payment obligation established pursuant to Section 2 are subject and subordinate to any real property tax exemption granted pursuant to Sections 3735.65 to 3735.70 or Sections 5709.61 to 5709.69 of the Ohio Revised Code.

**Section 2.** Service Payments and Property Tax Rollback Payments. Pursuant to Section 5709.42 of the Ohio Revised Code, this Council hereby directs and requires the Owner of each Parcel to make annual service payments in lieu of taxes with respect to the Improvement allocable thereto to the Treasurer of Licking County, Ohio (the "*County Treasurer*") on or before the final dates for payment of real property taxes. The service payment in lieu of taxes for each Parcel, including any penalties and

interest at the then current rate established under Sections 323.121(B)(1) and 5703.47 of the Ohio Revised Code, as the same may be amended or supplemented from time to time, or any other applicable provisions of the Ohio Revised Code (collectively, the “*Service Payments*”), shall be charged to each Parcel and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvement to that Parcel if it were not exempt from taxation pursuant to Section 1 of this Ordinance, all in accordance with Section 5709.42 of the Ohio Revised Code. The Service Payments, and any other payments with respect to the Improvement that are received by the County Treasurer in connection with the reduction required by Sections 319.302, 321.24, 323.152 and 323.156 of the Ohio Revised Code, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time, or any other applicable provisions of the Ohio Revised Code (collectively, the “*Property Tax Rollback Payments*”), shall be allocated and distributed in accordance with Section 4 of this Ordinance.

**Section 3. Tax Increment Equivalent Fund.** This Council hereby establishes, pursuant to and in accordance with the provisions of Section 5709.43 of the Ohio Revised Code, the Oak Grove II Public Tax Increment Equivalent Fund (the “*Fund*”). The Fund shall be maintained in the custody of the City and shall receive all distributions to be made to the City pursuant to Section 4 of this Ordinance. Those Service Payments and Property Tax Rollback Payments received by the City with respect to the Improvement to each Parcel and so deposited pursuant to Section 5709.42 of the Ohio Revised Code shall be used solely for the purposes authorized in the TIF Statutes and this Ordinance, as the same may be amended from time to time. The Fund shall remain in existence so long as such Service Payments and Property Tax Rollback Payments are collected and used for the aforesaid purposes, after which time the Fund shall be dissolved and any incidental surplus funds remaining therein transferred to the City’s General Fund, all in accordance with Section 5709.43 of the Ohio Revised Code.

**Section 4. Distribution of Funds.** Pursuant to the TIF Statutes, the County Treasurer is hereby requested and directed to distribute the Service Payments and Property Tax Rollback Payments as follows:

(i) to each School District, an amount equal to the amount the School District would otherwise have received as real property tax payments (including the applicable portion of any Property Tax Rollback Payments) derived from the Improvement to each Parcel if the Improvement had not been exempt from taxation pursuant to this Ordinance; and

(ii) to the City, all remaining amounts for further deposit into the Fund for payment of costs of the Public Infrastructure Improvements upon appropriation for that purpose by this Council. If so appropriated, such costs may but shall not be required to include, without limitation, all debt service payable on debt issued by the City or the New Albany Community Authority (the “*Authority*”) to pay for Public Infrastructure Improvements, all amounts owed to any fund of the City or Authority to reimburse that fund for the costs of any Public Infrastructure Improvements previously paid from that fund, including interest payable on those amounts, and all amounts owed by the City or Authority to any third party for the construction of Public Infrastructure Improvements, including interest payable on those amounts.

**Section 5. Public Infrastructure Improvements.** This Council hereby designates the Public Infrastructure Improvements described in Exhibit B attached hereto, and any other public infrastructure improvements hereafter designated by ordinance, as public infrastructure

improvements made, to be made or in the process of being made by the City that directly benefit, or that once made will directly benefit, the Parcels.

**Section 6.** Tax Increment Financing Agreement. The form of TIF Agreement presently on file with the Fiscal Officer is hereby approved and authorized with changes therein and amendments thereto not inconsistent with this Ordinance and not substantially adverse to the City and which shall be approved by the City Manager. The City Manager, for and in the name of the City, is hereby authorized to execute and deliver one or more TIF Agreements with one or more owners of a Parcel or Parcels in substantially that form along with any changes therein and amendments thereto, provided that the approval of such changes and amendments by the City Manager, and the character of those changes and amendments as not being substantially adverse to the City or inconsistent with this Ordinance, shall be evidenced conclusively by the City Manager's execution thereof.

