



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:

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-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

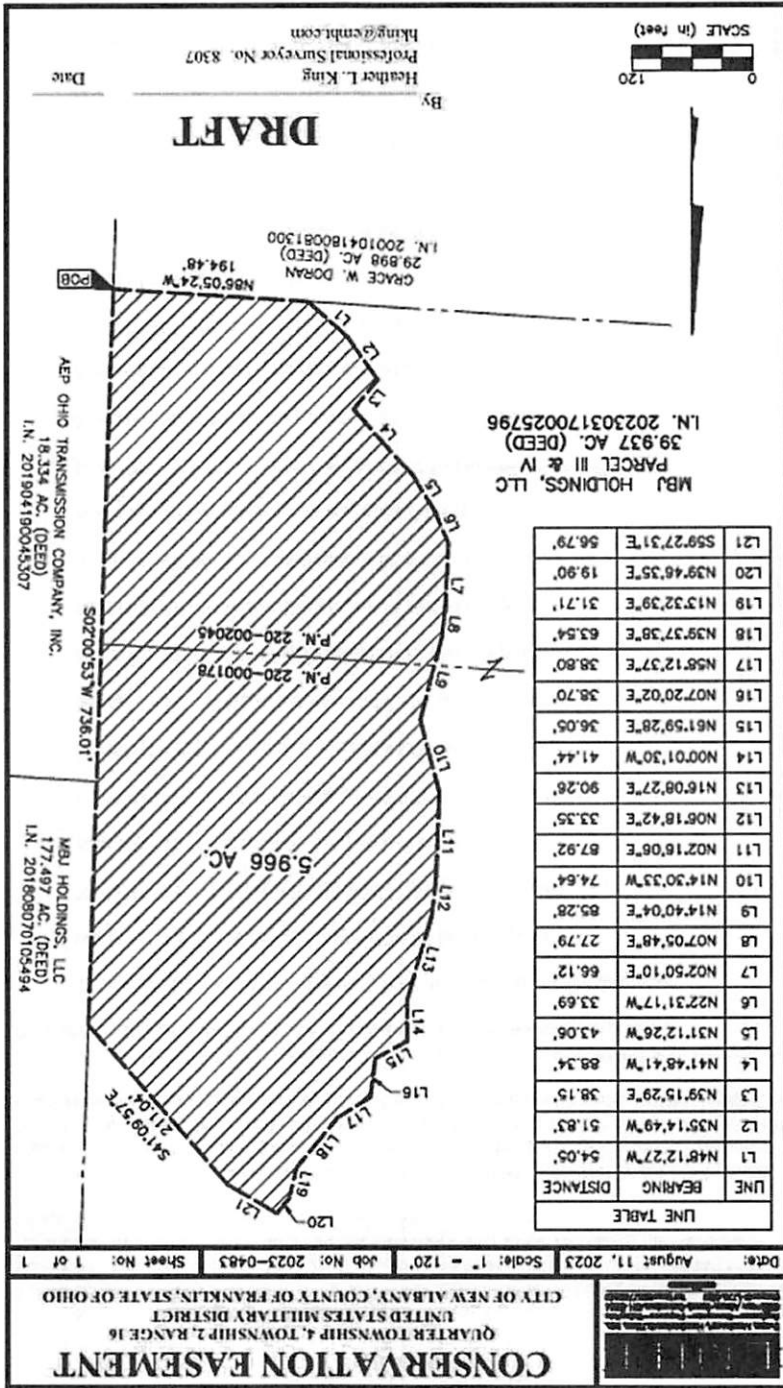
The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the _____ of **The City of New Albany, Ohio**, an Ohio municipal corporation, on behalf of said municipal corporation. This is an acknowledgment certificate; no oath or affirmation was administered to the signer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



Depiction of Conservation Easement Area

Exhibit A

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

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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 "A VI" 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

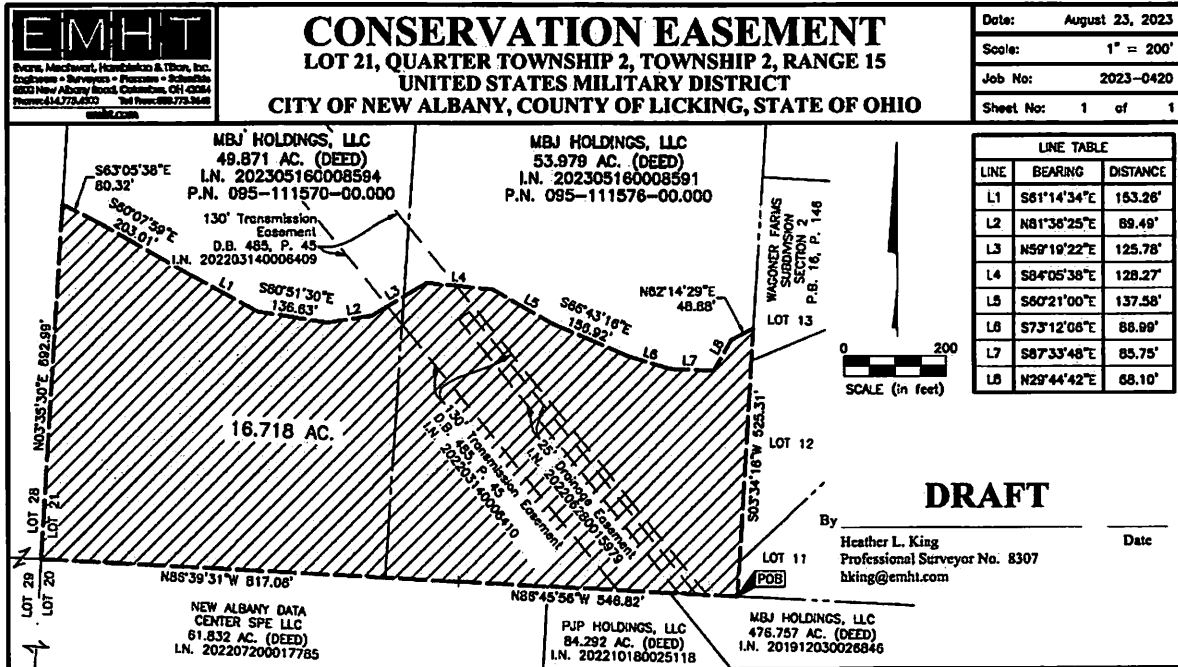


Exhibit B

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 MBI 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.

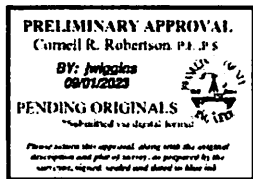
Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

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:td
0_665 no 20230403-V8-BNDY-04

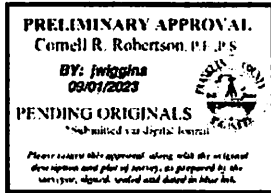


Exhibit B

Depiction of Property

See attached.

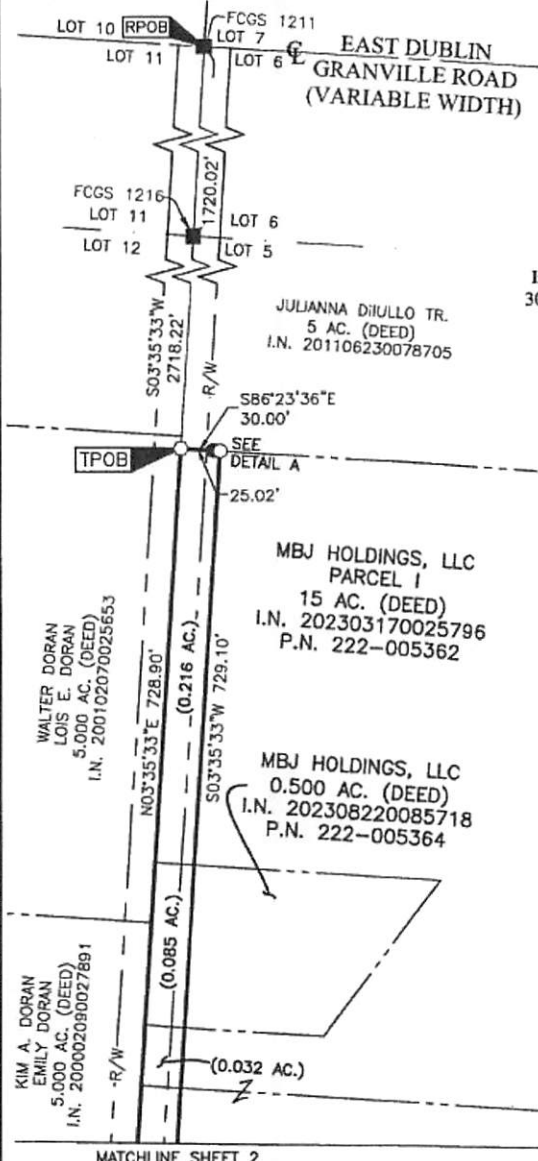


Evans, Macdonald, Hornblower & Tillotson, Inc.
 Engineers - Surveyors - Planners - Scientists
 5000 New Albany Road, Columbus, OH 43024
 Phone: 614.775.4333 Fax: 614.775.2648
 emht.com

SURVEY OF ACREAGE PARCEL

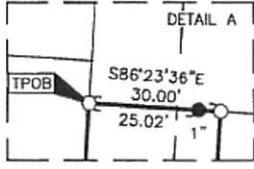
QUARTER TOWNSHIP 4, TOWNSHIP 2, RANGE 16
 UNITED STATES MILITARY DISTRICT
 CITY OF NEW ALBANY, COUNTY OF FRANKLIN, STATE OF OHIO

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.

STATE OF OHIO
 HEATHER L. KING
 6-8307
 REGISTERED PROFESSIONAL SURVEYOR
 By *Heather L. King* Date 8/16/23
 Heather L. King
 Professional Surveyor No. 6-8307
 hking@emht.com

A:\2023\0403\SURV\0403-SURVEY\BOUNDARY_20230403-15-807-04.DWG plotted by KING, HEATHER on 8/16/2023 10:48:51 AM last saved by HEATHER on 8/16/2023 10:48:37 AM

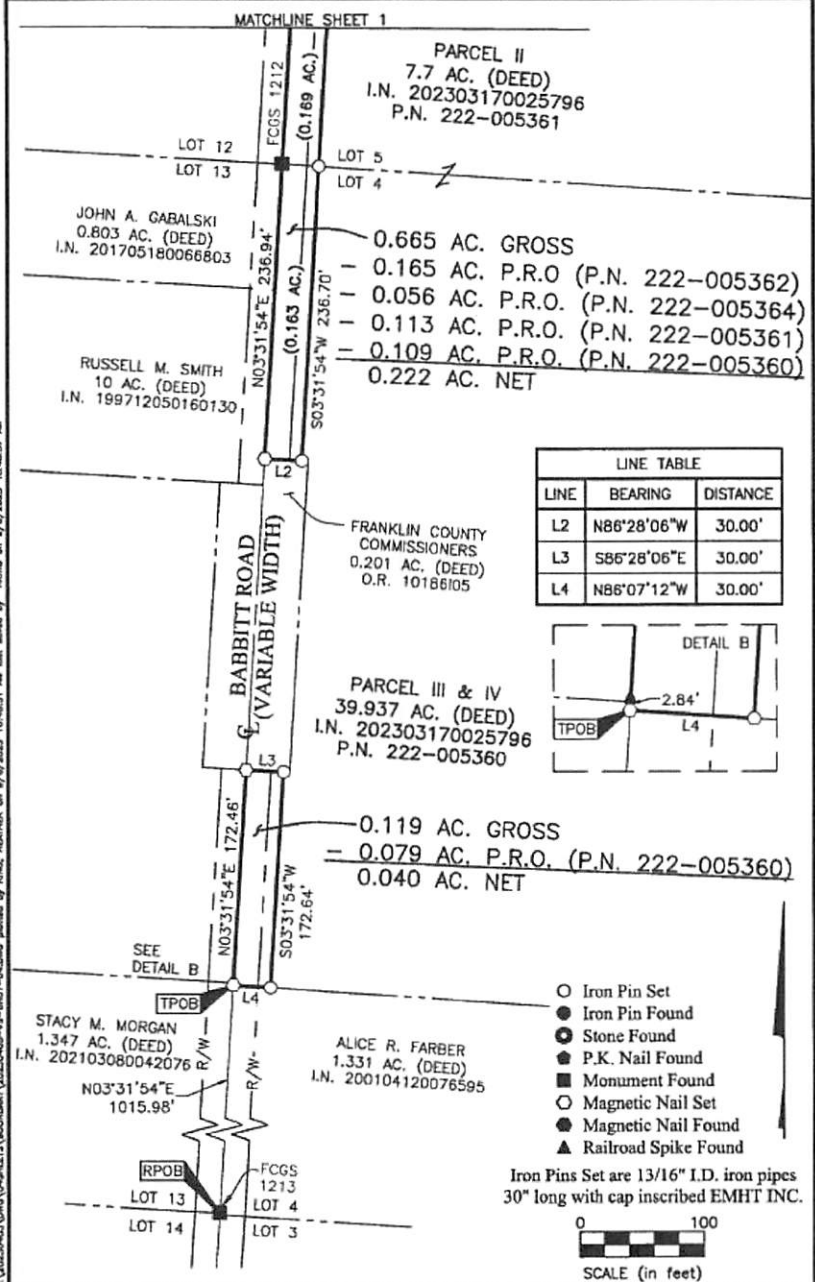


SURVEY OF ACREAGE PARCEL

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

14-2023-0403-DWG (48) SHEET 2 OF 2 SURVEY PARCEL BY KINC, REVISIONS ON 9/6/2023 10:48:37 AM. L&L INC. ON 9/6/2023 10:48:31 AM. L&L INC. ON 9/6/2023 10:48:37 AM.





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 18, 2023

The Jug Street South Zoning District (hereinafter, the "Zoning District") consists of 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. Building color palettes shall be simple and unobtrusive. Buildings shall avoid overly bright and jarring colors.
4. 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.
5. 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.
6. 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.
7. 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.
8. Elements such as meter boxes, utility conduits, roof and wall projections such as vent and exhaust pipes, basement window enclosures, and trash containers shall be designed, located, or screened so as to minimize their visibility and visual impact from off-site. Solar energy systems shall be excluded from the requirements of this section.
9. 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 front on a public street.

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. The developer shall grant easements to the City of New Albany adjacent to the rights of way in order to install and maintain street scape improvements and/or utilities. The proposed right-of-way width and easements are to be sufficient enough to accommodate the City street capital improvement projects.

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 with adjacent sites. 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 and Harrison Road rights 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 shall 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, or similar subject to review and approval of the City landscape architect.

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.

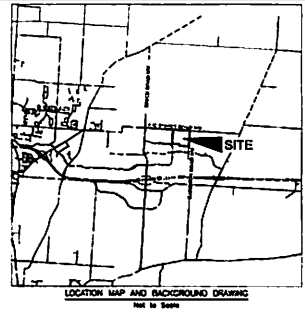
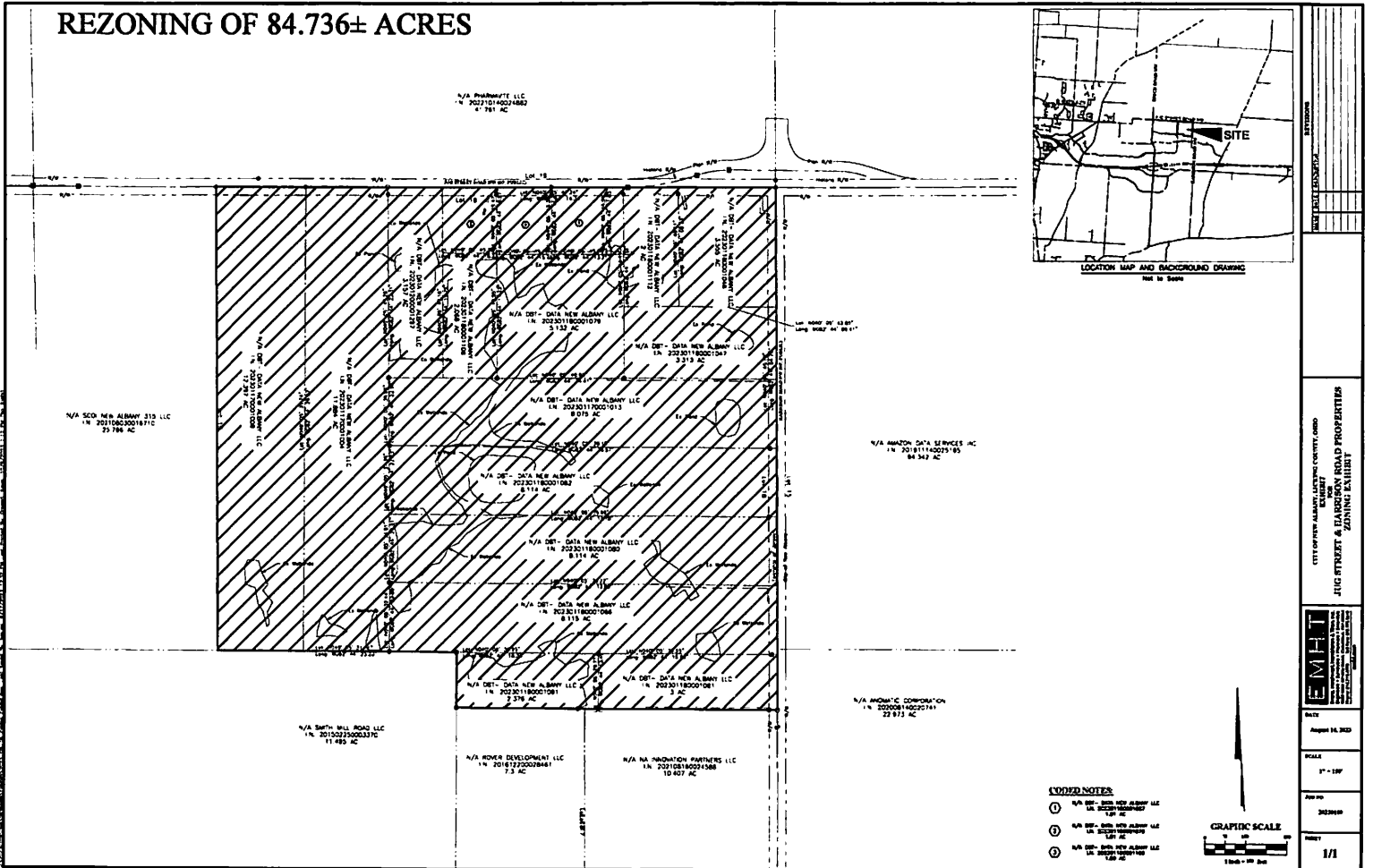
F. All other lighting on the site shall be in accordance with City Code.

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 with the exception of electric transmission lines, installed solely to serve this Zoning District shall be installed underground.

REZONING OF 84.736± ACRES



<p>NEW STATE RESOLUTION</p> <p>CITY OF NEW ALBANY, LEBANON COUNTY, OHIO</p> <p>RESOLUTION</p> <p>FOR</p> <p>REZONING</p> <p>OF</p> <p>84.736± ACRES OF</p> <p>PROPERTY</p> <p>LOCATED AT THE</p> <p>INTERSECTION OF</p> <p>STATE ROUTE 100 AND</p> <p>STATE ROUTE 100</p> <p>IN THE</p> <p>CITY OF NEW ALBANY, OHIO</p>
<p>DATE</p> <p>August 14, 2023</p>
<p>SCALE</p> <p>1" = 100'</p>
<p>PROJECT NO.</p> <p>202308</p>
<p>DATE</p> <p>8/14/23</p>
<p>1/1</p>

- COVER NOTES**
1. N/A SCD NEW ALBANY LLC
 2. N/A SCD NEW ALBANY LLC
 3. N/A SCD NEW ALBANY LLC





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:

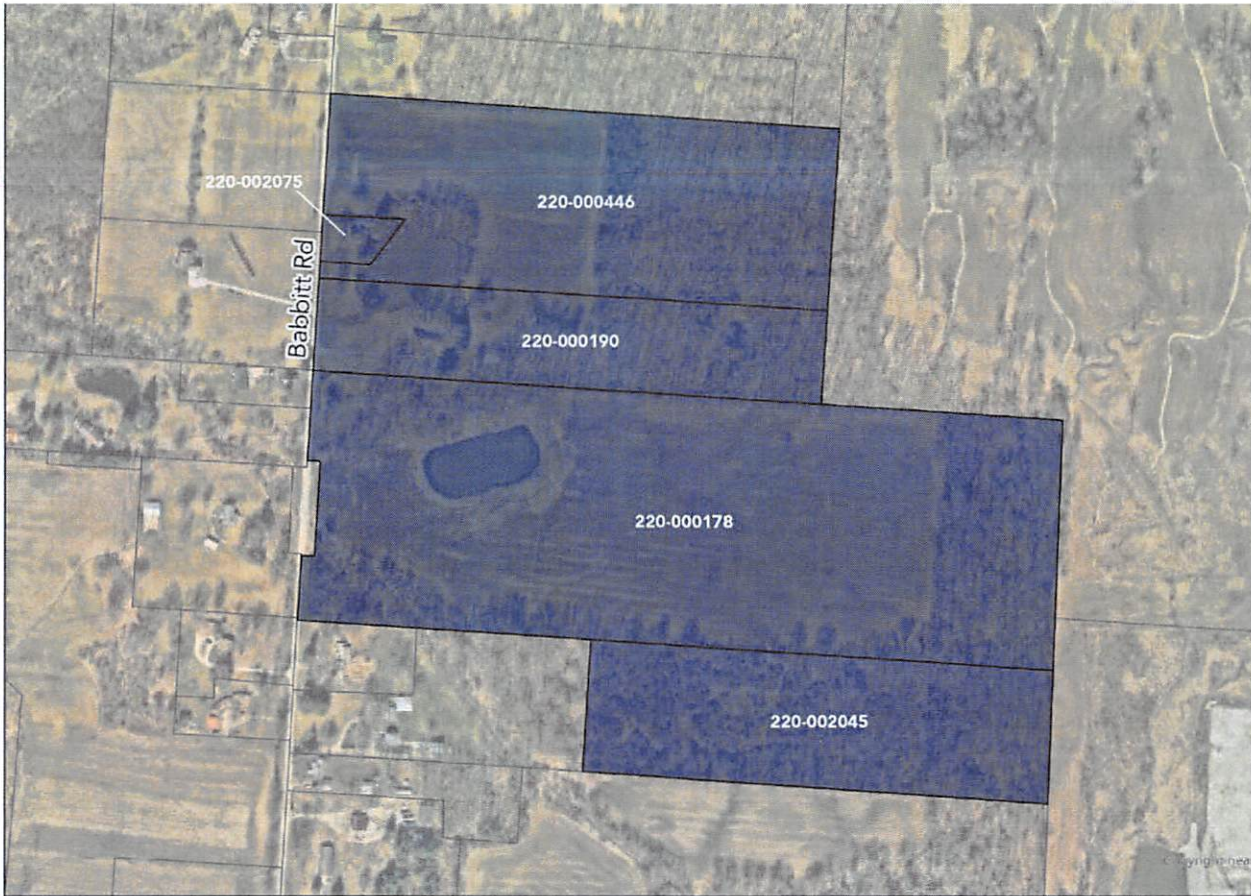
Effective:

PROPOSAL

EXHIBIT 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

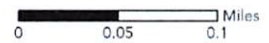


EXHIBIT B – O-99-2023

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.



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:

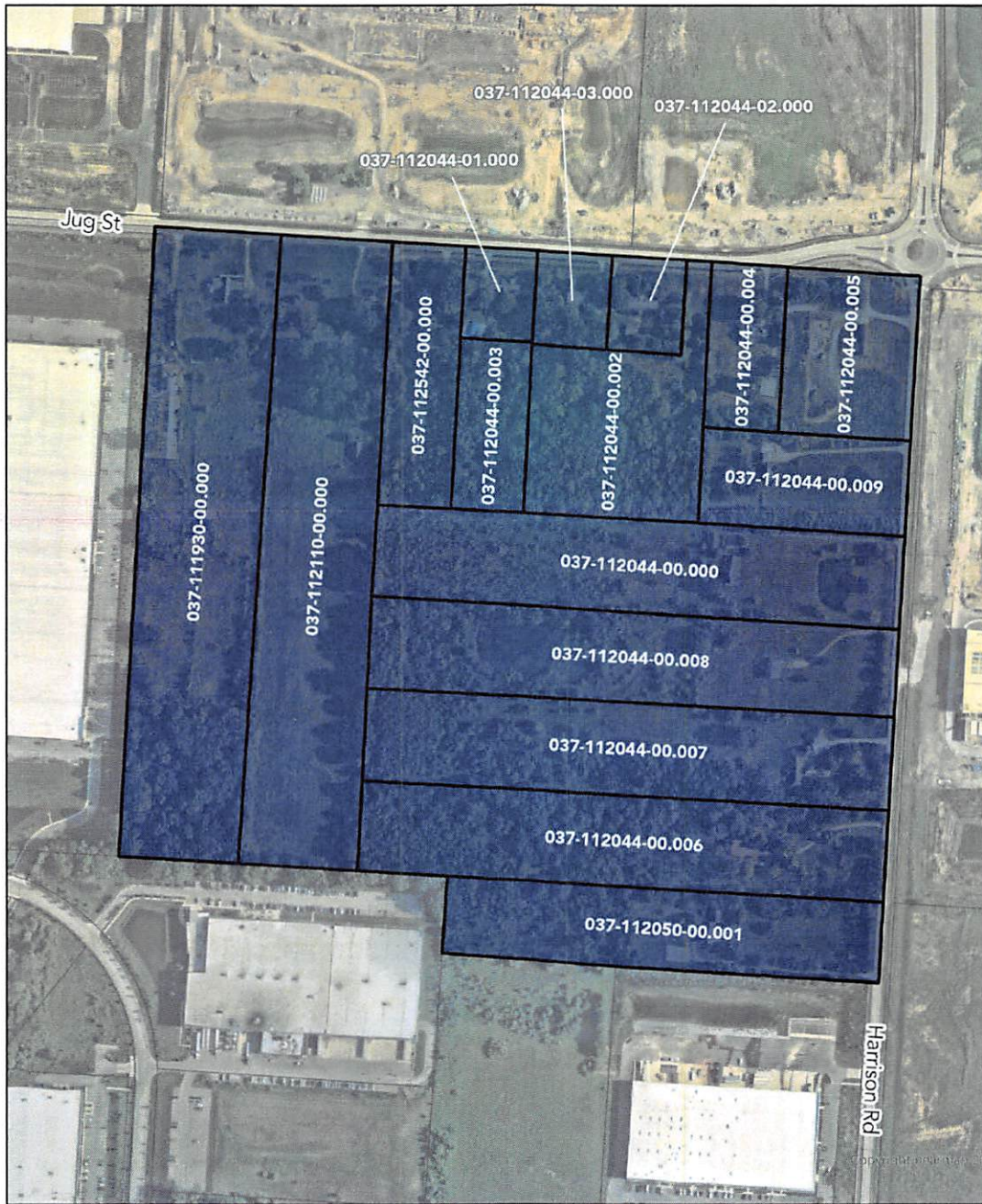
Effective:

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

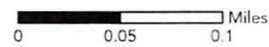


EXHIBIT B – O-100-2023

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.



ORDINANCE O-101-2023

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$50,000,000 FOR THE PURPOSE OF PAYING THE COSTS OF PROVIDING FOR THE CONTINUING DEVELOPMENT OF THE VILLAGE CENTER BY CONSTRUCTING A PARKING GARAGE AND VETERAN'S MEMORIAL PLAZA, LANDSCAPING, CURBING, PAVING, LIGHTING, AND ACQUIRING REAL ESTATE INTERESTS THEREIN, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO

WHEREAS, this City Council has requested that the Director of Finance, as fiscal officer of this City, certify the estimated life or period of usefulness of the Improvement described in Section 2 and the maximum maturity of the Bonds described in Section 2; and

WHEREAS, the Director of Finance has certified to this City Council that the estimated life or period of usefulness of the Improvement described in Section 2 is at least five (5) years and that the maximum maturity of the Bonds described in Section 2 is at least twenty-five (25) years.

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

Section 1. Definitions and Interpretation. In addition to the words and terms elsewhere defined in this Ordinance, unless the context or use clearly indicates another or different meaning or intent:

“Authorized Denominations” means the denomination of \$5,000 or any integral multiple in excess thereof.

“Bond Proceedings” means, collectively, this Ordinance, the Certificate of Award, the Continuing Disclosure Agreement, the Registrar Agreement and such other proceedings of the City, including the Bonds, that provide collectively for, among other things, the rights of holders and beneficial owners of the Bonds, and to the extent it is determined necessary by the Director of Finance in the Certificate of Award, the Purchase Agreement.

“Bond Register” means all books and records necessary for the registration, exchange and transfer of Bonds as provided in Section 5.

“Bond Registrar” means a bank or trust company authorized to do business in the State and designated by the Director of Finance in the Certificate of Award pursuant to Section 4 as the initial authenticating agent, bond registrar, transfer agent and paying agent for the Bonds under the Registrar Agreement and until a successor Bond Registrar shall have become such pursuant to the

provisions of the Registrar Agreement and, thereafter, “*Bond Registrar*” shall mean the successor Bond Registrar.

“*Bonds*” means, collectively, the Serial Bonds and the Term Bonds, each as is designated as such in the Certificate of Award.

“*Book entry form*” or “*book entry system*” means a form or system under which (a) the ownership of beneficial interests in the Bonds and the principal of and interest and any premium on the Bonds may be transferred only through a book entry, and (b) physical Bond certificates in fully registered form are issued by the City and payable only to a Depository or its nominee as registered owner, with the certificates deposited with and “immobilized” in the custody of the Depository or its designated agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Bonds and that principal and interest.

“*Certificate of Award*” means the certificate authorized by Section 6, to be executed by the Director of Finance, setting forth and determining those terms or other matters pertaining to the Bonds and their issuance, sale and delivery as this Ordinance requires or authorizes to be set forth or determined therein.

“*City Manager*” means the City Manager of the City or any person serving in an interim or acting capacity with respect to that office.

“*Clerk of Council*” means the Clerk of Council of the City or any person serving in an interim or acting capacity with respect to that office.

“*Closing Date*” means the date of physical delivery of, and payment of the purchase price for, the Bonds.

“*Code*” means the Internal Revenue Code of 1986, as amended, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“*Continuing Disclosure Agreement*” means the Continuing Disclosure Agreement which shall constitute the continuing disclosure agreement made by the City for the benefit of the holders and beneficial owners of the Bonds in accordance with the Rule, as it may be modified from the form on file with the Clerk of Council and executed by the City Manager and the Director of Finance, all in accordance with Section 9(c).

“*Depository*” means any securities depository that is a clearing agency registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Bonds or the principal of and interest and any premium on the Bonds, and to effect transfers of the Bonds, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Director of Finance” means the Director of Finance of the City or any person serving in an interim or acting capacity with respect to that office.

“Director of Law” means the Director of Law of the City or any person serving in an interim or acting capacity with respect to that office.

“Financing Costs” shall have the meaning given in Section 133.01 of the Ohio Revised Code.

“Interest Payment Dates” means, unless otherwise specified in the Certificate of Award, June 1 and December 1 of each year that the Bonds are outstanding, commencing on the date specified in the Certificate of Award.

“Mandatory Redemption Date” shall have the meaning set forth in Section 3(b).

“Mandatory Sinking Fund Redemption Requirements” shall have the meaning set forth in Section 3(e)(i).

“Original Purchaser” means the purchaser of the Bonds specified in the Certificate of Award.

“Participant” means any participant contracting with a Depository under a book entry system and includes securities brokers and dealers, banks and trust companies and clearing corporations.

“Principal Payment Dates” means, unless otherwise specified in the Certificate of Award, December 1 in each of the years from and including 2024 to and including 2043 as determined necessary by the Director of Finance in the Certificate of Award; *provided* that the first Principal Payment Date may be advanced or deferred up to one year and the last Principal Payment Date may be advanced or deferred by such number of years as determined necessary by the Director of Finance, and *provided further* that in no case shall the final Principal Payment Date exceed the maximum maturity limitation referred to in the preambles hereto, all of which determinations shall be made by the Director of Finance in the Certificate of Award in such manner as to be in the best interest of and financially advantageous to the City.

“Purchase Agreement” means the Bond Purchase Agreement, which to the extent it is determined necessary by the Director of Finance in the Certificate of Award, shall be between the City and the Original Purchaser, as it may be modified from the form on file with the Clerk of Council and executed by the City Manager and the Director of Finance, all in accordance with Section 6.

“Registrar Agreement” means the Bond Registrar Agreement between the City and the Bond Registrar, as it may be modified from the form on file with the Clerk of Council and executed by the City Manager and the Director of Finance, all in accordance with Section 4.

“Regulations” means Treasury Regulations issued pursuant to the Code or to the statutory predecessor of the Code.

“Rule” means Rule 15c2-12 prescribed by the SEC pursuant to the Securities Exchange Act of 1934.

“SEC” means the Securities and Exchange Commission.

“*Serial Bonds*” means those Bonds designated as such and maturing on the dates set forth in the Certificate of Award, bearing interest payable on each Interest Payment Date and not subject to mandatory sinking fund redemption.

“*State*” means the State of Ohio.

“*Term Bonds*” means those Bonds designated as such and maturing on the date or dates set forth in the Certificate of Award, bearing interest payable on each Interest Payment Date and subject to mandatory sinking fund redemption.

The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

Section 2. Authorized Principal Amount and Purpose; Application of Proceeds. This City Council determines that it is necessary and in the best interest of the City to issue bonds of this City in the maximum principal amount of \$50,000,000 (the “*Bonds*”) for the purpose of paying the costs of providing for the continuing development of the Village Center by constructing a parking garage and veteran’s memorial plaza, landscaping, curbing, paving, lighting, and acquiring real estate interests therein, together with all necessary appurtenances thereto (the “*Improvement*”). The Bonds shall be issued pursuant to Chapter 133 of the Ohio Revised Code, the Charter of the City, this Ordinance and the Certificate of Award.

The principal amount of Bonds to be issued shall not exceed the maximum principal amount specified in this Section 2 and shall be an amount determined by the Director of Finance in the Certificate of Award to be the principal amount of Bonds that is required to be issued at this time for the purpose stated in this Section 2, taking into account the costs of the Improvement, the estimates of the Financing Costs and the interest rates on the Bonds.

The proceeds from the sale of the Bonds received by the City (or withheld by the Original Purchaser on behalf of the City) shall be paid into the proper fund or funds, and those proceeds are hereby appropriated and shall be used for the purpose for which the Bonds are being issued, including without limitation but only to the extent not paid by others, the payment of the costs of issuing and servicing the Bonds, printing and delivery of the Bonds, legal services including obtaining the approving legal opinion of bond counsel, fees and expenses of any municipal advisor, paying agent and rating agency, any fees or premiums relating to municipal bond insurance or other security arrangements determined necessary by the Director of Finance, and all other Financing Costs and costs incurred incidental to those purposes. The Certificate of Award and the Purchase Agreement (if any) may authorize the Original Purchaser to withhold certain proceeds from the purchase price of the Bonds to provide for the payment of Financing Costs related to the Bonds on behalf of the City. Any portion of those proceeds received by the City representing premium (after payment of any Financing Costs identified in the Certificate of Award, and in the Purchase Agreement (if any) and/or the Registrar Agreement) or accrued interest shall be paid into the Bond Retirement Fund.

Section 3. Denominations; Dating; Principal and Interest Payment and Redemption Provisions. The Bonds shall be issued in one lot and only as fully registered bonds, in Authorized Denominations, but in no case as to a particular maturity date exceeding the principal amount

maturing on that date. The Bonds shall be dated as provided in the Certificate of Award, *provided* that their dated date shall not be more than sixty (60) days prior to the Closing Date.

(a) Interest Rates and Payment Dates. The Bonds shall bear interest at the rate or rates per year (computed on the basis of a 360-day year consisting of twelve 30-day months) as shall be determined by the Director of Finance, subject to subsection (c) of this Section 3, in the Certificate of Award. Interest on the Bonds shall be payable at such rate or rates on the Interest Payment Dates until the principal amount has been paid or provided for. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date.

(b) Principal Payment Schedule. The Bonds shall mature or be payable pursuant to Mandatory Sinking Fund Redemption Requirements on the Principal Payment Dates in principal amounts as shall be determined by the Director of Finance, subject to subsection (c) of this Section 3, in the Certificate of Award, which determination shall be in the best interest of and financially advantageous to the City.

Consistent with the foregoing and in accordance with the Director of Finance's determination of the best interest of and financial advantages to the City, the Director of Finance shall specify in the Certificate of Award (i) the aggregate principal amount of Bonds to be issued as Serial Bonds, the Principal Payment Date or Dates on which those Bonds shall be stated to mature and the principal amount thereof that shall be stated to mature on each such Principal Payment Date and (ii) the aggregate principal amount of Bonds to be issued as Term Bonds, the Principal Payment Date or Dates on which those Bonds shall be stated to mature, the principal amount thereof that shall be stated to mature on each such Principal Payment Date, the Principal Payment Date or Dates on which Term Bonds shall be subject to mandatory sinking fund redemption (each a "*Mandatory Redemption Date*") and the principal amount thereof that shall be payable pursuant to Mandatory Sinking Fund Redemption Requirements on each Mandatory Redemption Date.

(c) Conditions for Establishment of Interest Rates and Principal Payment Dates and Amounts. The rate or rates of interest per year to be borne by the Bonds, and the principal amount of Bonds maturing or payable pursuant to Mandatory Sinking Fund Redemption Requirements on each Principal Payment Date, shall be such that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable is not more than three times the amount of those payments in any other fiscal year. The net interest cost for the Bonds determined by taking into account the respective principal amounts of the Bonds and terms to maturity or Mandatory Sinking Fund Redemption Requirements of those principal amounts of Bonds shall not exceed 8.00%.

(d) Payment of Debt Charges. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal of and any premium on the Bonds shall be payable when due upon presentation and surrender of the Bonds at the designated corporate trust office of the Bond Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Register at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date. Notwithstanding the foregoing, if and so long as the Bonds are issued in a book entry system, principal of and interest and any premium on the Bonds shall be payable in the manner provided in any agreement entered into by the Director of Finance, in the name and on behalf of the City, in connection with the book entry system.

(e) Redemption Provisions. The Bonds shall be subject to redemption prior to stated maturity as follows:

(i) Mandatory Sinking Fund Redemption of Term Bonds. If any of the Bonds are issued as Term Bonds, the Term Bonds shall be subject to mandatory redemption in part by lot and be redeemed pursuant to mandatory sinking fund redemption requirements, at a redemption price of 100% of the principal amount redeemed, plus accrued interest to the redemption date, on the applicable Mandatory Redemption Dates and in the principal amounts payable on those Dates, for which provision is made in the Certificate of Award (such Dates and amounts being referred to as the "*Mandatory Sinking Fund Redemption Requirements*").

The aggregate of the moneys to be deposited with the Bond Registrar for payment of principal of and interest on any Term Bonds on each Mandatory Redemption Date shall include an amount sufficient to redeem on that Date the principal amount of Term Bonds payable on that Date pursuant to the Mandatory Sinking Fund Redemption Requirements (less the amount of any credit as hereinafter provided).

The City shall have the option to deliver to the Bond Registrar for cancellation Term Bonds in any aggregate principal amount and to receive a credit against the then current or any subsequent Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) of the City, as specified by the Director of Finance, for Term Bonds stated to mature on the same Principal Payment Date and bearing interest at the same rate as the Term Bonds so delivered. That option shall be exercised by the City on or before the 45th day preceding any Mandatory Redemption Date with respect to which the City wishes to obtain a credit, by furnishing the Bond Registrar a certificate, signed by the Director of Finance, setting forth the extent of the credit to be applied with respect to the then current or any subsequent Mandatory Sinking Fund Redemption Requirement for Term Bonds stated to mature on the same Principal Payment Date and bearing interest at the same rate as the Term Bonds so delivered. If the certificate is not timely furnished to the Bond Registrar, the current Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) shall not be reduced. A credit against the then current or any subsequent Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation), as specified by the Director of Finance, also shall be received by the City for any Term Bonds which prior thereto have been redeemed (other than through the operation of the applicable Mandatory Sinking Fund Redemption Requirements) or purchased for cancellation and canceled by the Bond Registrar, to the extent not applied theretofore as a credit against any Mandatory Sinking Fund Redemption Requirement, for Term Bonds stated to mature on the same Principal Payment Date and bearing interest at the same rate as the Term Bonds so redeemed or purchased and canceled.

Each Term Bond so delivered, or previously redeemed, or purchased and canceled, shall be credited by the Bond Registrar at 100% of the principal amount thereof against the then current or subsequent Mandatory Sinking Fund Redemption Requirements (and corresponding mandatory redemption obligations), as specified by the Director of Finance, for Term Bonds stated to mature on the same Principal Payment Date and bearing interest at the same rate as the Term Bonds so delivered, redeemed or purchased and canceled.

(ii) Optional Redemption. The Bonds of the maturities and interest rates specified in the Certificate of Award (if any are so specified) shall be subject to optional redemption by and at the sole option of the City, in whole or in part in integral multiples of \$5,000, on the dates and at the redemption prices (expressed as a percentage of the principal amount to be redeemed), plus accrued interest to the redemption date, to be determined by the Director of Finance in the Certificate of Award; *provided* that the redemption price for any optional redemption date shall not be greater than 103%.

If optional redemption of Term Bonds at a redemption price exceeding 100% of the principal amount to be redeemed is to take place as of any Mandatory Redemption Date applicable to those Term Bonds, the Term Bonds, or portions thereof, to be redeemed optionally shall be selected by lot prior to the selection by lot of the Term Bonds of the same maturity (and interest rate within a maturity if applicable) to be redeemed on the same date by operation of the Mandatory Sinking Fund Redemption Requirements. Bonds to be redeemed pursuant to this paragraph shall be redeemed only upon written notice from the Director of Finance to the Bond Registrar, given upon the direction of the City by passage of an ordinance or adoption of a resolution. That notice shall specify the redemption date and the principal amount of each maturity (and interest rate within a maturity if applicable) of Bonds to be redeemed, and shall be given at least 45 days prior to the redemption date or such shorter period as shall be acceptable to the Bond Registrar.