**Section 7.** Further Authorizations. This Council hereby authorizes and directs the City Manager, the City Solicitor, the Fiscal Officer or other appropriate officers of the City to make such arrangements as are necessary and proper for collection of the Service Payments from the Owners, including the preparation and filing of any necessary exemption applications. This Council further hereby authorizes and directs the City Manager, the City Solicitor, the Fiscal Officer or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Ordinance.

**Section 8.** Filings with Ohio Department of Development. Pursuant to Section 5709.40(I) of the Ohio Revised Code, the City Manager or other appropriate officer of the City is hereby directed to deliver a copy of this Ordinance to the Director of Development of the State of Ohio within fifteen (15) days after its adoption. Further, on or before March 31 of each year that the exemption set forth in Section 1 of this Ordinance remains in effect, the City Manager or other appropriate officer of the City shall prepare and submit to the Director of Development of the State of Ohio the status report required under Section 5709.40(I) of the Ohio Revised Code.

**Section 9.** Tax Incentive Review Council. This council hereby designates the Tax Incentive Review Council created pursuant to Resolution R-46-2009 as the tax incentive review council responsible for reviewing annually all exemptions from taxation resulting from the declarations set forth in this Ordinance and any other such matters as may properly come before that council, all in accordance with Section 5709.85 of the Ohio Revised Code.

**Section 10.** Open Meetings. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law, including Section 121.22 of the Ohio Revised Code.

**Section 11.** Effective Date. Pursuant to Article 6.07(b) of the New Albany Charter, this Ordinance shall become effective thirty (30) days after adoption.

CERTIFIED AS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Attest:

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

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

Approved as to form:

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

**Legislation dates:**

Prepared: 07/26/2023

Introduced: 10/17/2023

Revised:

Adopted:

Effective:

PROPOSAL

## EXHIBIT B – O-99-2023

### PUBLIC INFRASTRUCTURE IMPROVEMENTS

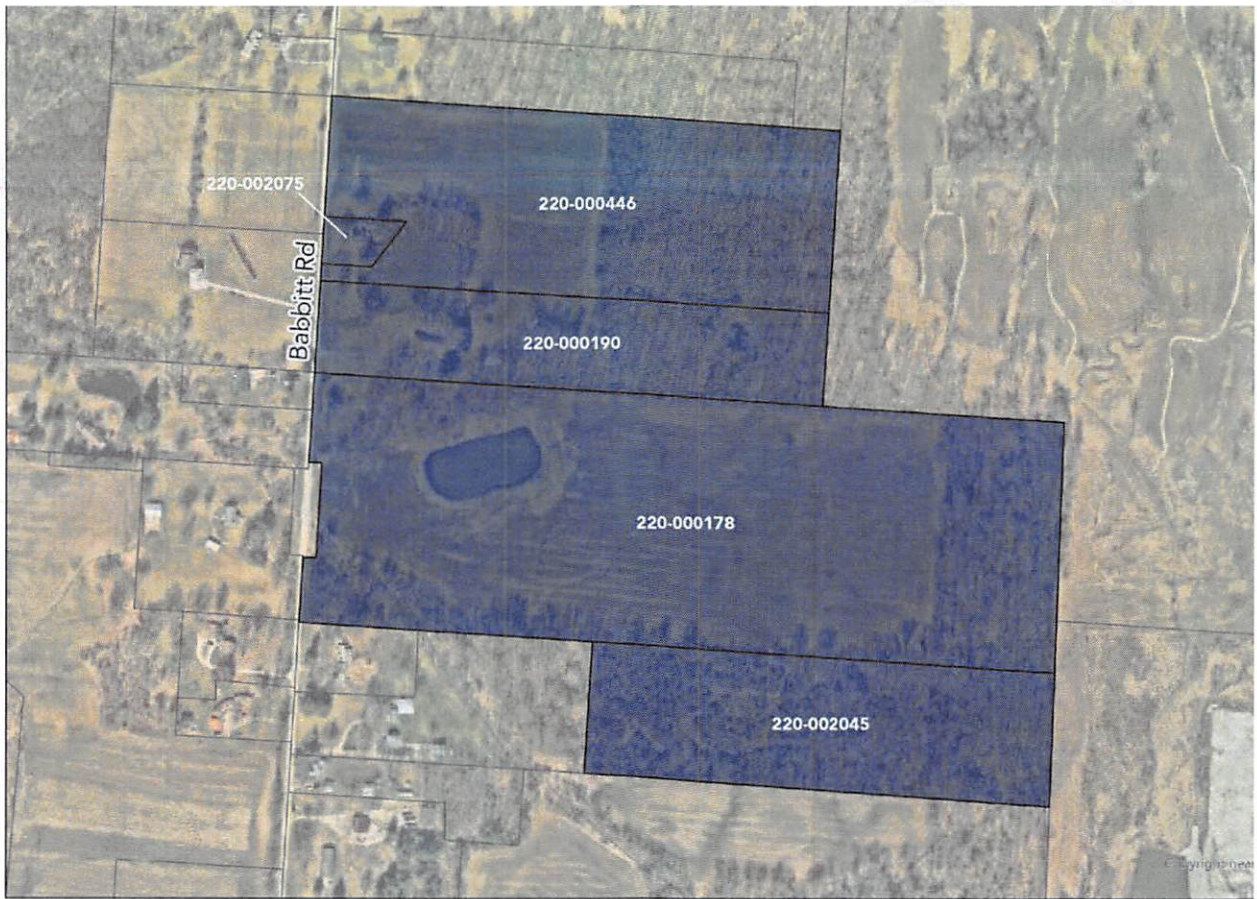
The Public Infrastructure Improvements include the construction of the following improvements that will directly benefit the Parcels and all related costs of permanent improvements (including, but not limited to, those costs listed in Section 133.15(B) of the Ohio Revised Code), along with any other improvements subsequently designated by Village Council:

- public roads and highways (including street realignments);
- water and sewer lines;
- leisure trails and connections;
- parks and public facilities;
- environmental remediation projects;
- stormwater and flood remediation projects, including such projects on private property when determined to be necessary for public health, safety and welfare;
- gas, electric and communications services facilities, including fiber optics;
- land acquisition, including acquisition in aid of industry, commerce, distribution, or research;
- demolition, including demolition on private property when determined to be necessary for economic development purposes;
- landscaping and signage, including brick retaining walls at roadway intersections; including in each case, design and other related costs (including traffic studies); any rights-of-way or real estate acquisition; curbs and gutters, medians, sidewalks, bikeways, and landscaping (including scenic fencing and irrigation); traffic signs and signalization (including overhead street signage); street lighting and signs; burial of utility lines (including fiber optics); erosion and sediment control measures; grading, drainage and other related work; survey work, soil engineering, inspection fees and construction staking; and all other costs and improvements necessary and appurtenant thereto.

EXHIBIT A – O-99-2023

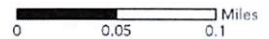
PARCEL MAP

The colored areas on the attached map specifically identify and depict the parcels included in this TIF district.



Oak Grove II TIF • *Babbitt Rd East*

■ TIF Expansion  
□ Parcel





**ORDINANCE O-100-2023**

**AN ORDINANCE TO DECLARE THE IMPROVEMENT TO CERTAIN PARCELS OF REAL PROPERTY TO BE A PUBLIC PURPOSE, EXEMPT 100% OF THAT IMPROVEMENT FROM REAL PROPERTY TAXATION, REQUIRE THE OWNERS OF THOSE PARCELS TO MAKE SERVICE PAYMENTS IN LIEU OF TAXES, PROVIDE FOR THE DISTRIBUTION OF THE APPLICABLE PORTION OF THOSE SERVICE PAYMENTS TO THE JOHNSTOWN-MONROE LOCAL SCHOOL DISTRICT AND THE CAREER AND TECHNOLOGY EDUCATION CENTERS OF LICKING COUNTY, ESTABLISH A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND FOR THE DEPOSIT OF THE REMAINDER OF THOSE SERVICE PAYMENTS, SPECIFY THE PUBLIC INFRASTRUCTURE IMPROVEMENTS THAT DIRECTLY BENEFIT THOSE PARCELS, AND APPROVE AND AUTHORIZE THE EXECUTION OF ONE OR MORE TAX INCREMENT FINANCING AGREEMENTS**