(iii) Partial Redemption. If fewer than all of the outstanding Bonds are called for optional redemption at one time and Bonds of more than one maturity (or interest rate within a maturity if applicable) are then outstanding, the Bonds that are called shall be Bonds of the maturity or maturities and interest rate or rates selected by the City. If fewer than all of the Bonds of a single maturity (or interest rate within a maturity if applicable) are to be redeemed, the selection of Bonds of that maturity (or interest rate within a maturity if applicable) to be redeemed, or portions thereof in amounts of \$5,000 or any integral multiple thereof, shall be made by the Bond Registrar by lot in a manner determined by the Bond Registrar. In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than \$5,000 are then outstanding, each \$5,000 unit of principal thereof shall be treated as if it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all, of the \$5,000 units of principal amount represented by a Bond are to be called for redemption, then, upon notice of redemption of a \$5,000 unit or units, the registered owner of that Bond shall surrender the Bond to the Bond Registrar (A) for payment of the redemption price of the \$5,000 unit or units of principal amount called for redemption (including, without limitation, the interest accrued to the date fixed for redemption and any premium), and (B) for issuance, without charge to the registered owner, of a new Bond or Bonds of any Authorized Denomination or Denominations in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

(iv) Notice of Redemption. The notice of the call for redemption of Bonds shall identify (A) by designation, letters, numbers or other distinguishing marks, the Bonds or portions thereof to be redeemed, (B) the redemption price to be paid, (C) the date fixed for redemption, and (D) the place or places where the amounts due upon redemption are payable. The notice shall be given by the Bond Registrar on behalf of the City by mailing a copy of the redemption notice by first-class mail, postage prepaid, at least 30 days prior to the date fixed for redemption, to the registered owner of each Bond subject to redemption

in whole or in part at the registered owner's address shown on the Bond Register maintained by the Bond Registrar at the close of business on the 15th day preceding that mailing. Failure to receive notice by mail or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any Bond.

(v) Payment of Redeemed Bonds. In the event that notice of redemption shall have been given by the Bond Registrar to the registered owners as provided above, there shall be deposited with the Bond Registrar on or prior to the redemption date, moneys that, in addition to any other moneys available therefor and held by the Bond Registrar, will be sufficient to redeem at the redemption price thereof, plus accrued interest to the redemption date, all of the redeemable Bonds for which notice of redemption has been given. Notice having been mailed in the manner provided in the preceding paragraph hereof, the Bonds and portions thereof called for redemption shall become due and payable on the redemption date, and, subject to the provisions of Sections 3(d) and 5, upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, plus accrued interest to the redemption date. If moneys for the redemption of all of the Bonds and portions thereof to be redeemed, together with accrued interest thereon to the redemption date, are held by the Bond Registrar on the redemption date, so as to be available therefor on that date and, if notice of redemption has been deposited in the mail as aforesaid, then from and after the redemption date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding. If those moneys shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption. All moneys held by the Bond Registrar for the redemption of particular Bonds shall be held in trust for the account of the registered owners thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds; *provided* that any interest earned on the moneys so held by the Bond Registrar shall be for the account of and paid to the City to the extent not required for the payment of the Bonds called for redemption.

Section 4. Execution and Authentication of Bonds; Appointment of Bond Registrar. The Bonds shall be signed by the City Manager and the Director of Finance, in the name of the City and in their official capacities; *provided* that either or both of those signatures may be a facsimile. The Bonds shall be issued in the Authorized Denominations and numbers as requested by the Original Purchaser and approved by the Director of Finance, shall be numbered as determined by the Director of Finance in order to distinguish each Bond from any other Bond, and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to Chapter 133 of the Ohio Revised Code, the Charter of the City, this Ordinance and the Certificate of Award.

The Director of Finance is hereby authorized to designate in the Certificate of Award a bank or trust company authorized to do business in the State to act as the initial Bond Registrar. The City Manager and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Registrar Agreement between the City and the Bond Registrar, in substantially the form as is now on file with the Clerk of Council. The Registrar Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the City Manager and the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Registrar Agreement or

amendments thereto. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Registrar Agreement, except to the extent paid or reimbursed by the Original Purchaser and/or the Bond Registrar pursuant to the Certificate of Award, the Purchase Agreement (if any) and/or the Registrar Agreement, from the proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Bond Proceedings unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Bond Proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar or by any other person acting as an agent of the Bond Registrar and approved by the Director of Finance on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

Section 5. Registration; Transfer and Exchange; Book Entry System.

(a) Bond Register. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep the Bond Register at its designated corporate trust office. Subject to the provisions of Sections 3(d) and 9(c), the person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of the Bond Proceedings. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the City nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section 5. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

(b) Transfer and Exchange. Any Bond may be exchanged for Bonds of any Authorized Denomination upon presentation and surrender at the designated corporate trust office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the designated corporate trust office of the Bond Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any Authorized Denomination or Denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Bond Proceedings. The exchange or transfer shall be without charge to the owner, except that the City and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the

City, evidencing the same debt, and entitled to the same security and benefit under the Bond Proceedings as the Bonds surrendered upon that exchange or transfer. Neither the City nor the Bond Registrar shall be required to make any exchange or transfer of (i) Bonds then subject to call for redemption between the 15th day preceding the mailing of notice of Bonds to be redeemed and the date of that mailing, or (ii) any Bond selected for redemption, in whole or in part.

(c) Book Entry System. Notwithstanding any other provisions of this Ordinance, if the Director of Finance determines in the Certificate of Award that it is in the best interest of and financially advantageous to the City, the Bonds may be issued in book entry form in accordance with the following provisions of this Section 5.

The Bonds may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized: (i) the Bonds may be issued in the form of a single, fully registered Bond representing each maturity, and, if applicable, each interest rate within a maturity, and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository or its designated agent for that purpose, which may be the Bond Registrar; (ii) the beneficial owners of Bonds in book entry form shall have no right to receive Bonds in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Bonds as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Bonds for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Bonds from the Depository, and shall cause Bond certificates in registered form and Authorized Denominations to be authenticated by the Bond Registrar and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Finance is hereby authorized and directed, to the extent necessary or required, to enter into any agreements, in the name and on behalf of the City, that the Director of Finance determines to be necessary in connection with a book entry system for the Bonds.

Section 6. Sale of the Bonds to the Original Purchaser. The Director of Finance is authorized to sell the Bonds at private sale to the Original Purchaser at a purchase price, not less than 97% of the aggregate principal amount thereof, as shall be determined by the Director of Finance in the Certificate of Award, plus accrued interest (if any) on the Bonds from their date to the Closing Date, and shall be awarded by the Director of Finance with and upon such other terms as are required or authorized by this Ordinance to be specified in the Certificate of Award, in accordance with law and the provisions of this Ordinance and the Purchase Agreement (if any). The Director of Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Bonds with one or more other bond issues of the City into a consolidated bond issue pursuant to Section 133.30(B) of the Ohio Revised Code in which case a single Certificate of Award may be utilized for the consolidated bond issue if appropriate and consistent with the terms of this Ordinance.

The Director of Finance shall sign and deliver the Certificate of Award and shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the Original Purchaser upon payment of the purchase price.

To the extent it is determined necessary by the Director of Finance in the Certificate of Award, the City Manager and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Purchase Agreement between the City and the Original Purchaser, in substantially the form as is now on file with the Clerk of Council, providing for the sale to, and the purchase by, the Original Purchaser of the Bonds. The Purchase Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the City Manager and the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Purchase Agreement or amendments thereto.

The Mayor, the City Manager, the Director of Finance, the Director of Law, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. Any actions heretofore taken by the Mayor, the City Manager, the Director of Finance, the Director of Law, the Clerk of Council or other City official, as appropriate, in doing any and all acts necessary in connection with the issuance and sale of the Bonds are hereby ratified and confirmed.

Section 7. Provision for Tax Levy. There shall be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Bonds when and as the same fall due.

In each year to the extent receipts from the municipal income tax are available for the payment of the debt charges on the Bonds and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of such receipts so available and appropriated in compliance with the following covenant. To the extent necessary, the debt charges on the Bonds shall be paid from municipal income taxes lawfully available therefor under the Constitution and the laws of the State, and the Charter of the City; and the City hereby covenants, subject and pursuant to such authority, including particularly Section 133.05(B)(7) of the Ohio Revised Code, to appropriate annually from such municipal income taxes such amount as is necessary to meet such annual debt charges.

Nothing in the preceding paragraph in any way diminishes the irrevocable pledge of the full faith and credit and general property taxing power of the City to the prompt payment of the debt charges on the Bonds.

Section 8. Federal Tax Considerations. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Code or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Bonds will not be an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Director of Finance or any other officer of the City having responsibility for issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Bonds as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Bonds or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties with respect to the Bonds, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments with respect to the Bonds, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Bonds. The Director of Finance or any other officer of the City having responsibility for issuance of the Bonds is specifically authorized to designate the Bonds as "qualified tax-exempt obligations" if such designation is applicable and desirable, and to make any related necessary representations and covenants.

Section 9. Official Statement, Rating, Bond Insurance, Continuing Disclosure and Financing Costs.

(a) Primary Offering Disclosure -- Official Statement. The City Manager and the Director of Finance are each authorized and directed, on behalf of the City and in their official capacities, to (i) prepare or cause to be prepared, and make or authorize modifications, completions or changes of or supplements to, a disclosure document in the form of an official statement relating to the original issuance of the Bonds in substantially the form as is now on file with the Clerk of Council, (ii) determine, and to certify or otherwise represent, when the official statement is to be "deemed final" (except for permitted omissions) by the City as of its date or is a final official statement for purposes of paragraph (b) of the Rule, (iii) use and distribute, or authorize the use and

distribution of those official statements and any supplements thereto in connection with the original issuance of the Bonds, and (iv) complete and sign those official statements and any supplements thereto as so approved, together with such certificates, statements or other documents in connection with the finality, accuracy and completeness of those official statements and any supplements, as they may deem necessary or appropriate.

(b) Application for Rating or Bond Insurance. If, in the judgment of the Director of Finance, the filing of an application for (i) a rating on the Bonds by one or more nationally recognized rating agencies, or (ii) a policy of insurance from a company or companies to better assure the payment of principal of and interest on the Bonds, is in the best interest of and financially advantageous to this City, the Director of Finance is authorized to prepare and submit those applications, to provide to each such agency or company such information as may be required for the purpose, and to provide further for the payment of the cost of obtaining each such rating or policy, except to the extent otherwise paid or reimbursed pursuant to Certificate of Award, the Purchase Agreement (if any) and/or the Registrar Agreement, from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated for that purpose. The Director of Finance is hereby authorized, to the extent necessary or required, to enter into any agreements, in the name of and on behalf of the City, that the Director of Finance determines to be necessary in connection with the obtaining of that bond insurance.

(c) Agreement to Provide Continuing Disclosure. For the benefit of the holders and beneficial owners from time to time of the Bonds, the City agrees to provide or cause to be provided such financial information and operating data, audited financial statements and notices of the occurrence of certain events, in such manner as may be required for purposes of the Rule. The City Manager and the Director of Finance are each authorized and directed to complete, sign and deliver the Continuing Disclosure Agreement, in the name and on behalf of the City, in substantially the form as is now on file with the Clerk of Council. The Continuing Disclosure Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the City Manager and the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Continuing Disclosure Agreement or amendments thereto.

The Director of Finance is further authorized and directed to establish procedures in order to ensure compliance by the City with its Continuing Disclosure Agreement, including timely provision of information and notices as described above. Prior to making any filing required under the Rule, the Director of Finance shall consult with and obtain legal advice from, as appropriate, the Director of Law and bond or other qualified independent special counsel selected by the City. The Director of Finance, acting in the name and on behalf of the City, shall be entitled to rely upon any such legal advice in determining whether a filing should be made. The performance by the City of its Continuing Disclosure Agreement shall be subject to the annual appropriation of any funds that may be necessary to perform it.

(d) Financing Costs. The expenditure of the amounts necessary to pay any Financing Costs in connection with the Bonds, to the extent not paid or reimbursed by the Original Purchaser and/or the Bond Registrar pursuant to the Certificate of Award, the Purchase Agreement (if any) and/or the Registrar Agreement, is authorized and approved, and the Director of Finance is authorized to provide for the payment of any such amounts and costs from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

Section 10. Bond Counsel. The legal services of the law firm of Squire Patton Boggs (US) LLP are hereby retained. Those legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the authorization, sale and issuance of the Bonds and rendering at delivery related legal opinions, all as set forth in the form of engagement letter from that firm which is now on file in the office of the Clerk of Council. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county or municipal corporation or of this City, or the execution of public trusts. For those legal services, that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services. To the extent they are not paid or reimbursed pursuant to the Certificate of Award, the Purchase Agreement (if any) and/or the Registrar Agreement, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Bonds, if available, and otherwise from available moneys in the General Fund.

Section 11. Municipal Advisor. The services of Baker Tilly Municipal Advisors, LLC, as municipal advisor, are hereby retained. The municipal advisory services shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the Bonds. In rendering those municipal advisory services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those municipal advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those municipal advisory services. To the extent they are not paid or reimbursed pursuant to the Certificate of Award, the Purchase Agreement (if any) and/or the Registrar Agreement, the Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Bonds, if available, and otherwise from available moneys in the General Fund.

Section 12. Certification and Delivery of Ordinance and Certificate of Award. The Clerk of Council is directed to promptly deliver or cause to be delivered a certified copy of this Ordinance and an executed copy of the Certificate of Award to the County Auditors of Franklin and Licking Counties, Ohio.

Section 13. Satisfaction of Conditions for Bond Issuance. This City Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 7) of the City are pledged for the timely payment of the debt charges on the Bonds; that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds; and that the Bonds are being authorized and issued pursuant to Chapter 133 of the Ohio Revised Code, the

Charter of the City, this Ordinance, the Certificate of Award and other authorizing provisions of law.

Section 14. Compliance with Open Meeting Requirements. This City Council finds and determines that all formal actions of this City Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Council or any of its committees, and that all deliberations of this City Council and of 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 15. Effective Date. This Ordinance shall be in 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:

Benjamin S. Albrecht
Law Director

Legislation dates:

Prepared: 09/12/2023

Introduced: 11/07/2023

Revised:

Adopted:

Effective:



ORDINANCE O-102-2023

ANNUAL APPROPRIATION ORDINANCE

AN ORDINANCE TO MAKE APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF NEW ALBANY, STATE OF OHIO, DURING THE FISCAL YEAR ENDING DECEMBER 31, 2024

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

WHEREAS, Council for the City of New Albany, State of Ohio, wishes to provide for funding for current expenses and other expenditures of the city during fiscal year 2024.

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. To provide for the current expenses and other expenditures within the 2024 Annual Budget Program of the City of New Albany during the fiscal year ending December 31, 2024, the annual sums as follows are hereby set aside and appropriated:

Fund	Department	Category	Amount
General	Police	Personal Services	8,441,688
General	Police	Operating and Contractual Services	367,050
General	Community Development	Personal Services	3,024,770
General	Community Development	Operating and Contractual Services	2,294,200
General	Public Service	Personal Services	4,433,673
General	Public Service	Operating and Contractual Services	2,405,850
General	Land & Building Maintenance	Personal Services	1,069,704
General	Land & Building Maintenance	Operating and Contractual Services	2,166,950
General	Council	Personal Services	385,511
General	Council	Operating and Contractual Services	41,750
General	Administrative Services	Personal Services	2,768,828
General	Administrative Services	Operating and Contractual Services	2,855,931
General	Finance	Personal Services	1,069,505
General	Finance	Operating and Contractual Services	1,064,500
General	Legal	Personal Services	500
General	Legal	Operating and Contractual Services	384,500

Fund	Department	Category	Amount
General	General Administration	Personal Services	249,217
General	General Administration	Operating and Contractual Services	953,000
General	N/A	Transfers & Other Financing Uses	8,644,482
		Total General Fund	42,621,610

Fund	Department	Category	Amount
Severance Liability	General Administration	Personal Services	220,000
Street Construction, Maintenance & Repair	Public Service	Operating and Contractual Services	155,000
Street Construction, Maintenance & Repair	N/A	Capital	300,000
State Highway	Public Service	Operating and Contractual Services	20,000
State Highway	N/A	Capital	20,000
Permissive Tax	Public Service	Operating and Contractual Services	155,000
Permissive Tax	N/A	Capital	30,000
Alcohol Education	Police	Operating and Contractual Services	1,000
Drug Use Prevention Program Grant	Police	Personal Services	20,000
Drug Use Prevention Program Grant	Police	Operating and Contractual Services	20,000
Law Enforcement & Education	Police	Operating and Contractual Services	2,250
OneOhio Opioid	Police	Operating and Contractual Services	2,000
K-9 Patrol	Police	Personal Services	17,500
K-9 Patrol	Police	Operating and Contractual Services	3,000
Safety Town	Police	Operating and Contractual Services	42,200
DUI Grant	Police	Personal Services	10,000
DUI Grant	Police	Operating and Contractual Services	14,700
Law Enforcement Assistance	Police	Personal Services	1,200
Economic Development (NACA)	Community Development	Operating and Contractual Services	2,905,000
Economic Development (NACA)	Public Service	Operating and Contractual Services	535,000
Economic Development (NACA)	N/A	Transfers & Other Financing Uses	30,200
Economic Development (NAECA)	N/A	Transfers & Other Financing Uses	2,149,378
Local Fiscal Recovery	N/A	Capital	40,000,000
Hotel Excise Tax	Community Development	Operating and Contractual Services	170,000
Healthy New Albany Facilities	General Administration	Operating and Contractual Services	93,000
Healthy New Albany Facilities	Land & Building Maintenance	Operating and Contractual Services	875,000
Healthy New Albany Facilities	N/A	Transfers & Other Financing Uses	439,325
Hinson Amphitheater Fund	General Administration	Operating and Contractual Services	60,000
Alcohol Indigent	Administrative Services	Operating and Contractual Services	1,000

Fund	Department	Category	Amount
Court Special Projects	Administrative Services	Operating and Contractual Services	1,000
Clerk's Office Computer	Administrative Services	Operating and Contractual Services	1,000
Subdivision Development	Community Development	Operating and Contractual Services	1,000,000
Builder's Escrow	Community Development	Operating and Contractual Services	600,000
Oak Grove EOZ	Community Development	Operating and Contractual Services	4,458,169
Central College EOZ	Community Development	Operating and Contractual Services	2,888,909
Oak Grove II EOZ	Community Development	Operating and Contractual Services	3,547,069
Blacklick EOZ	Community Development	Operating and Contractual Services	4,132,371
Windsor TIF	General Administration	Operating and Contractual Services	855,000
Windsor TIF	N/A	Transfers & Other Financing Uses	726,556
Wentworth Crossing TIF	General Administration	Operating and Contractual Services	158,000
Wentworth Crossing TIF	N/A	Transfers & Other Financing Uses	160,000
Hawksmoor TIF	General Administration	Operating and Contractual Services	90,000
Hawksmoor TIF	N/A	Transfers & Other Financing Uses	102,101
Enclave TIF	General Administration	Operating and Contractual Services	29,000
Enclave TIF	N/A	Transfers & Other Financing Uses	60,000
Saunton TIF	General Administration	Operating and Contractual Services	72,000
Saunton TIF	N/A	Transfers & Other Financing Uses	120,000
Richmond Square TIF	General Administration	Operating and Contractual Services	90,000
Richmond Square TIF	N/A	Transfers & Other Financing Uses	105,283
Tidewater I TIF	General Administration	Operating and Contractual Services	171,000
Tidewater I TIF	N/A	Transfers & Other Financing Uses	300,000
Ealy Crossing TIF	General Administration	Operating and Contractual Services	172,000
Ealy Crossing TIF	N/A	Transfers & Other Financing Uses	300,000
Upper Clarenton TIF	General Administration	Operating and Contractual Services	262,000
Upper Clarenton TIF	N/A	Transfers & Other Financing Uses	235,225
Balfour Green TIF	General Administration	Operating and Contractual Services	14,000
Balfour Green TIF	N/A	Transfers & Other Financing Uses	17,130
Straits Farm TIF	General Administration	Operating and Contractual Services	376,000
Oxford TIF	General Administration	Operating and Contractual Services	27,000
Oxford TIF	N/A	Transfers & Other Financing Uses	67,000
Schleppi (Residential) TIF	General Administration	Operating and Contractual Services	98,000
Schleppi (Residential) TIF	N/A	Transfers & Other Financing Uses	66,476
Blacklick TIF	General Administration	Operating and Contractual Services	1,765,000
Blacklick TIF	N/A	Transfers & Other Financing Uses	195,144
Blacklick II TIF	General Administration	Operating and Contractual Services	100,700
Village Center TIF	General Administration	Operating and Contractual Services	715,000
Village Center TIF	N/A	Transfers & Other Financing Uses	420,000
Reasearch & Technology District TIF	General Administration	Operating and Contractual Services	5,000
Oak Grove II TIF	General Administration	Operating and Contractual Services	527,500
Village Center II TIF	General Administration	Operating and Contractual Services	487,500
		Total Special Revenue Funds	73,809,886

Fund	Department	Category	Amount
Debt Service	N/A	Debt Service	5,804,036
		Total Debt Service Funds	5,804,036

Fund	Department	Category	Amount
Capital Improvement	N/A	Capital	9,500,000
Capital Improvement	Finance	Operating and Contractual Services	100,000
Park Improvement	N/A	Capital	2,600,000
Park Improvement	Finance	Operating and Contractual Services	30,000
Bond Improvement	N/A	Capital	47,000,000
Bond Improvement	N/A	Transfers & Other Financing Uses	3,037,827
Infrastructure Replacement	Finance	Operating and Contractual Services	50,000
Capital Equipment Replacement	N/A	Capital	2,814,900
Oak Grove II Infrastructure	Finance	Operating and Contractual Services	80,000
Economic Development Capital	N/A	Capital	40,000,000
		Total Capital Projects Funds	105,212,727
		Total All Funds	227,448,259

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

Section 3. The director of finance is authorized to allocate the appropriations for a department within activities. Except as provided in Section 4 and Section 5, the director of finance is authorized to approve transfers between activities, provided that funds may not be transferred between appropriation line items.