**WHEREAS**, Sections 5709.40, 5709.42 and 5709.43 of the Ohio Revised Code (collectively, the “*TIF Statutes*”) authorize this Council to declare the improvement to certain parcels of real property located within the City of New Albany, Ohio ( the “*City*”) to be a public purpose and exempt from taxation, require the owner of those parcels to make service payments in lieu of taxes, provide for the distribution of the applicable portion of those service payments to the Johnstown-Monroe Local School District and the Career and Technology Education Centers of Licking County (C-TEC), (each, a “*School District*”), establish a municipal public improvement tax increment equivalent fund for the deposit of the remainder of those service payments and specify public infrastructure improvements made, to be made or in the process of being made that directly benefit, or that once made will directly benefit, those parcels; and

**WHEREAS**, the parcels of real property identified and depicted in Exhibit A attached hereto (each, as now or hereafter configured on the tax list and duplicate of real and public utility property, a “*Parcel*”, and collectively, the “*Parcels*”) are located in the City, and this Council has determined to declare the Improvement (as defined in Section 1 of this Ordinance) to each Parcel to be a public purpose; and

**WHEREAS**, this Council has determined that it is necessary and appropriate and in the best interest of the City to exempt from taxation one hundred percent (100%) of the Improvement to each Parcel as permitted and provided in Section 5709.40(B) of the Ohio Revised Code for thirty (30) years and to simultaneously direct and require the current and future owner of each Parcel (each such owner individually, an “*Owner*,” and collectively, the “*Owners*”) to make annual Service Payments (as defined in Section 2 of this Ordinance); and

**WHEREAS**, the City has determined that a portion of the Service Payments shall be paid directly to each School District in an amount equal to the real property taxes that the School District would have received if the Improvement to the Parcels had not been exempted from taxation pursuant to this Ordinance; and

**WHEREAS**, pursuant to Section 5709.43(A) of the Ohio Revised Code, this Council has determined to establish a municipal public improvement tax increment equivalent fund in which there shall be deposited the remaining Service Payments distributed to the City; and

**WHEREAS**, this Council has determined to designate the public infrastructure improvements described in Exhibit B attached hereto (the "*Public Infrastructure Improvements*") as public infrastructure improvements made, to be made or in the process of being made that directly benefit, or that once made will directly benefit, the Parcels; and

**WHEREAS**, this Council has determined to provide for the execution and delivery of one or more Tax Increment Financing Agreements (each, a "*TIF Agreement*"), which will more fully provide for the collection of Service Payments; and

**WHEREAS**, notice of this proposed Ordinance has been delivered to the Board of Education of Johnstown-Monroe Local School District and the Career and Technology Education Centers of Licking County (C-TEC) in accordance with, and within the time periods prescribed by, Sections 5709.40 and 5709.83 of the Ohio Revised Code and in furtherance of the commitment made by the City in the Compensation Agreements entered into between the Board of Education of the Johnstown-Monroe Local School District, and the City;

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

**Section 1.** Authorization of Tax Exemption. Pursuant to and in accordance with the provisions of Section 5709.40(B) of the Ohio Revised Code, one hundred percent (100%) of the increase in assessed value of each Parcel that is used or to be used for non-residential purposes and that would first appear on the tax list and duplicate of real and public utility property after the effective date of this Ordinance (which increase in assessed value is hereinafter referred to as the "*Improvement*", as further defined in Section 5709.40(A) of the Ohio Revised Code) is hereby declared to be a public purpose and shall be exempt from taxation for a period commencing with the first tax year that begins after the effective date of this Ordinance and in which an Improvement attributable to a new structure on that Parcel first appears on the tax list and duplicate of real and public utility property for that Parcel and ending on the earlier of (a) thirty (30) years after such commencement or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Statutes. The real property tax exemption granted pursuant to this Section and the payment obligation established pursuant to Section 2 are subject and subordinate to any real property tax exemption granted pursuant to Sections 3735.65 to 3735.70 or Sections 5709.61 to 5709.69 of the Ohio Revised Code.