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

Section 5. The director of finance is authorized to transfer appropriations between the General fund and various special revenue funds which include the police department, provided that such transfers are for an expense meeting the restrictions of said fund or funds, where applicable.

Section 6. 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 7. Pursuant to Article VI, Section 6.07(A) of the Charter of the City of New Albany, this ordinance shall be in effect on and after the earliest period allowed by law.

CERTIFIED AS ADOPTED this _____ day of _____, 2023.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Benjamin S. Albrecht
Law Director

Legislation dates:

Prepared: 11/01/2023

Introduced: 11/07/2023

Revised:

Adopted:

Effective:



ORDINANCE O-103-2023

AN ORDINANCE TO APPROVE THE PHASE 1 FINAL PLAT AND ACCEPT RIGHT-OF-WAY DEDICATION FOR BRISCOE PARKWAY AS REQUESTED BY THE CITY OF NEW ALBANY

WHEREAS, an application to approve the phase 1 final plat for Briscoe Parkway has been submitted by the city of New Albany; and

WHEREAS, the city will be the recipient (grantee) of the right of way dedication of approximately 4.152+/- acres connecting Horizon Court and Harrison Road; and

WHEREAS, the New Albany Planning Commission, after review in a public meeting on October 16, 2023, recommended approval of the phase 1 final plat; and

WHEREAS, the city engineer certifies that Briscoe Parkway meets all the requirements of Chapter 1187 of the codified ordinances, storm water management, design requirements, and will meet all other requirements of the city.

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

Section 1: The phase 1 final plat creating Briscoe Parkway is attached to this ordinance as Exhibit A and made a part herein is approved.

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: 10/23/2023

Introduced: 11/07/2023

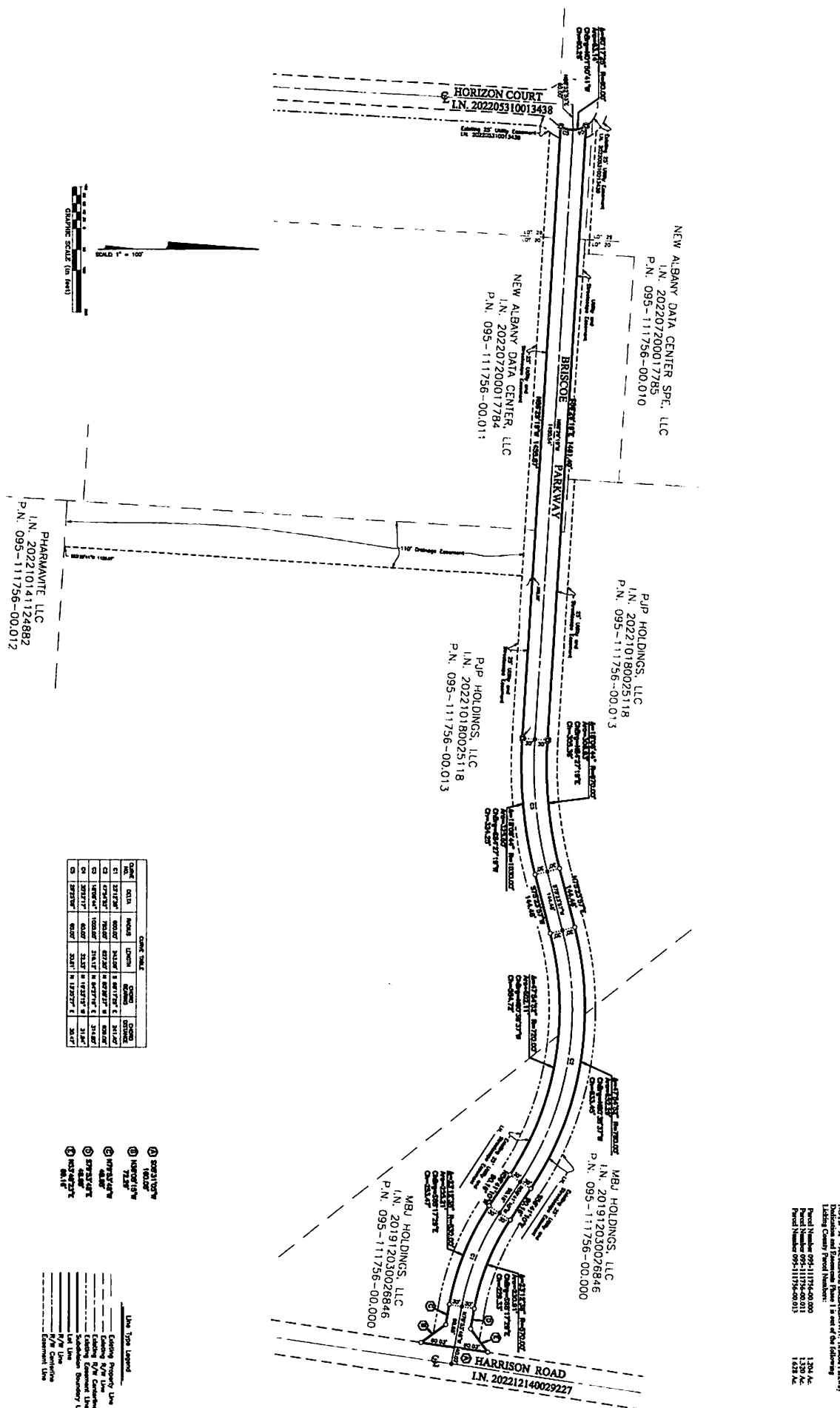
Revised:

Adopted:

Effective:

PROPOSED

BRISCOE PARKWAY DEDICATION AND EASEMENTS PHASE 1



OWNER		ADDRESS		CITY		STATE		ZIP	
MBJ HOLDINGS, LLC	201912030078846	10000	BRISCOE PARKWAY	NEW ALBANY	IN	46657			
PJP HOLDINGS, LLC	202210180025118	10000	BRISCOE PARKWAY	NEW ALBANY	IN	46657			
NEW ALBANY DATA CENTER, S.P.E. LLC	202207200017785	10000	BRISCOE PARKWAY	NEW ALBANY	IN	46657			
NEW ALBANY DATA CENTER, LLC	202207200017784	10000	BRISCOE PARKWAY	NEW ALBANY	IN	46657			
PHARMAWAIT LLC	202210141124882	10000	BRISCOE PARKWAY	NEW ALBANY	IN	46657			

- ① DEDICATION
- ② EASEMENT
- ③ PROPERTY LINE
- ④ EXISTING PROPERTY LINE
- ⑤ EXISTING R/W CENTERLINE
- ⑥ EXISTING EASEMENT LINE
- ⑦ SUBMITTAL BOUNDARY LINE
- ⑧ R/W LINE
- ⑨ R/W CENTERLINE
- ⑩ EASEMENT LINE

NOTE: ALL ATTACHED RECORDS, SHOW PARKWAY DEDICATION AND EASEMENTS, ARE A PART OF THIS SET OF PLANS.
 Listing County Parcel Number:
 Parcel Number 095-111756-00.011
 Parcel Number 095-111756-00.012
 Parcel Number 095-111756-00.013



ORDINANCE O-104-2023

**AN ORDINANCE TO APPROVE THE PHASE 2 FINAL PLAT AND
ACCEPT RIGHT-OF-WAY DEDICATION FOR BRISCOE PARKWAY AS
REQUESTED BY THE CITY OF NEW ALBANY**

WHEREAS, an application to approve the phase 2 final plat for Briscoe Parkway has been submitted by the city of New Albany; and

WHEREAS, the city will be the recipient (grantee) of the right of way dedication of approximately 4.259+/- acres connecting Harrison Road and Clover Valley Road; and

WHEREAS, the New Albany Planning Commission, after review in a public meeting on October 16, 2023, recommended approval of the phase 2 final plat; and

WHEREAS, the city engineer certifies that Briscoe Parkway meets all the requirements of Chapter 1187 of the codified ordinances, storm water management, design requirements and will meet all other requirements of the city.

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

Section 1: The phase 2 final plat creating Briscoe Parkway is attached to this ordinance as Exhibit A and made a part herein is approved.

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: 10/23/2023

Introduced: 11/07/2023

Revised:

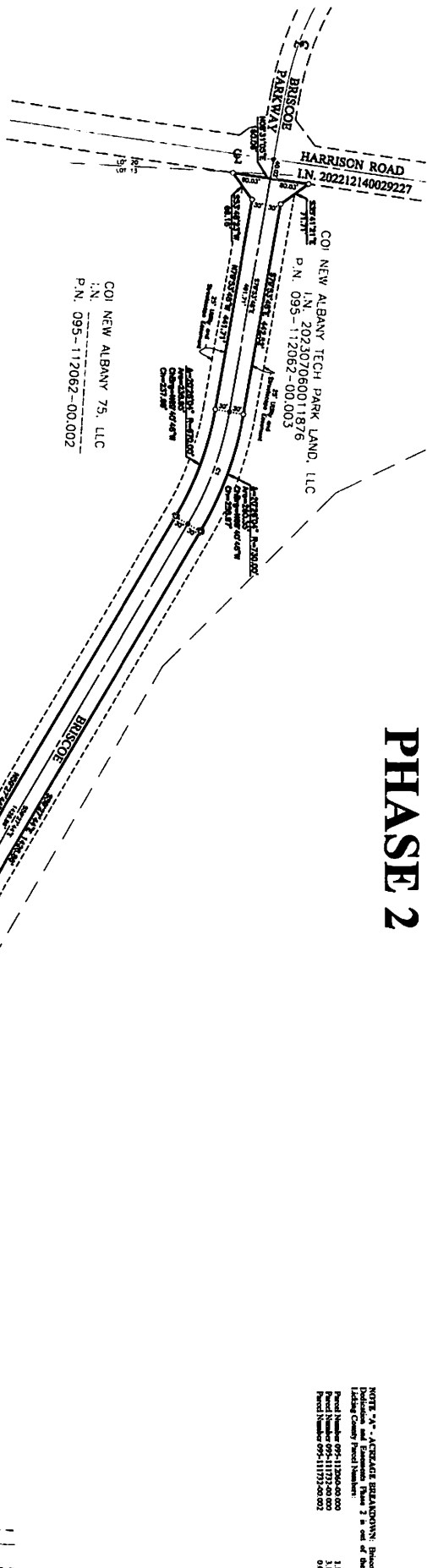
Adopted:

Effective:

PROPOSED

BRISCOE PARKWAY DEDICATION AND EASEMENTS PHASE 2

NOTE: "A" - AVERAGE BEARING; Briscoe Parkway
 Labeling County Parcel Number
 Parcel Number 095-11732-00-000 1.141 Ac.
 Parcel Number 095-11732-00-000 3.111 Ac.
 Parcel Number 095-11732-00-002 0.077 Ac.



COI NEW ALBANY 75, LLC
 I.N. 202307060011876
 P.N. 095-112062-00.003

COI NEW ALBANY TECH PARK LAND, LLC
 I.N. 202307060011876
 P.N. 095-112062-00.003

COI NEW ALBANY 75, LLC
 I.N. 202205180012410
 P.N. 095-111732-00.002

MBJ HOLDINGS, LLC
 I.N. 202205180012410
 P.N. 095-111732-00.002

CHG#	DATE	REMARKS	BY	DATE	CHG#	DATE	REMARKS	BY	DATE
01	11/11/2023	INITIAL	MBJ	11/11/2023	02	11/11/2023	INITIAL	MBJ	11/11/2023

- ① MBI HOLDINGS, LLC
 I.N. 202303030003860
 P.N. 095-112062-00.000
- ② THE CITY OF NEW ALBANY, OHIO
 PARCEL C5-WD
 I.N. 202305080008020
- ③ THE CITY OF NEW ALBANY, OHIO
 PARCEL C4-WD
 I.N. 202305080008020



- Line Type Legend
- Existing Property Line
 - Existing Right-of-Way
 - Existing Easement Line
 - Proposed Right-of-Way
 - Proposed Easement Line
 - Proposed Right-of-Way
 - Proposed Easement Line
 - Proposed Right-of-Way
 - Proposed Easement Line



ORDINANCE O-105-2023

AN ORDINANCE TO APPROVE THE FINAL PLAT FOR THE RE-SUBDIVISION OF LOTS 4, 5 & 6A WITHIN THE HAWKSMOOR SUBDIVISION ON 2.456 +/- ACRES GENERALLY LOCATED ALONG THE NORTH SIDE OF HAWKSMOOR DRIVE, AS REQUESTED BY ANDREW & LISA RUMPKE

WHEREAS, an application to approve the final plat for the re-subdivisions of lots 4, 5 & 6a Hawksmoor has been submitted; and

WHEREAS, New Albany Codified Ordinance Chapter 1187 requires approval of the final plat by council; and

WHEREAS, the New Albany Planning Commission, after review during a public meeting on May 15, 2023, recommended approval of this final plat; and

WHEREAS, the city engineer certifies that the re-subdivision of lots 4, 5 & 6a within the Hawksmoor subdivision meets all the requirements of chapter 1187 of the codified ordinances, storm water management, design requirements and will meet all other requirements of the city.

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

Section 1. That the said final plat for the amended plat of lots 4, 5 & 6a within the Hawksmoor subdivision is attached to this ordinance as Exhibit A and made a part herein is approved.

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

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

CERTIFIED AS ADOPTED this _____ 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: 10/20/2023
Introduced: 11/07/2023
Revised:
Adopted:
Effective:

Exhibit A - O-105-2023

RE-SUBDIVISION OF LOTS 4, 5 & 6a OF HAWKSMOOR

Situated in State of Ohio, County of Franklin, City of New Albany, located in Quarter Townships 3 and 4, Township 2, Range 16, United States Military Lands, containing 2.456 acres of land, more or less, said 2.456 acres being a resubdivision of all of Lot 6a as numbered and delineated upon the record plat of "RE-SUBDIVISION OF LOT 6a OF HAWKSMOOR", of record in Plat Book 119, Page 95, which contains 1.141 acres, all of said Lot 6a standing in the name of Andrew M. Rumpke and Lisa Canos Rumpke of record in Instrument Number 202307110068263, a 0.585 acre tract, as conveyed to Andrew M. Rumpke and Lisa Canos Rumpke of record in Instrument Number 202307110068263, and all of Lots 4 & 5 of "HAWKSMOOR", of record in Plat Book 106, Page 10, all of said Lots 4 & 5 standing in the name of Andrew M. Rumpke and Lisa Canos Rumpke of record in Instrument Numbers 201109010109415 & 201110120129966, all being of record in Recorder's Office, Franklin County, Ohio.

The undersigned, Andrew M. Rumpke and Lisa Canos Rumpke, authorized signatures, do hereby certify that this plat correctly represents its "Re-Subdivision of Lots 4, 5 & 6a of Hawksmoor", containing Lot 6b, and does hereby accept this plat of the same.

Easements are hereby reserved in, over and under areas hereby platted, and designated on this plat as "Easement" or "Drainage Easement" for the construction, operation and maintenance of all public and quasi public utilities above and beneath the surface of the ground and, where necessary, for the construction, operation and maintenance of service connections to all adjacent lots and lands and for storm water drainage. Within those areas designated "Drainage Easement" on this plat, an additional easement is hereby reserved for the purpose of constructing, operating, and maintaining major storm water drainage swales and or other storm water drainage facilities. No above grade structures, dams or other obstructions to the flow of storm water runoff are permitted within the Drainage Easement areas as delineated on this plat unless approved by the City Engineer, City of New Albany.

All easements within the building setback lines for general utility and drainage purposes shall be landscaped per the Hawksmoor Landscape Plan and maintained by the Hawksmoor Homeowners Association, Inc.



LOCATION MAP
NO SCALE

STATE OF OHIO
COUNTY OF FRANKLIN ss:

Before me, a Notary Public in and for said State, personally appeared _____, authorized signer, who acknowledged the signing the foregoing instrument to be their free and voluntary act and deed for the uses and purposes expressed therein.

Witness Thereof, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2023.

My Commission expires _____
Notary Public, State of Ohio

In Witness Whereof, Andrew M. Rumpke and Lisa Canos Rumpke, Authorized Signature, has hereunto set their hand this _____ day of _____, 2023.

Signed and acknowledged Andrew M. Rumpke & Lisa Canos Rumpke
In the presence of:

Witness _____ By _____
Title _____

Witness _____ By _____
Title _____

STATE OF OHIO
COUNTY OF FRANKLIN ss:

Before me, a Notary Public in and for said State, personally appeared _____, authorized signer, who acknowledged the signing the foregoing instrument to be their free and voluntary act and deed for the uses and purposes expressed therein.

Witness Thereof, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2023.

My Commission expires _____
Notary Public, State of Ohio

SURVEY DATA:

BASIS OF BEARINGS: The bearings shown on this plat were transferred from a GPS survey of Franklin County Monuments "FCGS 9913-B" and "FCGS 9914-B" performed by the Franklin County Engineer's Office, which was based on the Ohio State Plane Coordinate System, Ohio South Zone, NAD83 (1986 adjustment) and determines the bearing between said monuments as N 10° 32' 24" E.

SOURCE OF DATA: The sources of recorded survey data are the records of the Franklin County, Ohio, Recorder, referenced in the plan and text of this plat.

IRON PINS, where indicated, unless otherwise noted, are to be set and are iron pipes, thirteen-sixteenths inch inside diameter, thirty inches long with a plastic cap placed in the top bearing the inscription "ADVANCED". These markers shall be set following the completion of the construction/installation of the street pavement and utilities and prior to the Village of New Albany, Ohio's acceptance of these subdivision improvements. The New Albany, Ohio, Municipal Engineer shall be notified in writing by the surveyor when the markers are in place.

PERMANENT MARKERS: Permanent markers, where indicated hereon, are to be one-inch diameter, thirty-inch long, solid iron pins, are to be set with the top end flush with the surface of the ground and then capped with an aluminum cap stamped "ADVANCED". Once installed, the top of the cap shall be marked (punched) to record the actual location of the point. These markers shall be set following the completion of the construction/installation of the street pavement and utilities and prior to the Village of New Albany, Ohio's acceptance of these subdivision improvements. The New Albany, Ohio, Municipal Engineer shall be notified in writing by the surveyor when the markers are in place.

Approved this _____ day of _____, 2023

Mayor, New Albany, Ohio

Approved this _____ day of _____, 2023

Municipal Engineer, New Albany, Ohio

Approved this _____ day of _____, 2023

Council Representative to Planning Commission, New Albany, Ohio

Approved this _____ day of _____, 2023

Chairperson, Planning Commission New Albany, Ohio

Approved this _____ day of _____, 2023

Finance Director, New Albany, Ohio

Approved and accepted by Resolution No. _____, passed _____, 2023, by the Council for the City of New Albany, Ohio. Approval of this plat shall become null and void unless recorded prior to _____, 2023.

Transferred this _____ day of _____, _____

Auditor, Franklin County, Ohio

Deputy Auditor, Franklin County, Ohio

Filed for record this _____ day of _____, 2023 at _____ M.
Fee \$ _____

Recorder, Franklin County, Ohio

File No. _____

Recorded this _____ day of _____, 2023

Deputy Recorder, Franklin County, Ohio

Plat Book _____, Pages _____

We do hereby certify that we have surveyed the above premises, prepared the attached plat, and that said plat is correct. All dimensions are in feet and decimal parts thereof.

- = Iron Pin Set
- = Permanent Marker
- = Iron Pin Found
- ✕ = PK Nail Found

By _____
Reg. Surveyor

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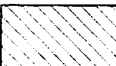
RE-SUBDIVISION OF LOTS 4, 5 & 6a OF HAWKSMOOR

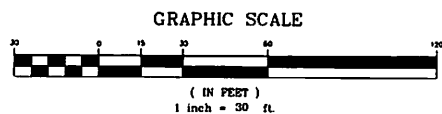
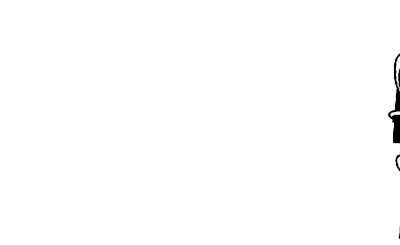
NOTE "A": All of the area hereby platted is within Zone X (area determined to be outside 500-year floodplain) as shown on Federal Emergency Management Agency Flood Insurance Rate Map for Franklin County, Ohio and Incorporated Areas, map numbered 39049C0204K with effective date of June 17, 2008.

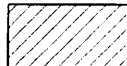
NOTE "B": The Hawkmoor Homeowners Association, Inc. and all of the area being platted, hereby, shall be subject to Declarations of Covenants, Conditions, Restrictions and Easements for Hawkmoor as recorded with the Franklin County, Ohio Recorder in Instrument Number 200506030107847 and Instrument Number 200707100120698 and Instrument Number 20150508060071.

NOTE "C" - TREE PRESERVATION/NO BUILD ZONE/DRAINAGE EASEMENT:
 Within those areas designated herein as "Tree Preservation/No Build Zone/Drainage Easement", no accessory buildings, fences, walks, steps or improvements of any kind shall be constructed with the exception of seeding and limited grading to allow proper drainage in order to preserve trees. No tree shall be removed without the approval of the City Manager or their designee. Dead plant material, and noxious plant material such as poison ivy and trees may be removed. This zone shall be maintained by the owners of the lot. Preservation zone markers must be installed at the edge of the preservation zone. The design of the markers will be provided by the applicant and must be approved by the city. Preservation zone markers are installed on site prior to the issuance of a building permit. The plat notes and locations are submitted and subject to staff approval.