**Section 2.** Service Payments and Property Tax Rollback Payments. Pursuant to Section 5709.42 of the Ohio Revised Code, this Council hereby directs and requires the Owner of each Parcel to make annual service payments in lieu of taxes with respect to the Improvement allocable thereto to the



Treasurer of Licking County, Ohio (the "*County Treasurer*") on or before the final dates for payment of real property taxes. The service payment in lieu of taxes for each Parcel, including any penalties and interest at the then current rate established under Sections 323.121(B)(1) and 5703.47 of the Ohio Revised Code, as the same may be amended or supplemented from time to time, or any other applicable provisions of the Ohio Revised Code (collectively, the "*Service Payments*"), shall be charged to each Parcel and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvement to that Parcel if it were not exempt from taxation pursuant to Section 1 of this Ordinance, all in accordance with Section 5709.42 of the Ohio Revised Code. The Service Payments, and any other payments with respect to the Improvement that are received by the County Treasurer in connection with the reduction required by Sections 319.302, 321.24, 323.152 and 323.156 of the Ohio Revised Code, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time, or any other applicable provisions of the Ohio Revised Code (collectively, the "*Property Tax Rollback Payments*"), shall be allocated and distributed in accordance with Section 4 of this Ordinance.

**Section 3. Tax Increment Equivalent Fund.** This Council hereby establishes, pursuant to and in accordance with the provisions of Section 5709.43 of the Ohio Revised Code, the Oak Grove II Public Tax Increment Equivalent Fund (the "*Fund*"). The Fund shall be maintained in the custody of the City and shall receive all distributions to be made to the City pursuant to Section 4 of this Ordinance. Those Service Payments and Property Tax Rollback Payments received by the City with respect to the Improvement to each Parcel and so deposited pursuant to Section 5709.42 of the Ohio Revised Code shall be used solely for the purposes authorized in the TIF Statutes and this Ordinance, as the same may be amended from time to time. The Fund shall remain in existence so long as such Service Payments and Property Tax Rollback Payments are collected and used for the aforesaid purposes, after which time the Fund shall be dissolved and any incidental surplus funds remaining therein transferred to the City's General Fund, all in accordance with Section 5709.43 of the Ohio Revised Code.

**Section 4. Distribution of Funds.** Pursuant to the TIF Statutes, the County Treasurer is hereby requested and directed to distribute the Service Payments and Property Tax Rollback Payments as follows:

(i) to each School District, an amount equal to the amount the School District would otherwise have received as real property tax payments (including the applicable portion of any Property Tax Rollback Payments) derived from the Improvement to each Parcel if the Improvement had not been exempt from taxation pursuant to this Ordinance; and

(ii) to the City, all remaining amounts for further deposit into the Fund for payment of costs of the Public Infrastructure Improvements upon appropriation for that purpose by this Council. If so appropriated, such costs may but shall not be required to include, without limitation, all debt service payable on debt issued by the City or the New Albany Community Authority (the "*Authority*") to pay for Public Infrastructure Improvements, all amounts owed to any fund of the City or Authority to reimburse that fund for the costs of any Public Infrastructure Improvements previously paid from that fund, including interest payable on those amounts, and all amounts owed by the City or Authority to any third party for the construction of Public Infrastructure Improvements, including interest payable on those amounts.

**Section 5. Public Infrastructure Improvements.** This Council hereby designates the Public Infrastructure Improvements described in Exhibit B attached hereto, and any other public infrastructure improvements hereafter designated by ordinance, as public infrastructure improvements made, to be made or in the process of being made by the City that directly benefit, or that once made will directly benefit, the Parcels.

**Section 6. Tax Increment Financing Agreement.** The form of TIF Agreement presently on file with the Fiscal Officer is hereby approved and authorized with changes therein and amendments thereto not inconsistent with this Ordinance and not substantially adverse to the City and which shall be approved by the City Manager. The City Manager, for and in the name of the City, is hereby authorized to execute and deliver one or more TIF Agreements with one or more owners of a Parcel or Parcels in substantially that form along with any changes therein and amendments thereto, provided that the approval of such changes and amendments by the City Manager, and the character of those changes and amendments as not being substantially adverse to the City or inconsistent with this Ordinance, shall be evidenced conclusively by the City Manager's execution thereof.

**Section 7. Further Authorizations.** This Council hereby authorizes and directs the City Manager, the City Solicitor, the Fiscal Officer or other appropriate officers of the City to make such arrangements as are necessary and proper for collection of the Service Payments from the Owners, including the preparation and filing of any necessary exemption applications. This Council further hereby authorizes and directs the City Manager, the City Solicitor, the Fiscal Officer or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Ordinance.

**Section 8. Filings with Ohio Department of Development.** Pursuant to Section 5709.40(I) of the Ohio Revised Code, the City Manager or other appropriate officer of the City is hereby directed to deliver a copy of this Ordinance to the Director of Development of the State of Ohio within fifteen (15) days after its adoption. Further, on or before March 31 of each year that the exemption set forth in Section 1 of this Ordinance remains in effect, the City Manager or other appropriate officer of the City shall prepare and submit to the Director of Development of the State of Ohio the status report required under Section 5709.40(I) of the Ohio Revised Code.

**Section 9. Tax Incentive Review Council.** This council hereby designates the Tax Incentive Review Council created pursuant to Resolution R-46-2009 as the tax incentive review council responsible for reviewing annually all exemptions from taxation resulting from the declarations set forth in this Ordinance and any other such matters as may properly come before that council, all in accordance with Section 5709.85 of the Ohio Revised Code.

**Section 10. Open Meetings.** This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law, including Section 121.22 of the Ohio Revised Code.

**Section 11. Effective Date.** Pursuant to Article 6.07(b) of the New Albany Charter, this Ordinance shall become effective thirty (30) days after adoption.

CERTIFIED AS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Attest:

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

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

Approved as to form:

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

**Legislation dates:**

Prepared: 10/04/2023

Introduced: 10/17/2023

Revised:

Adopted:

Effective:

**EXHIBIT A – O-100-2023**

**PARCEL MAP**

The colored areas on the attached map specifically identify and depict the parcels included in this TIF district.

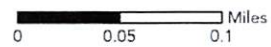




## Oak Grove II TIF

*Jug and Harrison*

- TIF Expansion
- Parcel



## EXHIBIT B – O-100-2023

### PUBLIC INFRASTRUCTURE IMPROVEMENTS

The Public Infrastructure Improvements include the construction of the following improvements that will directly benefit the Parcels and all related costs of permanent improvements (including, but not limited to, those costs listed in Section 133.15(B) of the Ohio Revised Code), along with any other improvements subsequently designated by Village Council:

- public roads and highways (including street realignments);
- water and sewer lines;
- leisure trails and connections;
- parks and public facilities;
- environmental remediation projects;
- stormwater and flood remediation projects, including such projects on private property when determined to be necessary for public health, safety and welfare;
- gas, electric and communications services facilities, including fiber optics;
- land acquisition, including acquisition in aid of industry, commerce, distribution, or research;
- demolition, including demolition on private property when determined to be necessary for economic development purposes;
- landscaping and signage, including brick retaining walls at roadway intersections; including in each case, design and other related costs (including traffic studies); any rights-of-way or real estate acquisition; curbs and gutters, medians, sidewalks, bikeways, and landscaping (including scenic fencing and irrigation); traffic signs and signalization (including overhead street signage); street lighting and signs; burial of utility lines (including fiber optics); erosion and sediment control measures; grading, drainage and other related work; survey work, soil engineering, inspection fees and construction staking; and all other costs and improvements necessary and appurtenant thereto.



## RESOLUTION R-44-2023

### **A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A COMMUNITY REINVESTMENT AREA AGREEMENT AND A MEMORANDUM OF UNDERSTANDING WITH QTS NAL TX I, LLC FOR ITS SITE NO. 1, AND MAKING RELATED AUTHORIZATIONS**

**WHEREAS**, the Council for the City of New Albany, Ohio (the "City") by its Resolution No. R-17-09 adopted March 3, 2009 (the "Original CRA Legislation"), created the Oak Grove II Community Reinvestment Area (the "Original Area"), and by its Resolutions No. R-41-10 adopted July 6, 2010, No. R-72-10 adopted November 16, 2010, No. R-53-2012 adopted October 2, 2012, No. R-26-2013 adopted August 6, 2013, No. R-72-2014 adopted September 16, 2014, and R-49-2015 adopted November 17, 2015, No. R-45-2016 adopted November 1, 2016, No. R-02-17 adopted February 7, 2017, No. R-17-18 adopted July 17, 2018, No. R-41-18 adopted November 6, 2018, No. R-05-2019 adopted February 19, 2019, No. R-37-2019 adopted August 6, 2019, No. R-15-2021 adopted April 6, 2021, No. R-46-21 adopted September 21, 2021, No. R-09-2022 adopted February 1, 2022, No. R-18-2022 adopted May 3, 2022, and No. R-38-2022 adopted November 15, 2022, and No. R-21-2023 adopted April 18, 2023 (together the "CRA Expansion Legislation" and collectively with the Original CRA Legislation the "CRA Legislation"), amended the designation of the Original Area to include the area known as the "Johnstown Monroe Area", "Johnstown Monroe Annex", "Licking Heights Annex", "Cobbs Road Annex", "Harrison Road Area", "Innovation Campus Area" "Innovation Campus Way Extension" "Beech Road South", "Babbitt Road", "Central College Road Area", "Jug Street North", "Jug Street South", "Innovation District East", "Innovation District East Expansion", "Mink Street and Green Chapel Road Expansion", "Beech Rd. & US 62 District" and "Northeast Business Park District", respectively, and certain other parcels within the City (collectively, with the Original Area, the "Area"), and designated that entire Area the Oak Grove II Community Reinvestment Area; and