NOTE "D": The Plat herein defined will require Municipal Engineer review and approval for any construction proposed to occur within the 30' utility and drainage easement shown hereon.

 Area of Ex. Tree Preservation/No Build Zone, per P.B. 106, Pg. 10, to be Vacated by the recording of this plat. Existing 30' drainage easement is to remain. Existing electric utility is known to be located within this easement area.



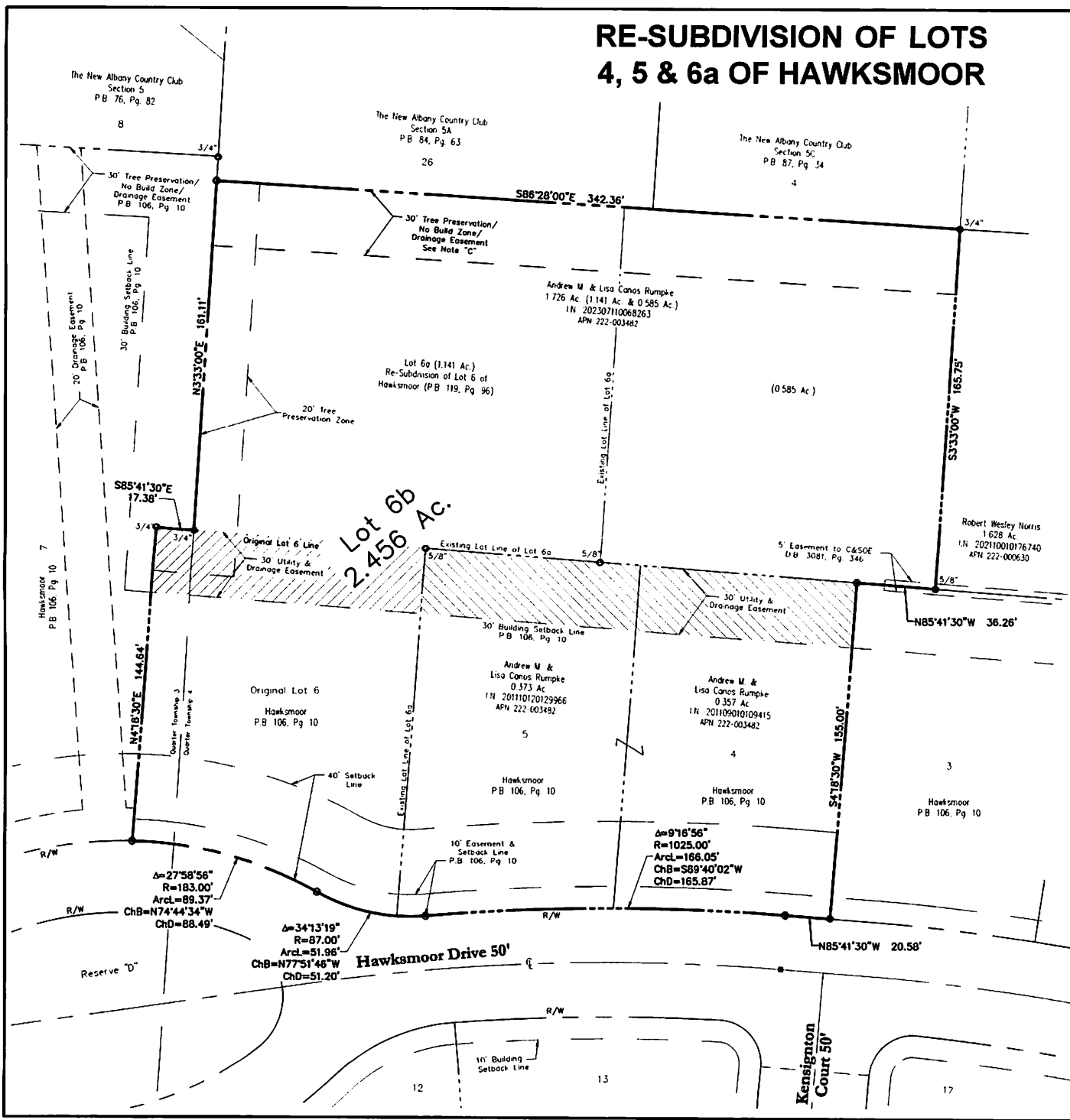
 Area of Ex. Tree Preservation/No Build Zone, per P.B. 106, Pg. 10, Vacated by prior plat (P.B. 119, Pg 95). Existing 30' drainage easement is to remain. Existing electric utility is known to be located within this easement area.

Acresage breakdown:
 APN: 222-005170 = 0.585 Ac.
 APN: 222-004874 = 1.141 Ac.
 APN: 222-003482 = 0.730 Ac.



ADVANCED CIVIL DESIGN
 ENGINEERS & SURVEYORS

781 Science Boulevard - Suite 100
 Gahanna, Ohio 43230
 PH 614.428.7750
 FAX 614.428.7755



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RESOLUTION R-46-2023

A RESOLUTION TO AMEND THE OAK GROVE II COMMUNITY REINVESTMENT AREA TO ADD APPROXIMATELY 84.772 +/- ACRES TO THAT AREA, CONFIRMING THE DESIGNATION OF A HOUSING OFFICER AND THE CREATION OF A COMMUNITY REINVESTMENT AREA HOUSING COUNCIL AND TAX INCENTIVE REVIEW COUNCILS, AND TO EXPAND THE OAK GROVE II ECONOMIC OPPORTUNITY ZONE TO ADD THAT AREA

WHEREAS, the Council of the City of New Albany, Ohio (the "City") desires to pursue all reasonable and legitimate incentive measures to assist and encourage development in specific areas of the City that have not enjoyed sufficient reinvestment in new construction; and

WHEREAS, Council, by its Resolution No. R-17-09 adopted March 3, 2009, designated the Oak Grove II Community Reinvestment Area (the "Original Oak Grove II Area"), and by each of its Resolutions No. R-41-2010 adopted July 6, 2010, R-72-2010 adopted November 16, 2010, R-53-2012 adopted October 2, 2012, R-26-2013 adopted August 6, 2013, R-72-2014 adopted September 16, 2014, R-49-2015 adopted November 17, 2015, R-45-16 adopted November 1, 2016, R-02-2017 adopted February 7, 2017, R-17-2018 adopted July 17, 2018, R-41-2018 adopted November 6, 2018, R-50-2018 adopted December 10, 2018, R-05-2019 adopted February 19, 2019, R-37-2019 adopted on August 6, 2019, R-15-2021 adopted on April 6, 2021, R-46-2021 adopted September 21, 2021, R-09-2022 adopted on February 1, 2022, R-18-2022 adopted on May 3, 2022, R-38-2022 adopted on November 15, 2022, and R-21-2023 adopted on April 18, 2023, expanded that Original Oak Grove II Area (as expanded to date, the "Current Oak Grove II Area"), which enabled the City to offer in that Current Oak Grove II Area real property tax exemptions on the construction of certain new structures and the remodeling of certain existing structures as described in Ohio Revised Code ("R.C.") Section 3735.67; and

WHEREAS, the City desires to promote commercial and industrial development in an additional area contiguous to the Current Oak Grove II Area, which contiguous area includes approximately 84.772 +/- acres and which is depicted on Exhibit A attached hereto (the "Oak Grove II Expansion Area"); and

WHEREAS, the City believes that the redevelopment of the Oak Grove II Expansion Area would encourage economic stability, maintain real property values, and generate new employment opportunities and desires to designate the Oak Grove II Expansion Area as a community reinvestment area pursuant to R.C. Sections 3735.65 to 3735.70; and

WHEREAS, that Survey shows the facts and conditions relating to existing housing and commercial structures and undeveloped land in the Oak Grove II Expansion Area, including,

among other things, evidence of deterioration and lack of new construction, or repair or rehabilitation of structures in that Oak Grove II Expansion Area; and

WHEREAS, the construction of new commercial or industrial structures in the Oak Grove II Expansion Area constitutes a public purpose for which real property tax exemptions may be granted; and

WHEREAS, the City created an economic opportunity zone (the "Oak Grove II EOZ") to encourage commercial and other business development in the City, and now the City, to consistently preserve areas and zones, wishes to expand the Oak Grove II EOZ in conjunction with the expansion of the Oak Grove II CRA so that the two, when mapped, have the same area and boundaries;

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

Section 1. Conditions in the Oak Grove II Expansion Area. Based on the findings in the Survey and on this Council's own knowledge of the facts and conditions existing in the Oak Grove II Expansion Area, this Council hereby finds that the Oak Grove II Expansion Area is one in which housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged.

Section 2. Creation of Oak Grove II Expanded CRA. This Council hereby designates the Oak Grove II Expansion Area as a community reinvestment area (collectively with the Current Oak Grove II Area, the "Oak Grove II CRA") in accordance with R.C. Section 3735.66. Only new commercial and/or industrial structures consistent with the applicable zoning regulations within the Oak Grove II CRA will be eligible for the exemptions provided for in Section 3 of this Resolution, and residential remodeling or new structures, including, but not limited to, multi-family condominium or apartment structures or remodeling thereof, shall not be eligible for the exemptions granted in that Section 3.

Section 3. Tax Exemptions in the Oak Grove II CRA. Within the Oak Grove II CRA, the percentage of the tax exemption on the increase in the assessed valuation resulting from improvements to commercial and industrial real property and the term of those exemptions shall be negotiated in advance of construction occurring according to the rules outlined in R.C. Section 3735.67. The City has the authority to negotiate, approve or deny any request for such a tax exemption. The results of the negotiation as approved by this Council will be set forth in writing in a Community Reinvestment Area Agreement as provided in R.C. Section 3735.671. If the newly constructed structure qualifies for an exemption, during the period of the exemption the exempted percentage of the value of the structure shall not be considered to be an improvement on the land on which it is located for the purpose of real property taxation.

The Mayor, the City Manager, the City Community Development Director, and the City Economic Development Manager, or any one of them, are hereby authorized to give any and all notices on behalf of this Council that may be required by law, including, without limitation, those notices required by R.C. Sections 3735.671, 3537.673 and 5709.83, in connection with the consideration, approval or entering into of any agreements under R.C. Section 3735.671.

Section 4. Designation of Housing Officer. To administer and implement the provisions of this Resolution, the Council hereby confirms the prior designation of the City Manager as the Housing Officer for the Oak Grove II CRA as described in R.C. Sections 3735.65 to 3735.70.

Section 5. Housing Council and Tax Incentive Review Councils. This Council hereby confirms the prior creation of a Community Reinvestment Area Housing Council (the "Housing Council") for the Oak Grove II CRA. That Housing Council is composed of two members appointed by the Mayor, two members appointed by this Council and one member appointed by the City's Municipal Planning Commission. A majority of those five members shall appoint two additional members who shall be residents of the City. Terms of the members of the Housing Council shall be three years. An unexpired term resulting from a vacancy in the Housing Council shall be filled in the same manner as the initial appointment was made. The Housing Council shall make an annual inspection of the properties within the Oak Grove II CRA for which an exemption has been granted under R.C. Section 3735.69. The Housing Council also shall also hear appeals under R.C. Section 3735.70.

The "Franklin County Tax Incentive Review Council" and the "Licking County Tax Incentive Review Council" (each a "TIRC") were both previously created pursuant to R.C. Section 5709.85. Each TIRC reviews annually the compliance of each agreement involving the granting of exemptions for commercial or industrial real property improvements under R.C. Section 3735.671 and makes written recommendations to this Council as to continuing, modifying or terminating each agreement based upon the performance of each agreement.

Section 6. Resolution to be Forwarded and Published. The Housing Officer or the Housing Officer's designee is hereby authorized and directed to forward a copy of this Resolution to the Franklin County Auditor or the Licking County Auditor, as applicable, and to cause to be published a copy of this Resolution in a newspaper of general circulation in the City once per week for two consecutive weeks following its adoption.

Section 7. Authorization to Petition the State of Ohio Director of Development. The Housing Officer, or the Housing Officer's designee, is hereby authorized and directed, on behalf of the City, to petition the State Director of Development, in accordance with R.C. Section 3735.66, for confirmation of the Oak Grove II CRA as expanded to include the Oak Grove II Expansion Area.

Section 8. Open Meeting. The Council hereby finds and determines that all formal actions relative to the passage of this Resolution were taken in an open meeting of this Council and any of its committees and that all deliberations of this Council and of its committees that resulted in formal action were taken in meetings open to the public in full compliance with the applicable legal requirements, including R.C. Section 121.22.

Section 9. Effective Date. Pursuant to Article 6.07 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 S. Albrecht
Law Director

Legislation dates:

Prepared: 10/27/2023

Introduced: 11/07/2023

Revised:

Adopted:

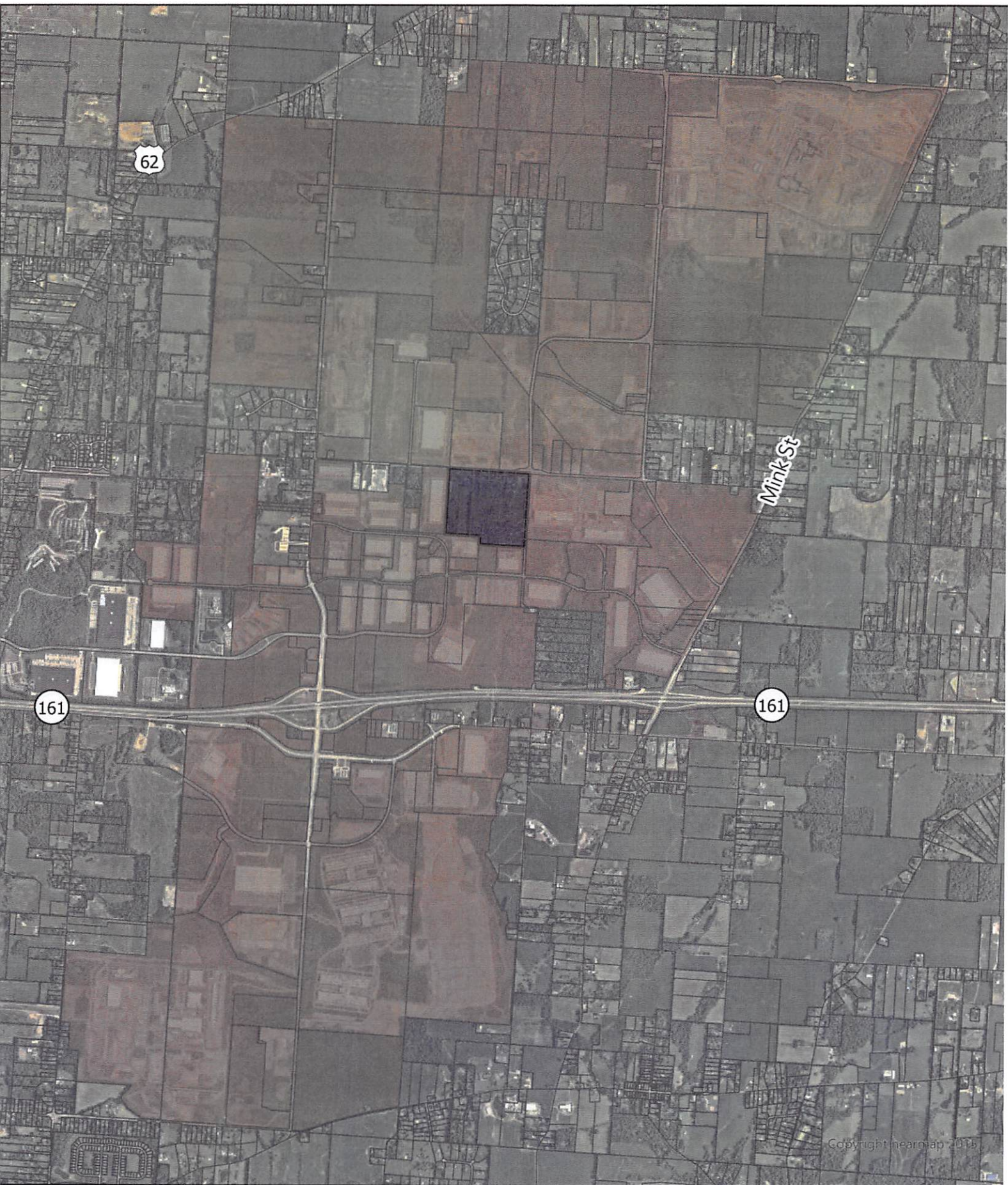
Effective:

PROPOSAL

EXHIBIT A – R-46-2023

PARCEL MAP

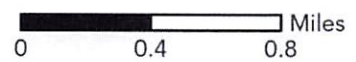
The colored areas on the attached map specifically identify and depict the Parcels and constitute part of Exhibit A.



Oak Grove II CRA

Jug and Harrison

-  CRA Expansion
-  Oak Grove II
-  Parcel



Copyright nearmap 2015



RESOLUTION R-47-2023

A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE NEW ALBANY COMPANY LLC FOR THE PURPOSE OF MEMORIALIZING CERTAIN COMMITMENTS

WHEREAS, over the past two decades the city and the New Albany Company have worked cooperatively to pursue a comprehensive approach to planning and developing the New Albany Village Center; and

WHEREAS, the Village Center is the core of the community and serves as a central location for a mix of unique and complimentary civic, social, recreational, residential, dining, and other commercial uses; and

WHEREAS, as the owner of a significant amount of improved and unimproved real property within the Village Center and elsewhere in New Albany, the New Albany Company shares in the city's vision to maintain and enhance the vibrancy and success of the Village Center; and

WHEREAS, anticipated public and private improvements and development in the coming years have caused the city and the New Albany Company to proactively contemplate the infrastructure needs of the Village Center and beyond; and

WHEREAS, this agreement is intended to memorialize the parties' mutual understandings and agreements regarding their respective development initiatives and those which are of shared interest.

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

Section 1. The city manager is hereby authorized and directed to enter into a Cooperative Agreement, the same or substantially similar to Exhibit A, with the New Albany Company.

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

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

CERTIFIED AS ADOPTED this _____ day of _____, 2023.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Ben Albrecht
Law Director

Legislation dates:

Prepared: 10/04/2023

Introduced: 11/07/2023

Revised:

Adopted:

Effective:

EXHIBIT A – R-47-2023

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (this “Agreement”) is made and entered into so as to be effective on the last date of signature below (the “Effective Date”), by and between **THE NEW ALBANY COMPANY LLC**, a Delaware limited liability company with its address at 8000 Walton Parkway, Suite 120, New Albany, Ohio 43054 (“NACO”), and the **CITY OF NEW ALBANY**, an Ohio charter municipality having its address at 99 W. Main Street, New Albany, Ohio 43054 (“City”).

RECITALS:

WHEREAS, over the past three decades, City and NACO have undertaken significant planning efforts with respect to, and have invested significant resources in, the area of the municipality that is generally known as the “Village Center”, which is generally identified in **Exhibit A** (attached hereto and incorporated herein by reference); and

WHEREAS, the Village Center is the core of the community and serves as a central location for a mix of unique and complimentary civic, social, recreational, residential, dining, and other commercial uses; and

WHEREAS, as the owner of a significant amount of improved and unimproved real property within the Village Center and elsewhere in New Albany, NACO shares in the City’s vision to maintain and enhance the vibrancy and success of the Village Center; and

WHEREAS, anticipated public and private development have caused the City and NACO to proactively contemplate the infrastructure needs of the Village Center and beyond; and

WHEREAS, this Agreement is intended to memorialize the parties’ mutual understandings and agreements regarding their respective development initiatives and those which are of shared interest.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT:

1. Purpose of Agreement.

(A) Generally. It is intended that this Agreement will in some instances create binding commitments on behalf of City and/or NACO, and in others will provide the parties’ agreed-upon framework with respect to further required actions. City and NACO agree that the

following projects and infrastructure (collectively, the “Projects”) are of mutual interest. These are further defined and described throughout this Agreement:

- (i) Market Street Extension;
- (ii) Rose Run Park II;
- (iii) Parking Structure behind Village Hall; and
- (iv) Ganton Parkway Extension.

(B) Affiliated Persons and Entities. It is contemplated that some of NACO’s obligations under this Agreement pertain to real property that is or may be owned by persons having an ownership interest in NACO or by other business entities that are wholly owned by such persons (such NACO-related persons and business entities to be referred to herein as “Affiliates”). NACO shall cause the Affiliates to take all actions necessary in order to allow NACO to fulfill its obligations hereunder. When the term “NACO” is used, it will include the relevant Affiliates when the context requires even if the term “Affiliates” is not expressly used.

2. Village Center Master Planning.

(A) Plan Update. City and NACO desire to engage in a study to identify mutual goals and objectives for portions of the Village Center to both facilitate the City’s goals with respect to public improvements and to assist in expediting NACO’s efforts to develop or redevelop certain properties that it owns therein (such study to be referred to herein as the “Area Study”). In order to further these efforts, City and NACO agree to make their representatives available to meet on a regular and continuing basis, beginning as soon as reasonably practical following the Effective Date. The City staff and NACO shall work cooperatively and diligently to (i) define, prior to the end of 2023, a scope of topics to be addressed, and the portions of the Village Center to be included, in the Area Study, and (ii) create and agree upon the final form of the Area Study by no later than September 30, 2024. City shall be responsible for drafting and creating the Area Study at its expense, provided that the costs of engaging any consultants that NACO utilizes while participating in this planning effort shall be paid by NACO.