**WHEREAS**, the Directors of the Department of Development of the State of Ohio and the Ohio Development Services Agency (successor and predecessor to one another) have determined and certified that the aforementioned Area contains the characteristics set forth in Ohio Revised Code Section 3735.66 and confirmed that Area as a "Community Reinvestment Area" pursuant to that Section 3735.66; and

**WHEREAS**, QTS NAL TX I, LLC (the "Company") has submitted to the City the application attached to the Community Reinvestment Area Agreement for its Site No. 1 (the "CRA Agreement") referred to in Section 1 of this Resolution (the "Agreement Application"), together with the fee referred to in Section 6 of that CRA Agreement; and

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

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

**WHEREAS**, the Boards of Education of both the Licking Heights Local School District and the Licking County Joint Vocational School District (also known as "Career and Technology Education Centers of Licking County" or "C-TEC") have each waived their rights to receive notice under Section 5709.83 of the Revised Code in accordance with their respective compensation agreements entered into with the city of New Albany; and

**WHEREAS**, the Company requires an adequate supply of water and sewer services for the development and operation of the Project and the City and Company desire to enter into a Memorandum of Understanding (the "MOU") addressing the availability and supply of water and sewer services for the development and operation of the Project.

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

**Section 1. Community Reinvestment Area Agreement.** The CRA Agreement for the Project (Site No. 1), by and between the City and the Company, in the form presently on file with the Clerk of the Council which provides for a 100% CRA exemption for 15-years for the proposed Project is hereby approved and authorized with any changes therein and amendments thereto not inconsistent with this Resolution and not substantially adverse to this City which shall be approved by the city manager. The city manager, for and in the name of this City, is hereby authorized to execute that CRA Agreement and approve the character of any changes or amendments thereto as not inconsistent with this Resolution and not substantially adverse to this City that are approved by the city manager, which approval shall be conclusively evidenced by the city manager's execution of that CRA Agreement.

**Section 2. Water and Sewer Services Memorandum of Understanding.** The Memorandum of Understanding by and between the City and the Company, in the form presently on file with the Clerk of the Council which addresses the availability and supply of water and sewer services for the development and operation of the Project, is hereby approved and authorized with any changes therein and amendments thereto not inconsistent with this Resolution and not substantially adverse to this City which shall be approved by the city manager. The city manager, for and in the name of this City, is hereby authorized to execute that MOU and approve the character of any changes or amendments thereto as not inconsistent with this Resolution and not substantially adverse to this City that are approved by the city manager, which approval shall be conclusively evidenced by the city manager's execution of that MOU.

**Section 3. Further Authorizations.** This Council hereby further authorizes and directs the city manager, the director of law, the director of finance, the community development director, the clerk of council, or any such other appropriate officers of the City to prepare and sign all agreements



and instruments and to take any other actions (including by not limited to making application and preliminary arrangements for financing that is then subject to formal approval by this Council) as may be appropriate to implement this Resolution and the transactions referenced or contemplated in this Resolution and the Community Reinvestment Area Agreement authorized and approved in this Resolution.

**Section 4. Compliance with the Law.** This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in an open meeting of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

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

**CERTIFIED AS ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2023.**

**Attest:**

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

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

**Approved as to form:**

\_\_\_\_\_  
Benjamin Albrecht  
Law Director

**Legislation dates:**

Prepared: 10/06/2023

Introduced: 10/17/2023

Revised:

Adopted:

Effective:



## RESOLUTION R-45-2023

### **A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A COMMUNITY REINVESTMENT AREA AGREEMENT AND A MEMORANDUM OF UNDERSTANDING WITH QTS NAL TX I, LLC FOR ITS SITE NO. 2, AND MAKING RELATED AUTHORIZATIONS**