(B) Former Gas Station and Police Station Sites.

(i) Redevelopment. No later than the date that is ninety (90) days following the completion of the Area Study to the mutual satisfaction of City and NACO, NACO shall file an application for a certificate of appropriateness (a “COA Application”) for redevelopment of all of the real property located to the north of Rose Run Creek and upon which the former Duke and Duchess gas station and the former police station are or were located. The COA shall include a development proposal for the development of at least two buildings containing first floor retail, restaurant, office, and/or commercial uses with one or more additional floors including office and/or residential uses. If residential uses are included in any building located on the former Duke and Duchess gas station site and/or the former police station site, parking for those residential uses shall be provided on-site and will not utilize the Parking Structure (non-residential uses shall be permitted to use the Parking Structure). Once filed, NACO shall diligently pursue the approval of the COA Application by the City’s Architectural Review Board (“ARB”).

(ii) **Demolition.** Prior to February 1, 2024, NACO shall complete (at its sole expense) the demolition of the building which formerly included the convenience store for the Duke and Duchess gas station and the building which formerly was a police station. NACO shall then make commercially reasonable efforts to complete construction of at least one building and related improvements as detailed in the approved COA Application such that a certificate of occupancy is issued for a building that is a part thereof no later than the date that is eighteen (18) months following the date when the ARB's action to approve the COA Application becomes legally effective. All of the timing requirements in this paragraph may be delayed based on so-called "**Force Majeure Events**", such as acts of God, strikes, wars, or other similar extraordinary events.

3. Market Street Extension.

(A) **General Project Description.** The "**Market Street Extension**" encompasses the construction of an extension of the public street known as Market Street from its existing terminus at State Route 605/Reynoldsburg-New Albany Road ("**RNA Road**") eastward and northward to the intersection of U.S Route 62 and 3rd Street, as generally depicted in **Exhibit B** (attached hereto and incorporated herein by reference), as well as related improvements as described in Section 2(B).

(B) **Project Scope.** The Market Street Extension shall include the following improvements:

(i) Installation of pavement, vehicular and pedestrian signage, street trees, streetlights, leisure trail on west side of Market Street extension, landscaping, and other customary improvements related to a public street (collectively, the "**Extension Vehicular and Pedestrian Improvements**");

(ii) Traffic circle at the intersection of Market Street and RNA Road (the "**New Traffic Circle**");

(iii) Improvements to the intersection of the Market Street Extension and East Dublin-Granville Road, at the location where the southern portion of 3rd Street presently terminates at East Dublin-Granville Road, so as to create a stop condition for vehicular traffic (the "**D-G Road Intersection Improvements**");

(iv) Improvements to the intersection of U.S. Route 62 and 3rd Street (the "**U.S. 62 Intersection Improvements**"), as detailed further in Section 2.F;

(v) Improvements to existing 3rd Street from the U.S. Route 62 Intersection Improvements on the north to connect with the D-G Road Intersection Improvements on the south and to accommodate a widening of 3rd Street and the flow of additional vehicular traffic (the "**3rd Street Improvements**");

(vi) Extension of a 12-inch waterline in the location and for a distance which is generally identified in **Exhibit B** (the “Extension Waterline”), along with fire hydrants as detailed on an approved final plat;

(vii) Regional stormwater basins (collectively, the “Regional Basins”) to accept, retain, clean, and release storm water runoff from the Market Street Extension and from private development sites within the area that is generally depicted in **Exhibit C**, which is attached hereto and incorporated herein by reference (the “Drainage Area”);

(viii) Drainage lines necessary to collect storm water runoff from the Market Street Extension and the Drainage Area (the “Drainage Lines”); and

(ix) Landscaping around the Regional Basins, including but not limited to grass, tree, and shrub plantings as well as mounding on the south and east sides of the Regional Basins, as detailed more specifically in Section 2(E) (the “Basin Landscaping”).

(C) Construction and Timing. City shall be responsible for constructing the Market Street Extension at its sole cost and expense except as otherwise provided in this Agreement. Construction shall commence on or after the date when the Plat (such term being later defined herein) is recorded, and shall be substantially completed no later than December 31, 2025, subject to Force Majeure Events. The Market Street Extension shall be deemed to be “substantially completed” when the entire public street which is included within that Project is open for public use by vehicular traffic and the Regional Basins and Drainage Lines have been installed and are operational. All aspects of the Market Street Extension as set forth in Section 2(B) shall be completed by City in their entirety by no later than June 30, 2026. All dates for performance as provided in this paragraph are subject to delays caused by Force Majeure Events

(D) NACO Obligations. With regard to the Market Street Extension:

(i) Dedications. NACO and its Affiliates shall dedicate, by their execution of that certain plat known as Market Street, Reynoldsburg-New Albany Road, Dublin-Granville Road, Third Street & Main Street Dedication and Easements, approved by New Albany City Council in Resolution Number R-58-2023 (the “Plat”), necessary right-of-way to City, at no charge, from real property that is under their respective ownership, in order to facilitate construction of the Extension Vehicular and Pedestrian Improvements, the New Traffic Circle, the D-G Road Intersection Improvements, the 3rd Street Improvements, and the U.S. 62 Intersection Improvements. NACO and its Affiliates shall execute the Plat as soon as reasonably practical following the date when City provides a mylar copy to them for signatures.

(ii) Utilities Easements. If necessary due to lack of space within the right-of-way to be dedicated to the City pursuant to the immediately preceding subsection, NACO and/or its Affiliates shall (a) grant an easement to City, not to exceed 10 feet in width from the edge of each side of the right-of-way of the Market Street Extension and at no charge to City, to accommodate construction, operation, and maintenance of the Extension Waterline (the “Waterline Easement”), and (b) grant necessary easements to

City, not to exceed 10 feet in width from either or both edges of the right-of-way of the Market Street Extension and which may overlap the Waterline Easement, and at no charge to City, to accommodate the construction, operation, and maintenance of the private utility lines (collectively, the “Private Utilities Easements”).

(iii) Basin Easements. NACO and/or its Affiliates shall grant necessary easements to City, with sizes and locations be mutually agreed upon by City and NACO and at no charge to City, to accommodate the construction, operation, and maintenance of the Regional Basins (collectively, the “Basin Easements”). The Basin Easements shall be created by, and their locations shall be identified in, the Plat, provided that City, NACO, and/or its Affiliates (as applicable) shall negotiate cooperatively and diligently to agree upon and execute, within ninety (90) days following the Effective Date the forms of one or more instruments to be recorded (the “Basin Easement Agreement(s)”) which will provide additional details as to the parties’ rights and obligations relating to each of the Basin Easements.

(iv) Drainage Easements. NACO and/or its Affiliates shall grant necessary easements to City, at widths and locations to be mutually agreed upon by City and NACO and at no charge to City, to accommodate the construction, operation, and maintenance of the Drainage Lines (the “Drainage Easements”). The Drainage Easements shall be created by, and their locations shall be identified in, the Plat, provided that City, NACO, and/or its Affiliates (as applicable) shall negotiate cooperatively and diligently to agree upon and execute, within ninety (90) days following the Effective Date the forms of one or more instruments to be recorded (the “Drainage Easement Agreement(s)”) which will provide additional details as to the parties’ rights and obligations relating to each of the Drainage Easements.

(v) Landscaping Easements. NACO and/or its Affiliates shall grant necessary easements to City for the installation, maintenance, and replacement of the Basin Landscaping (the “Landscaping Easements”). The Landscaping Easements shall be created by, and their locations shall be identified in, the Plat, provided that City, NACO, and/or its Affiliates (as applicable) shall negotiate cooperatively and diligently to agree upon and execute, within ninety (90) days following the Effective Date, the forms of one or more instruments to be recorded (the “Landscaping Easement Agreement(s)”) which will provide additional details as to the parties’ rights and obligations relating to each of the Drainage Easements.

(vi) Existing Leases. To the extent that any existing leases of real property or improvements owned by NACO and/or its Affiliates need to be terminated in order to facilitate the construction and/or operation of any portion of the Market Street Extension, they shall terminate such leases. Such terminations will occur within a timeframe that allows them to be effective prior to commencement of construction of the relevant phase of the Market Street Extension.

(vii) Authority of City Manager. By approving legislation or a resolution to approve this Agreement, City Council authorizes the City Manager to negotiate, accept,

execute, and cause to be recorded any instruments creating the Private Utilities Easements, the Basin Easements, the Drainage Easements, and the Landscaping Easements without the requirement of further action by City Council. Should NACO desire to relocate any of the aforementioned easements in the future, the City and NACO shall work cooperatively to identify mutually acceptable modified locations for the Basin Easements, provided that any modifications to the original recorded instruments relating to such easements shall require the prior approval of City Council.

(E) Regional Stormwater Basins. City will install and construct the Regional Basins at its sole cost and expense. City and NACO have agreed upon a final landscaping plan for areas near and around the Regional Basins, which is attached hereto and incorporated herein by reference as Exhibit D (the "Regional Basin Landscaping Plan"). City has provided a proposed landscaping plan to NACO for its review. Once the parties agree upon the final form of the landscaping plan, then they shall work cooperatively to identify those portions of the landscaping which would be customary for City projects of this type, and which will include mounding on the south and east sides of the Regional Basins (the "Baseline Basin Landscaping"). Any landscaping that is detailed in the agreed-upon landscaping plan which is in addition or supplementary to the Baseline Basin Landscaping (the "Supplemental Basin Landscaping") shall be installed by City at the same time as the Baseline Basin Landscaping. NACO shall reimburse the City for the costs of the Supplemental Basin Landscaping within thirty (30) days after the completion of installation and the delivery of a detailed written invoice for the same to NACO.

Following installation of the Regional Basins, the Baseline Basin Landscaping, and the Supplemental Basin Landscaping, City will be responsible for maintaining the Regional Basins at its expense, and NACO shall be responsible for maintaining (at its expense) the Baseline Basin Landscaping and Supplemental Basin Landscaping at its expense. The rights and obligations of City and NACO with respect to maintenance of the Regional Basins, the Baseline Basin Landscaping, and the Supplemental Basin Landscaping shall be set forth in one or more written easement agreements as contemplated in Section 2(D).

(F) U.S. 62 Intersection Improvements. The provisions of this Section 3(F) shall apply to the U.S. 62 Intersection Improvements, in addition to any other terms, provisions, and requirements relating thereto as provided elsewhere in this Agreement.

(i) Driving School Parcel. NACO is the owner of that certain improved parcel of real property which is known on the Effective Date as Franklin County Auditor Parcel Number 222-000066, as generally illustrated in Exhibit E (attached hereto and incorporated herein by reference (the "Driving School Parcel"). In order to accommodate the construction of the U.S. 62 Intersection Improvements, it will be necessary to demolish an existing building found on the Driving School Property. NACO shall be responsible for completing such demolition, provided, however, that it shall not be required to commence such demolition until it has been provided with at least 90 days' prior written notice from City of the need for the demolition to be completed. Following its provision of such notice and the passage of at least 90 days thereafter, NACO shall commence and diligently pursue the completion of the demolition of the building and all

other improvements located on the Driving School Parcel. Once such demolition is complete, NACO shall provide City with copies of invoices detailing the costs and expenses incurred by NACO relating to the demolition. The City Manager then shall have the right to reasonably review the same and City shall reimburse NACO for said costs and expenses within 30 days after the receipt of the invoices. At least 15 days prior to commencing the demolition of the building and other improvements on the Driving School Parcel, NACO shall provide City with a written estimate of the costs and expenses to be incurred in association therewith for the reasonable review and approval of the City Manager.

Following the demolition contemplated in the immediately preceding paragraph, City shall construct the U.S. 62 Intersection Improvements in accordance with plans that are reasonably reviewed and approved by NACO. Upon completion of the U.S. 62 Intersection Improvements, the Driving School Parcel shall have the right to a full movement vehicular access point on U.S. Route 62 in a location that aligns with an extension of a public alley extending from U.S. Route 62 northward and westward to the eastern edge of the right-of-way of 3rd Street, as illustrated in **Exhibit F** (the “**Alley**”).

(ii) **Right-of-Way Vacation or Transfer.** Upon completion of the U.S. Route 62 Intersection Improvements such that they are open for use by the general public, City shall take action to either (a) vacate that portion of the 3rd Street right-of-way extending between U.S. Route 62 on the south and the Alley, or (b) deed such property to NACO, both at no cost or expense to NACO. Prior to vacating or conveying such real property, City shall remove all pavement therefrom and shall grade and seed the real property with grass at its sole cost and expense.

4. Rose Run Park II; Parking Structure.

(A) **General Project Description.** The provisions of this Section 3 shall apply to Rose Run II Park and the Parking Structure (all capitalized terms being defined below).

(i) “**Rose Run II Park**” generally includes the planned extension of the existing Rose Run Park eastward to RNA Road. A conceptual plan providing the vision for Rose Run Park II is attached hereto and incorporated herein by reference as **Exhibit G** (the “**Rose Run II Plan**”). Generally it can be described as an expansion of the greenway along Rose Run Creek, the provision of pedestrian and bicycle access through and across that greenway, and the installation of a Veterans Memorial. This project also shall include other related improvements as described in this Section 4; and

(ii) The “**Parking Structure**” shall mean a parking structure located behind Village Hall in the general location identified in **Exhibit G**, on land which is owned by City, and which is intended to provide parking for the general public, City-owned vehicles, and non-residential private development, along with other associated improvements as further contemplated hereunder.

(B) Scopes of Projects.

(i) Rose Run II Park. Rose Run Park II shall include the following improvements:

(a) The improvement of real property along the Rose Run Creek as a continuation of the greenway from its current termination on the west side of U.S. Route 62/Main Street to RNA Road on the east (collectively, the "Greenway");

(b) Installation, construction, and maintenance of a retaining wall, as needed along the north side of Rose Run Creek from U.S. Route 62/Main Street on the west and RNA Road on the east (the "Retaining Wall");

(c) Installation, construction, and maintenance of paved leisure paths along the north and south sides of Rose Run Creek to continue the existing path network within Rose Run Park to the west, to RNA Road on the east, and to other parts of the Village Center (collectively, the "Leisure Paths");

(d) A pedestrian gateway extending from Rose Run Creek north to E. Dublin Granville Road at the approximate midpoint between West Main Street and South High Street, in the area that is generally located between in Exhibit G (the "Pedestrian Gateway"). Among other improvements, the Pedestrian Gateway shall include a pedestrian bridge over Rose Run Creek to connect the Pedestrian Gateway to Rose Run Park II; and

(e) Relocation of the existing Veterans Memorial owned by the City (which is located at the southeast corner of the intersection of U.S. Route 62 and High Street) to a location south of the Rose Run Creek on land owned by the City, with associated improvements and enhancements (collectively, the "Veterans Memorial").

(ii) Parking Structure. The Parking Structure shall consist of a vehicular parking structure located behind New Albany Village Hall on land which is owned by City in the general location identified in Exhibit H, to be designed and constructed in accordance with the specifications set forth in Certificate of Appropriateness Application Number PLARB20220147, which was approved by the City's Architectural Review Board on January 10, 2023 (the "Parking Structure COA"), and which is intended to provide parking for the general public, City-owned vehicles, and other uses. The Parking Structure also shall include (but not be limited to) modification of the existing paved parking area and drive aisles behind Village Hall, to the extent they are impacted by the Parking Structure; modification of the existing paved parking lot behind the police station; and modifications to and removal and/or additions of vehicular and pedestrian access points along Village Hall Road to provide for the efficient and safe ingress and egress of vehicles and pedestrians between this street and the Parking Structure, as detailed in the Parking Structure COA.

(C) NACO Commitments. In exchange for the City's commitments as detailed in Section 3(D), NACO shall:

(i) Park/Trail Land. Transfer and convey to City ownership of certain land along the Rose Run corridor between RNA Road and Main Street which is generally located 25' north of the centerline of Rose Run Creek and to the south of the properties identified in Exhibit I (attached hereto and incorporated herein by reference) (the "Park/Trail Land"), in order to facilitate the construction and maintenance of an extension, by City, of the Rose Run Park and a leisure trail eastward to the intersection of East Dublin-Granville Road and the Market Street Extension. This conveyance shall be made at no charge to City and shall be completed within 45 days after the first date when City Council has taken action to appropriate funds to pay the costs of the portion of Rose Run II that includes the Retaining Wall (which such appropriation shall provide for the payment of the costs of the Retaining Wall);

(ii) Mill Warehouse Land. Transfer and convey to City ownership of the real property on which the so-called "Mill Warehouse" is located, with boundaries that later will be mutually agreed upon by City and NACO (but in substantial compliance with the boundaries illustrated in the Rose Run II Plan). This property is located to the south of and adjacent to Rose Run Creek, to the east of and adjacent to Main Street, and to the south of the former Duke and Duchess gas station (said land to be referred to herein as the "Mill Warehouse Land" and the building to be referred to as the "Mill Warehouse"). NACO also shall demolish the Mill Warehouse at its sole cost and expense prior to conveying the Mill Warehouse Land to City and shall appropriately grade and seed the property following this demolition, at its sole cost and expense. The conveyance of the Mill Warehouse Land to City shall occur within the same timeframe as required for the Park/Trail Land, but these two transfers and conveyances are not required to occur at the same time; and

(iii) Pedestrian Gateway Easement. Grant an easement to City (the "Pedestrian Gateway Access Easement") to accommodate the Pedestrian Gateway as shown in Exhibit J extending from Rose Run Creek north to East Dublin-Granville Road at the approximate midpoint between West Main Street and South High Street, with a width sufficient to provide for this improvement. The conveyance of the Pedestrian Gateway Easement to City shall occur within the same timeframe as required for the Park/Trail Land, but these two transfers and conveyances are not required to occur at the same time;

(D) City Commitments. In exchange for NACO's commitments as detailed in Section 3(D), City shall, at its sole cost and expense:

(i) Greenway Improvements. Improve real property along the Rose Run Creek as a continuation of an existing greenway from its current termination on the west side of U.S Route 62/Main Street to RNA Road on the east in accordance with the Rose Run II Plan (collectively, the "Greenway Improvements");

(ii) Retaining Wall; Leisure Paths. Install, construct, and maintain the Retaining Wall and the Leisure Paths the plan which is attached hereto and incorporated herein by reference as Exhibit K;

(iii) Pedestrian Gateway. Install, construct, and maintain the Pedestrian Gateway, including but not limited to installing, constructing, and maintaining a pedestrian bridge over Rose Run Creek, in accordance with the plan which is attached hereto and incorporated herein by reference as Exhibit L;

(iv) Transfer and convey to NACO ownership of that portion of Franklin County Auditor Parcel Number 222-003477 which is located to the south of the right-of-way of Village Hall Drive (the "Village Hall Road Sliver", as generally identified in Exhibit M, attached hereto and incorporated herein by reference); and

(v) Parking Structure. Construct, maintain, and operate the Parking Structure.

City shall undertake commercially reasonable efforts to commence construction of the Greenway Improvements, the Retaining Wall, the Leisure Paths, and the Pedestrian Gateway by January 1, 2025 and to complete the same by December 31, 2025. City shall complete construction of the Parking Structure such that it may be used by the general public by the later of (a) June 30, 2025 and (b) the date on which the first certificate of occupancy issued for the first newly constructed building located on the former Duke and Duchess gas station site or the former police station site to the north of Rose Run Creek. City shall transfer and convey the Excess Land and the Village Hall Road Sliver to NACO at the same time as NACO transfers and conveys the Mill Warehouse Land to City.

In recognition of the fact that several private and public construction projects are likely to be undertaken simultaneously within a relatively small land area, it is acknowledged that the dates for City's commencement and completion of the Greenway Improvements, the Retaining Wall, the Leisure Paths, the Pedestrian Gateway, and the Parking Structure, and the dates for NACO to commence and complete construction of new buildings on the former Duke and Duchess gas station and former police stations parcels as contemplated in Section 2(B)(ii) above may be impacted. Therefore, each party agrees to coordinate with the other as to the timing and staging of these construction projects to promote efficiency and shall negotiate in good faith from time-to-time (as necessary) to make adjustments to dates for performance by the other party if such adjustments are driven by the constructing party's project(s).

5. Ganton Parkway Extension.

(A) General Project Description. The "Ganton Parkway Extension" will include the construction of an extension of existing Ganton Parkway from the Franklin/Licking County boundary line westward/northwestward to U.S. Route 62 at its existing intersection with Theisen Drive, as generally illustrated in Exhibit N (attached hereto and incorporated herein by reference), which is attached hereto and incorporated herein by reference. It is expected that the Ganton Parkway Extension will occur in phases over time rather than as a single construction project, although nothing herein shall be read to prohibit it from being completed as a single

construction project or to prohibit the construction of more than one (but not all) phases at one time. The Ganton Parkway Extension as illustrated in Exhibit N is intended to demonstrate the intent in terms of its general location and its points of intersection with other public streets. Actual locations, specifications, sizing, and designs for the Ganton Parkway Extension will be reviewed for approval as part of one or more final plats in accordance with the review procedures in the City's Codified Ordinances.

Construction of each phase of the Ganton Parkway Extension shall include Related Street Improvements. The term "Related Street Improvements" shall mean "public utility lines, private utility lines and/or conduits/ducts, street lights, street trees, vehicular and pedestrian signage, traffic control devices, paved leisure trails, sidewalks, fencing, and other improvements customarily associated with a public street, as provided in an approved plat and/or associated approved engineering drawings."

(B) Intent. The intent of this Section 5 is to set forth general expectations of the City and NACO as they related to the Ganton Parkway Extension. The parties agree that additional actions will need to be taken and/or additional agreements between them will be required in order to facilitate the construction of the Ganton Parkway Extension. Any such actions or agreement shall be consistent with the provisions of this Section 5.

(C) Construction. City shall be responsible for constructing each phase of the Ganton Parkway Extension at its sole cost and expense except as otherwise provided in this Agreement. At least ninety (90) days prior to commencing construction of any such phase, City shall deliver written notification of its intent in this regard so as to provide NACO with time to complete its relevant obligations as contemplated in Section 4(D) below. City may elect to construct the phases of Ganton Parkway in any order.

(D) Kitzmilller Road Intersection Realignment. The relevant phase of the Ganton Parkway Extension shall include the redesign and realignment of the existing intersection of East Dublin-Granville Road and Kitzmilller Road, as generally illustrated in Exhibit N (the "Kitzmilller Intersection Realignment").

(E) NACO Commitments. With regard to the Ganton Parkway Extension:

(i) NACO shall dedicate rights-of-way and utility easements to City for each phase at no cost to City, provided that relevant final plats have been approved and all of City's funding for that phase has been secured and appropriated. Rights-of-way and utility easement widths shall be consistent with the street typology for the Ganton Parkway Extension, as determined at the time of the design of each phase, and shall be consistent with that which has been dedicated by NACO to City for other street improvement projects within the City with similar designs.

(ii) NACO shall dedicate rights-of-way and utility easements to City for the Kitzmilller Intersection Realignment at no cost to City. Right-of-way and utility easement widths shall be determined at the time of review and approval of a final plat. The relevant final plat shall provide that any right-of-way which is being vacated as a result of the

Kitzmilller Intersection Realignment shall be transferred into NACO's ownership or, if it is not possible for such ownership to be transferred to NACO by and through a vacation of right-of-way on a final plat, City agrees that it will convey ownership to NACO of any right-of-way that is no longer needed by and through the execution and delivery of a limited warranty deed.

(iii) NACO shall grant to City, at no charge, easements for the construction, operation, repair, maintenance, and replacement of temporary and permanent BMP storm water management infrastructure to serve each phase of the Ganton Parkway Extension in locations to be mutually agreed upon. These easements and the terms under which they are granted will be set forth in separate written instruments that shall be recorded with the Offices of the Recorders of Franklin County or Licking County, as applicable.

6. **Other Commitments.** In addition to the various commitments and obligations of City and NACO as set forth elsewhere in this Agreement, they also agree to the following:

(A) **2nd Street and 3rd Street Area.** In consideration of the numerous acquisitions of parcels of real property that were acquired by NACO in order to facilitate the construction of the Market Street Extension, City acknowledges its intent to transfer and convey to NACO the real property and improvements (i) known on the Effective Date as Franklin County Auditor Parcel Numbers 222-000022 and 222-000038 (together, the "Cherry Alley/2nd Street Parcels") and (ii) known on the Effective Date as Franklin County Auditor Parcel Numbers 222-000106, 222-000113, and 222-000042 (the "2nd and 3rd Street Parcels", and together with the Cherry Alley/2nd Street Parcels, the "Historic Village Center Parcels", as shown in **Exhibit O**, which is attached hereto and incorporated herein by reference). City also acknowledges its intent to cooperate in facilitating the prompt completion of necessary actions to vacation of and transfer to NACO of the right-of-way of Walnut Alley from U.S. Route 62 (the "Walnut Alley ROW") on the north and East Dublin-Granville Road on the south in order to accommodate the comprehensive development of properties owned by NACO adjacent to and/or in the vicinity of that right-of-way.

(B) **Redevelopment Plans.** Prior to being required to transfer the Historic Village Center Parcels and the Walnut Alley ROW to NACO, the City and NACO shall agree upon a site plan and architectural designs for the redevelopment of the same along with other NACO property holdings between 2nd Street and 3rd Street between East Dublin Granville Road and U.S. Route 62. Once a site plan and architectural designs are agreed upon, as evidenced in a letter or other writing signed by the City Manager and an authorized representative of NACO, then within four (4) months thereafter NACO shall submit a COA Application for redevelopment of the properties in accordance with the agreed upon plan and designs, for review by the ARB. Within three (3) calendar months after the ARB approves such an application, City shall complete the transfer and conveyance of the Historic Village Center Parcels and the Walnut Alley ROW to NACO. In order to facilitate an orderly closing of the transfers and conveyances to NACO, the parties shall enter into a separate written agreement relating to the same, which shall include, among other provisions concerning the details of the transfers and conveyances,

dates for commencement and completion of the redevelopment of the subject real property.

7. **General Obligations.** The following obligations and commitments are generally applicable to the Projects:

(A) **Real Estate Transfers.** The conveyance of fee simple title to real property or the granting of an easement in real property by one of the parties to the other as contemplated in this Agreement shall be completed on an “As-Is, Where-Is” basis, with all faults and no warranties or representations as to its condition or its fitness for any particular purpose, provided that the party that is to receive the conveyance of the real property or the grant of the easement shall be permitted at any time prior to its acceptance of the conveyance to undertake its own investigations of the physical condition of the property and of title and survey matters relating thereto. If the party that will receive the conveyance of or easement in real property is not satisfied with its investigations, it may elect not to take ownership of or an easement in the real property by delivering written notice to the other party. The granting of any easements in real property shall be completed by and through the execution, acknowledgement, and delivery of one or more easement agreements, which shall be recorded by the party that has been conveyed the real property or the easement(s) at its sole cost and expense.

The conveyances of fee simple title to real property as contemplated in this Agreement shall be completed by and through the execution, acknowledgement, and delivery of one or more limited warranty deeds, which shall be recorded by the party that has been conveyed the real property at its sole cost and expense. The party that conveys ownership of real property to the other party shall provide the other party with a title insurance policy covering the real property that is conveyed, in amounts to be reasonably agreed upon by NACO and City.

(B) **Design and Engineering; Bidding.** City shall be responsible for the design and engineering of each of the Projects at its sole cost and expense, unless expressly otherwise provided in this Agreement. It also shall be responsible for the bidding of all contracts which are necessary for the completion of each of the Projects. Such actions shall be undertaken and completed in a manner that meets all applicable timing requirements.

(C) **Platting and Permitting.** All plats and relevant permits (including, but not limited to, environmental permits needed from relevant state and federal agencies) shall be prepared by City at its sole cost and expense. City shall diligently pursue the issuance or receipt of all approvals relating to the same such that commencement and completion of each of the Projects may occur in a timely manner as detailed in this Agreement.

(D) **Reviews.** City acknowledges that NACO’s ownership and development interests in the Village Center mean that the Projects will have an impact on NACO which is unique. Therefore, at each stage of the design and engineering process for all

major components of each of the Projects, City will present NACO with the opportunity to provide input. Should minor modifications be needed to this Agreement to adjust City commitments or the timing requirements of any party, these modifications may be approved by the City Manager administratively.

(E) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Ohio. By executing this Agreement, each party hereto expressly (i) consents and submits to personal jurisdiction consistent with the previous sentence, (ii) waives, to the fullest extent permitted by law, any claim or defense that such venue is not proper or convenient, (iii) consents to the service of process in any manner authorized by Ohio law, and (iv) agrees that all actions brought pursuant to or under this Agreement shall be filed with the state and/federal courts located in Franklin County, Ohio.

(F) Entire Agreement. This Agreement is the entire agreement between the parties concerning the Projects and supersedes any prior agreements relating thereto. No modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by both parties to be bound.

(G) Survival. Any of the provisions of this Agreement which expressly provide for their survival and any provisions pertaining to a period of time following Closing shall survive Closing and the delivery of a deed and shall not be merged therein.

(H) Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, and all such counterparts shall together constitute but one and the same agreement.

(I) Severability. If any provisions of this Agreement applicable to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such party or circumstance, other than those as to which it is determined invalid or unenforceable, shall not be affected thereby, and each remaining provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

(J) Headings. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope or content of any of its provisions.

(K) Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served (i) by depositing the same in the United States mail or with a reputable nationwide delivery service, addressed to the party to be notified, postage prepaid, and overnight, registered or certified with return receipt requested, or (ii) by delivering the same in person to such party. Notice given in accordance with (i) above shall be effective when mailed. Notice given in accordance with (ii) above shall be effective upon receipt at the address of the addressee or upon

refusal to accept delivery (such refusal being evidenced by advice from the courier company or individual used to make delivery). For purposes of notice, the addresses of the parties shall be as set forth in the opening paragraph of this agreement unless otherwise instructed in a written notice delivered to all parties hereto.

(L) Business Days. Whenever any time limit or date provided herein falls on a Saturday, Sunday or holiday observed by national banking associations in the State of Ohio ("Bank Holiday"), then such date shall be extended to the next day which is not a Saturday, Sunday or Bank Holiday.

(I) Rule of Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement, and the parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

(J) Exhibits. All exhibits or addenda referred to in this Agreement are incorporated herein for all purposes.

(K) Assignment. City may not assign this Agreement without NACO's prior written consent, which shall not be unreasonably delayed or withheld. NACO may assign this Agreement in whole or in part to its affiliated business entities, provided that NACO delivers written notice to City with details of the assignment promptly after the assignment is completed.

IN WITNESS WHEREOF, City and NACO have executed this Agreement as of the dates written below.

CITY:

NACO:

CITY OF NEW ALBANY,
an Ohio charter municipal corporation

THE NEW ALBANY COMPANY LLC,
a Delaware limited liability company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

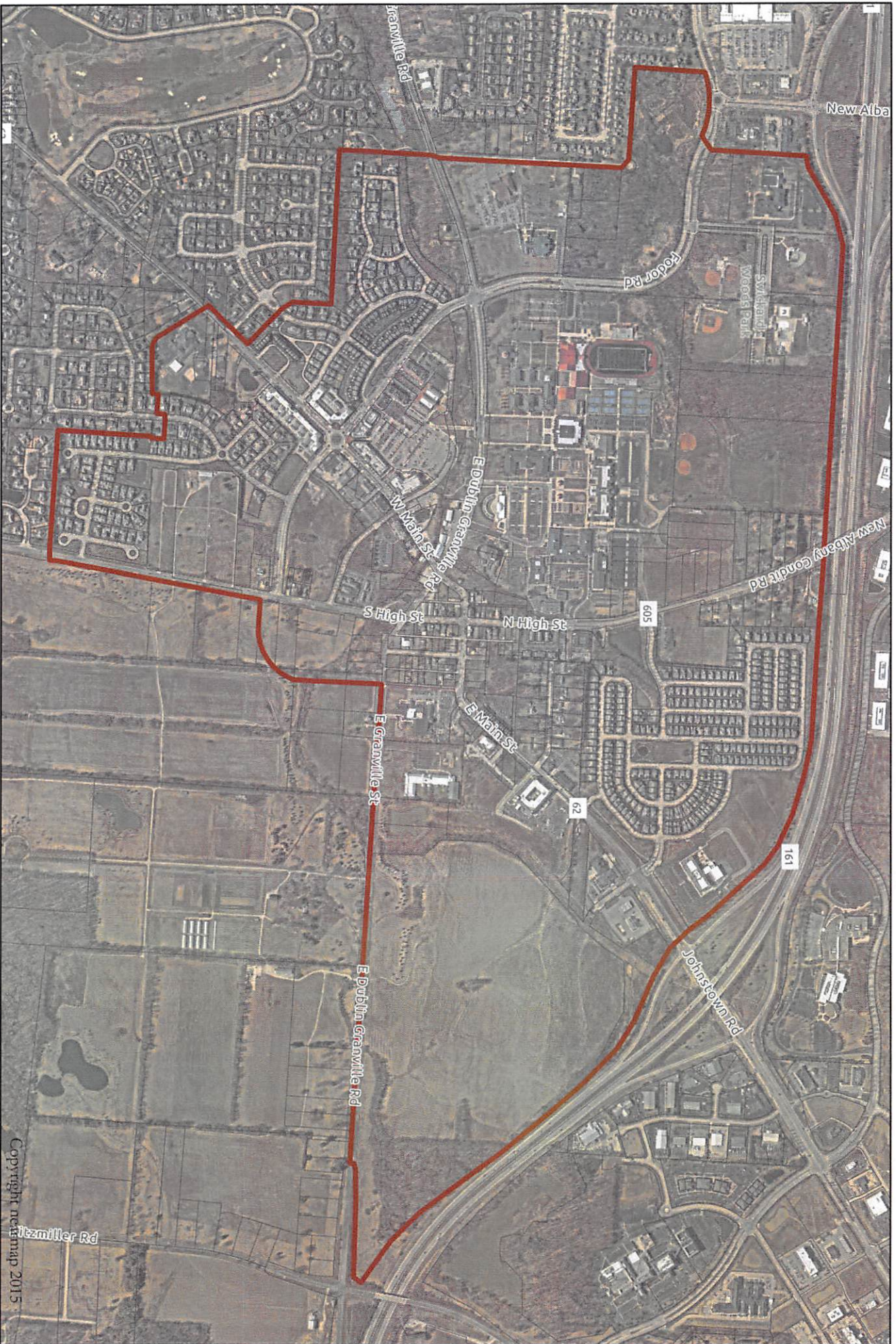
Title: _____

Date: _____

Date: _____

Approved as to form:

Benjamin Albrecht, City Law Director



New Alba

St. Daniel's Woods Park

Fodor Rd

New Albany Condr Rd

605

N High St

62

161

Johnstown Rd

E Main St

E Dublin Granville Rd

W Main St

S High St

E Granville St

E Dublin Granville Rd

Granville Rd

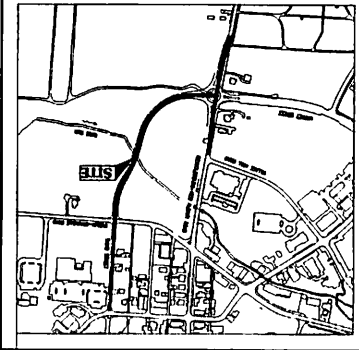
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Lezmiller Rd

Exhibit A



MARKET STREET, REYNOLDSBURG-NEW ALBANY ROAD, DUBLIN-GRANVILLE ROAD, THIRD STREET & MAIN STREET DEDICATION AND EASEMENTS



SWAYEE DATA:
BASIS OF REVENUES: This plat was transferred from a plat
revenue earnings and is based on the Ohio State Plane Coordinate System, South Zone
as per MAP 83, 1959 adjustment in bearing of North 10°31'41" East was used for a
portion of the existing centerline-New Albany Road, between centerline
monuments FCOS 99164 and FCOS 99169 designated the base of bearing for this plat.

REMARKS: BROWN PINS were indicated markers, unless otherwise noted, and one stake street
cap placed at the top end bearing the name "E.P. FERRIS SURVEYOR 2422".
REMARKS: Permanent markers were indicated hereon, and to be
found in the top end bearing the name "E.P. FERRIS SURVEYOR 2422".
points indicated and one to be set with the top end first with the surface of the
ground and then topped with an aluminum cap stamped "E.P. Ferris Ohio" and the
top of the cap shall be marked (punched) to record the actual location of the point.
These markers shall be set following the completion of the construction, installation of
the street pavement and utilities and prior to the City of New Albany, Ohio's
acceptance of these improvements. The New Albany, Ohio, Municipal Engineer shall be
notified when the markers are in place.

FLOOD NOTE:
At the subject property is located a Zone X (Area of 0.28 acre) flood with average
depth of less than 1 foot, an average once in 100 year flood (FIM) Map
Number 150402200X (June 17, 2008).

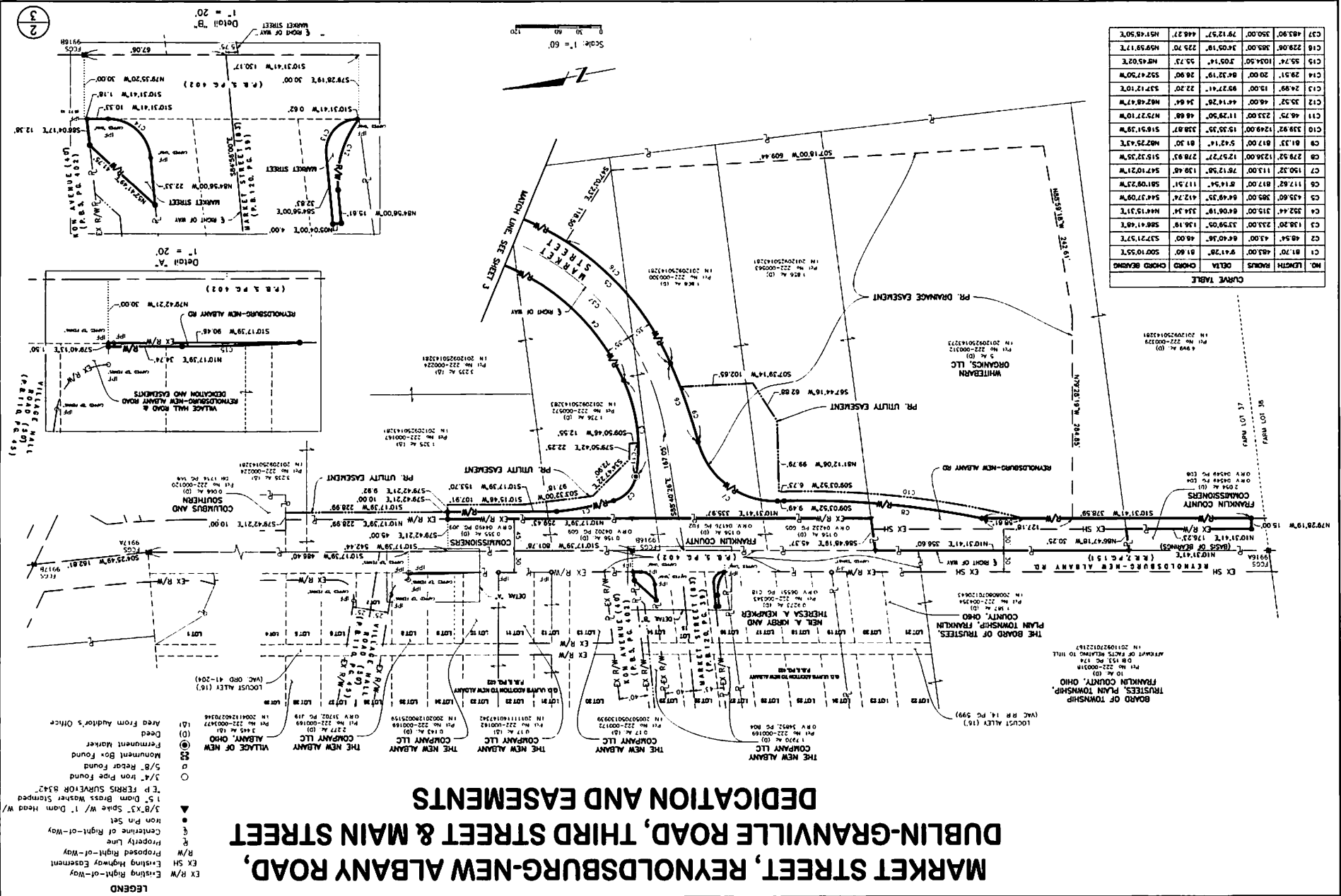
Approved and received by Resolution No. _____ passed
at a meeting of the Board of Commissioners of the City of New Albany, Ohio, on this _____ day of _____, 20____, at the City of New Albany, Ohio, the City Council for the
City of New Albany, Ohio, approved of this plat and
Main Street shown depicted hereon is accepted, as such, by the Council for the
City of New Albany, Ohio, on this _____ day of _____, 20____.

Transferred this _____ day of _____, 20____, at _____, Franklin County, Ohio,
Auditor, _____ Franklin County, Ohio,
Deputy Auditor, _____ Franklin County, Ohio,
Fined for record this _____ day of _____, 20____, at _____, Franklin County, Ohio,
Recorder, _____ Franklin County, Ohio,
File No. _____
Filed for record this _____ day of _____, 20____, at _____, Franklin County, Ohio,
Deputy Recorder, _____ Franklin County, Ohio,
Notary Public, State of Ohio, _____

By _____
Signed and acknowledged
in the presence of
_____, has hereto set his hand this _____ day of _____, 20____,
in Witness Whereof,
I, _____, Notary Public, State of Ohio,
do hereby certify that I have surveyed the above premises, prepared the
attached plat, and that said plat is correct to the best of my knowledge. All
dimensions are in feet and decimal parts thereof.