**WHEREAS**, the Council for the City of New Albany, Ohio (the "City") by its Resolution No. R-17-09 adopted March 3, 2009 (the "Original CRA Legislation"), created the Oak Grove II Community Reinvestment Area (the "Original Area"), and by its Resolutions No. R-41-10 adopted July 6, 2010, No. R-72-10 adopted November 16, 2010, No. R-53-2012 adopted October 2, 2012, No. R-26-2013 adopted August 6, 2013, No. R-72-2014 adopted September 16, 2014, and R-49-2015 adopted November 17, 2015, No. R-45-2016 adopted November 1, 2016, No. R-02-17 adopted February 7, 2017, No. R-17-18 adopted July 17, 2018, No. R-41-18 adopted November 6, 2018, No. R-05-2019 adopted February 19, 2019, No. R-37-2019 adopted August 6, 2019, No. R-15-2021 adopted April 6, 2021, No. R-46-21 adopted September 21, 2021, No. R-09-2022 adopted February 1, 2022, No. R-18-2022 adopted May 3, 2022, and No. R-38-2022 adopted November 15, 2022, and No. R-21-2023 adopted April 18, 2023 (together the "CRA Expansion Legislation" and collectively with the Original CRA Legislation the "CRA Legislation"), amended the designation of the Original Area to include the area known as the "Johnstown Monroe Area", "Johnstown Monroe Annex", "Licking Heights Annex", "Cobbs Road Annex", "Harrison Road Area", "Innovation Campus Area" "Innovation Campus Way Extension" "Beech Road South", "Babbitt Road", "Central College Road Area", "Jug Street North", "Jug Street South", "Innovation District East", "Innovation District East Expansion", "Mink Street and Green Chapel Road Expansion", "Beech Rd. & US 62 District" and "Northeast Business Park District", respectively, and certain other parcels within the City (collectively, with the Original Area, the "Area"), and designated that entire Area the Oak Grove II Community Reinvestment Area; and

**WHEREAS**, the Directors of the Department of Development of the State of Ohio and the Ohio Development Services Agency (successor and predecessor to one another) have determined and certified that the aforementioned Area contains the characteristics set forth in Ohio Revised Code Section 3735.66 and confirmed that Area as a "Community Reinvestment Area" pursuant to that Section 3735.66; and

**WHEREAS**, QTS NAL TX I, LLC (the "Company") has submitted to the City the application attached to the Community Reinvestment Area Agreement for its Site No. 2 (the "CRA Agreement") referred to in Section 1 of this Resolution (the "Agreement Application"), together with the fee referred to in Section 6 of that CRA Agreement; and

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

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

**WHEREAS**, the Boards of Education of both the Licking Heights Local School District and the Licking County Joint Vocational School District (also known as "Career and Technology Education Centers of Licking County" or "C-TEC") have each waived their rights to receive notice under Section 5709.83 of the Revised Code in accordance with their respective compensation agreements entered into with the city of New Albany; and

**WHEREAS**, the Company requires an adequate supply of water and sewer services for the development and operation of the Project and the City and Company desire to enter into a Memorandum of Understanding (the "MOU") addressing the availability and supply of water and sewer services for the development and operation of the Project.

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

**Section 1. Community Reinvestment Area Agreement.** The CRA Agreement for the Project (Site No. 2), by and between the City and the Company, in the form presently on file with the Clerk of the Council which provides for a 100% CRA exemption for 15-years for the proposed Project is hereby approved and authorized with any changes therein and amendments thereto not inconsistent with this Resolution and not substantially adverse to this City which shall be approved by the city manager. The city manager, for and in the name of this City, is hereby authorized to execute that CRA Agreement and approve the character of any changes or amendments thereto as not inconsistent with this Resolution and not substantially adverse to this City that are approved by the city manager, which approval shall be conclusively evidenced by the city manager's execution of that CRA Agreement.

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**Section 3. Further Authorizations.** This Council hereby further authorizes and directs the city manager, the director of law, the director of finance, the community development director, the

clerk of council, or any such other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions (including by not limited to making application and preliminary arrangements for financing that is then subject to formal approval by this Council) as may be appropriate to implement this Resolution and the transactions referenced or contemplated in this Resolution and the Community Reinvestment Area Agreement authorized and approved in this Resolution.

**Section 4. Compliance with the Law.** This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in an open meeting of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

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

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**Attest:**

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Sloan T. Spalding  
Mayor

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

**Approved as to form:**

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Benjamin Albrecht  
Law Director

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