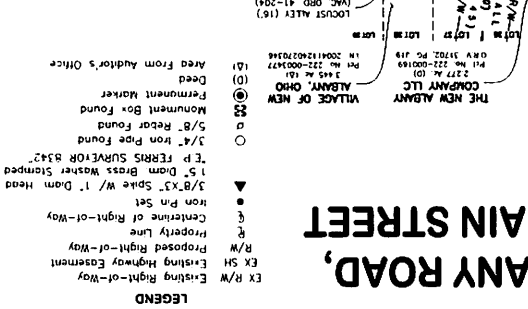
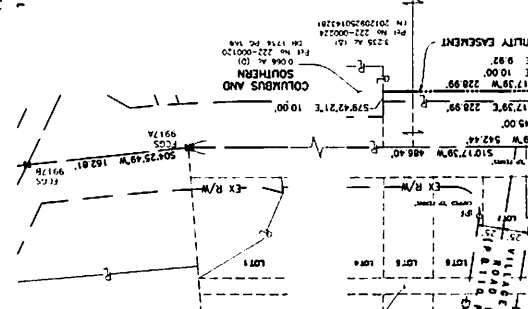
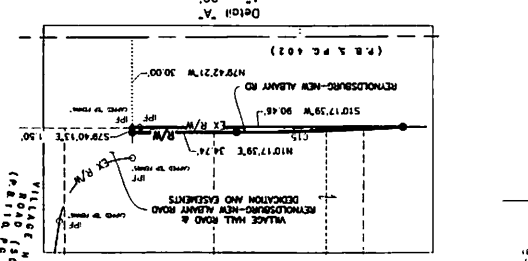
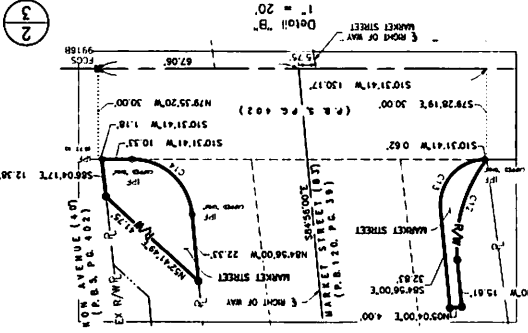


MARKET STREET, REYNOLDSBURG-NEW ALBANY ROAD, DUBLIN-GRANVILLE ROAD, THIRD STREET & MAIN STREET DEDICATION AND EASEMENTS



CURVE TABLE

NO.	LENGTH	BANKS	DATA	CHORD	CHORD BEARING
C1	81.70	48.00	81.60	500.10	S57°10'55"E
C2	48.54	43.00	46.00	537.71	S71°57'E
C3	136.20	233.00	339.00	136.18	S68°41'48"E
C4	352.44	315.00	64.00	334.34	S44°15'31"E
C5	435.60	385.00	64.00	412.74	S44°37'09"E
C6	117.62	817.00	814.94	117.01	S81°09'23"E
C7	150.32	113.00	76.12	138.48	S47°10'21"E
C8	278.52	128.00	125.27	278.83	S15°32'55"E
C9	81.33	817.00	547.14	81.30	S42°25'43"E
C10	339.92	1249.00	1535.35	339.87	S16°51'38"E
C11	48.75	233.00	1129.90	48.68	N129°31'0"W
C12	30.52	68.00	4614.26	34.64	N42°48'47"E
C13	24.98	18.00	8927.41	22.20	S37°12'10"E
C14	29.51	20.00	8432.19	28.90	S52°47'50"W
C15	55.74	104.50	4835.14	53.73	N45°50'E
C16	228.08	385.00	3405.18	225.70	N58°59'17"E
C17	483.90	350.00	2912.57	448.27	N51°48'50"E



- LEGEND**
- EX R/W Existing Right-of-Way
 - EX SH Existing Highway Easement
 - Proposed Right-of-Way
 - Propriety Line
 - Centerline of Right-of-Way
 - Iron Pin Set
 - 3/8" X 3" Spike W/ 1" Dam Head W/ 1 1/2" Dam Brass Washer Stamped E P FERRELL SURVEYOR 8342
 - 5/8" Iron Pipe Found
 - 5/8" Rebar Found
 - Monument Box Found
 - Permanant Marker
 - Deed
 - Area From Auditor's Office

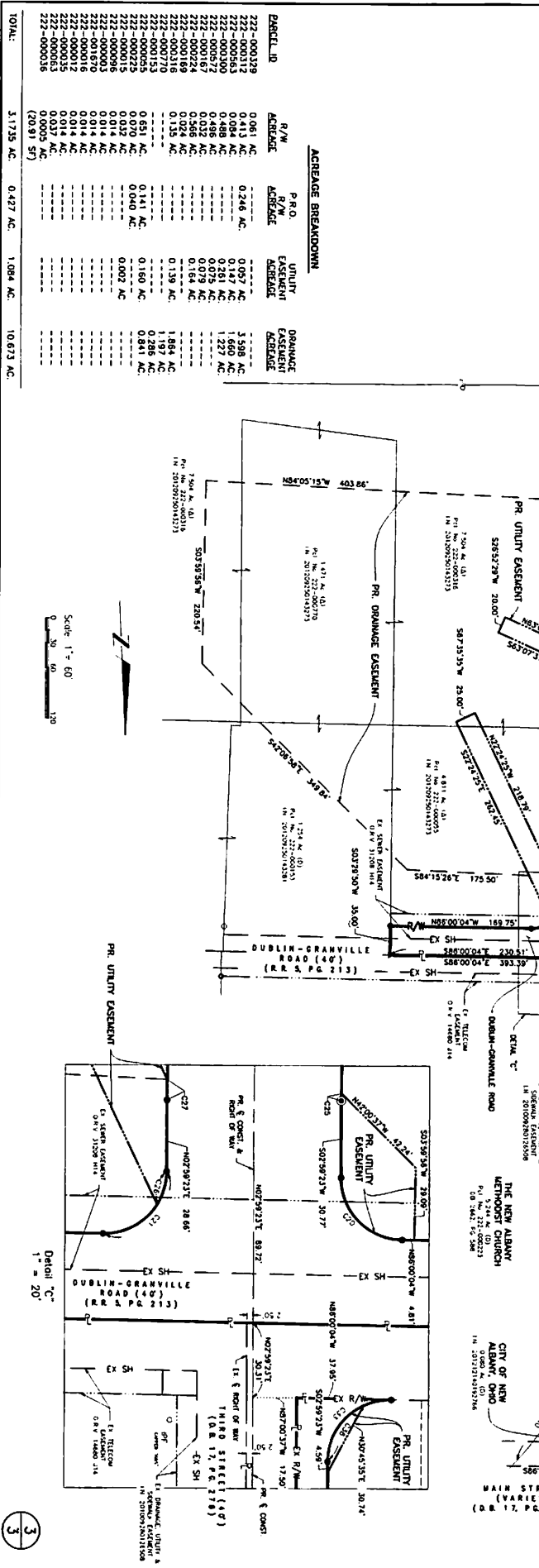
Scale: 1" = 60'



MARKET STREET, REYNOLDSBURG-NEW ALBANY ROAD, DUBLIN-GRANVILLE ROAD, THIRD STREET & MAIN STREET DEDICATION AND EASEMENTS

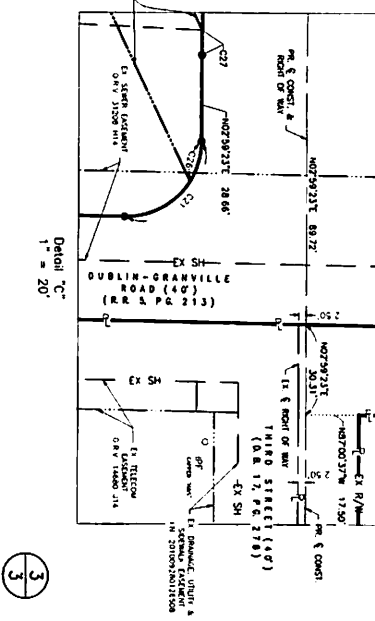
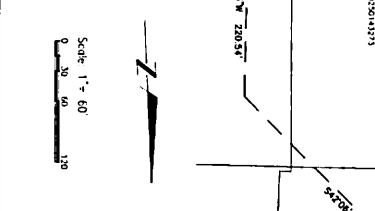
CURVE TABLE

NO.	LENGTH	RAIUS	DELTA	CHORD	CHORD BEARING
C1	352.44'	315.00'	64°00'18"	334.34'	N44°13'17"E
C2	448.60'	385.00'	64°48'35"	417.74'	S44°27'09"W
C3	538.56'	1035.00'	18°04'38"	323.50'	N67°14'41"W
C4	173.87'	345.00'	27°17'28"	172.23'	N63°07'17"E
C5	30.53'	25.00'	88°29'28"	35.04'	N41°30'21"W
C6	39.21'	25.00'	91°00'34"	35.07'	S48°29'35"W
C7	204.22'	435.00'	27°17'28"	206.27'	S16°38'17"W
C8	30.35'	1035.00'	18°04'38"	30.31'	S21°14'41"W
C9	178.43'	1035.00'	93°27'38"	178.21'	S21°33'34"W
C10	3.06'	365.00'	0°29'08"	3.06'	S31°33'37"W
C11	13.83'	25.00'	31°28'55"	13.79'	N19°29'30"E
C12	8.29'	435.00'	1°03'31"	8.29'	N19°29'30"E
C13	8.46'	985.00'	1°11'57"	8.46'	N28°23'27"E
C14	7.64'	985.00'	0°54'27"	7.64'	N27°29'35"E
C15	19.31'	25.00'	91°00'34"	19.34'	N17°48'28"E
C16	11.44'	10.00'	63°13'27"	10.83'	N29°24'18"W
C17	28.84'	78.00'	70°13'27"	27.24'	N73°39'40"W
C18	28.84'	78.00'	64°42'48"	28.78'	S50°04'48"W
C19	443.90'	350.00'	78°12'37"	448.27'	N51°48'50"E
C20	115.51'	1000.00'	16°04'38"	114.21'	N21°14'41"E
C21	390.55'	4000.00'	27°17'28"	388.75'	N18°33'12"E
C22	298.27'	280.00'	42°51'48"	204.67'	N23°23'15"E
C23	151.62'	280.00'	31°01'30"	148.17'	N18°30'00"E
C24	61.58'	144.50'	24°23'01"	61.11'	S74°44'50"E



ACREAGE BREAKDOWN

PARCEL I.D.	R/W ACREAGE	P.R.O. ACREAGE	UTILITY EASEMENT ACREAGE	DRAINAGE EASEMENT ACREAGE
222-000329	0.061 AC.	0.246 AC.	0.057 AC.	3.598 AC.
222-000312	0.413 AC.	0.074 AC.	0.141 AC.	1.660 AC.
222-000553	0.098 AC.	0.000 AC.	0.000 AC.	1.227 AC.
222-000572	0.486 AC.	0.000 AC.	0.075 AC.	0.000 AC.
222-000167	0.032 AC.	0.000 AC.	0.075 AC.	0.000 AC.
222-000724	0.068 AC.	0.000 AC.	0.164 AC.	0.000 AC.
222-000318	0.135 AC.	0.000 AC.	0.139 AC.	1.664 AC.
222-000153	0.000 AC.	0.000 AC.	0.000 AC.	1.197 AC.
222-000223	0.070 AC.	0.040 AC.	0.160 AC.	0.286 AC.
222-000015	0.032 AC.	0.000 AC.	0.002 AC.	0.881 AC.
222-000098	0.014 AC.	0.000 AC.	0.000 AC.	0.000 AC.
222-001870	0.014 AC.	0.000 AC.	0.000 AC.	0.000 AC.
222-000016	0.014 AC.	0.000 AC.	0.000 AC.	0.000 AC.
222-000012	0.017 AC.	0.000 AC.	0.000 AC.	0.000 AC.
222-000013	0.000 AC.	0.000 AC.	0.000 AC.	0.000 AC.
222-000035	0.000 AC.	0.000 AC.	0.000 AC.	0.000 AC.
TOTAL:	3.1735 AC.	0.427 AC.	1.084 AC.	10.673 AC.



- LEGEND**
- EX R/W Existing Right-of-Way
 - EX SH Existing Right-of-Way
 - R/W Proposed Right-of-Way
 - Property Line
 - Centerline of Right-of-Way
 - Iron Pin Set
 - 3/8"x3" Spike w/ 1" Dum Head w/ 1 1/2" Brass Washer Stamped "E.P. FERRIS SURVEYOR 8342"
 - 3/4" Iron Pipe Found
 - 5/8" Rebar Found
 - Monument Box Found
 - Permanent Marker
 - Area From Auditor's Office

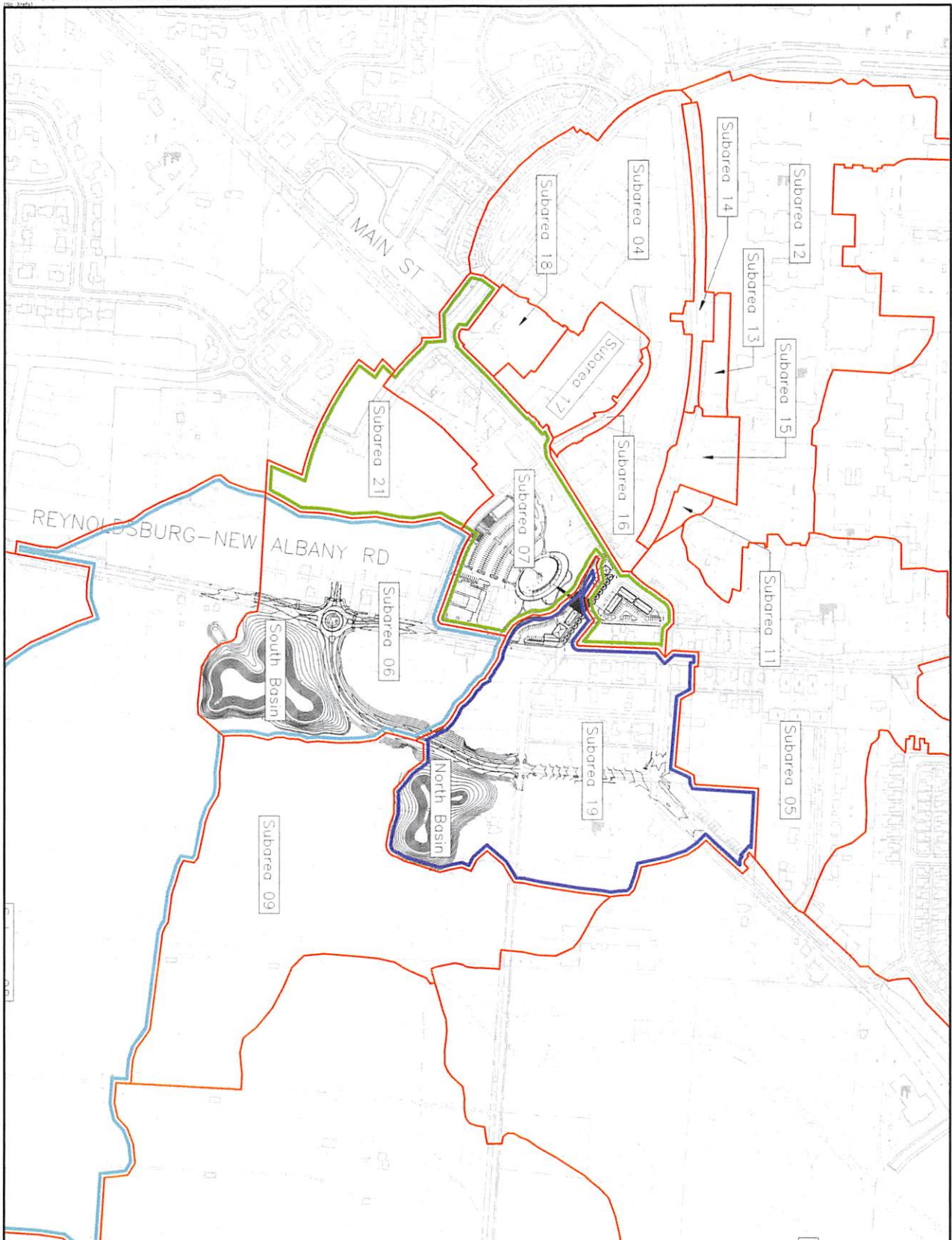


EXHIBIT C

Subarea	Area (Acres)	Population	Impervious Area (Acres)	Impervious %
04	120	1500	80	67%
05	150	2000	100	67%
06	100	1200	60	60%
07	80	1000	50	63%
09	200	2500	120	60%
11	180	2200	110	61%
12	140	1800	85	61%
13	110	1400	65	59%
14	130	1600	75	58%
15	160	2000	90	56%
16	120	1500	70	58%
17	90	1100	55	61%
18	110	1400	65	59%
19	130	1600	75	58%
21	150	1800	90	60%

Note: Subarea 21 is piped to South Basin. Higher flows will flood route directly to Rose Run.

LEGEND

- Sub-watershed boundary
- Tributary to North Basin
- Tributary to South Basin
- Regional and WQ Provider by Regional Basins

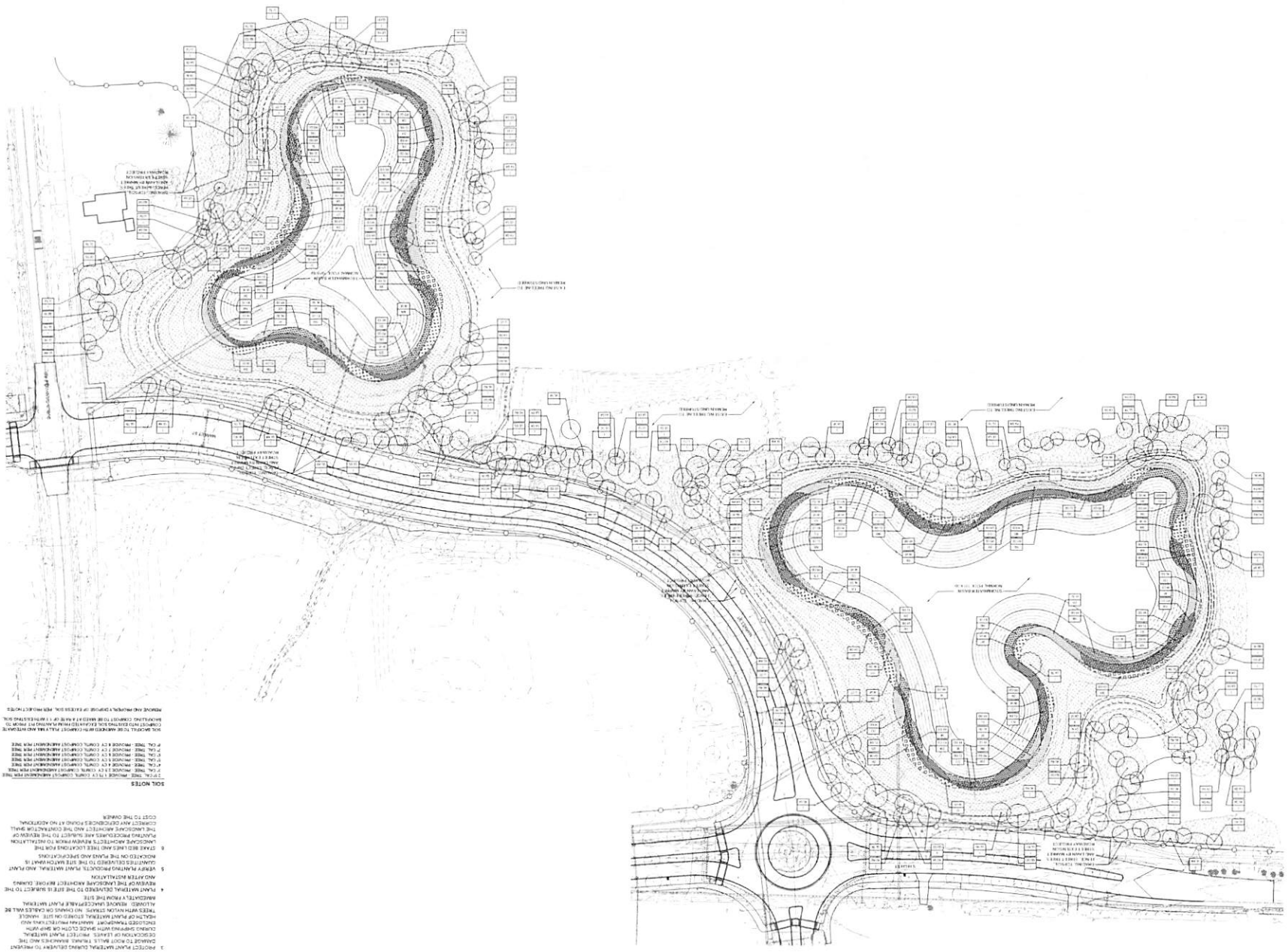


EMH/T
 CITY OF NEW ALBANY, OHIO
 BLOOD STUDIO
ROSE RUN II
 STORMWATER TRIBUTARY MAP

DATE: 05/18/2023
 SCALE: 1" = 200'
 DRAWN BY: MATSCHUHLE
 CHECKED BY: STACHSCHULTE
 PROJECT NO: 2021-0895

FIGURE: EXHIBIT C

EXHIBIT D



PLANTING NOTES

1. INCLUDE PLANT MATERIAL AS SPECIFIED ON PLANS.
2. PROVIDE 6" MIN. DRAINAGE SLOPE TO THE LANDSCAPE ARCHITECT'S CONCERNED REGION FOR PROTECTION OF EACH LANDSCAPE ARCHITECT'S PLANTING.
3. CHECK TO ASSURE THAT ALL PLANTS ARE PLANTED TO PREVENT DAMAGE TO ADJACENT STRUCTURES, UTILITIES, AND THE PROTECTION OF PLANTS.
4. PROTECT PLANT MATERIAL DURING DELIVERY TO PREVENT DAMAGE TO ADJACENT STRUCTURES, UTILITIES, AND THE PROTECTION OF PLANTS.
5. QUANTITIES OF PLANTS ARE LISTED ON THE SITE LAYOUT SHEET. QUANTITIES OF PLANTS ARE LISTED ON THE SITE LAYOUT SHEET. QUANTITIES OF PLANTS ARE LISTED ON THE SITE LAYOUT SHEET.
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10. QUANTITIES OF PLANTS ARE LISTED ON THE SITE LAYOUT SHEET. QUANTITIES OF PLANTS ARE LISTED ON THE SITE LAYOUT SHEET.

MARKET STREET

PLANTING PLAN
STORMWATER BASIN PLANTINGS



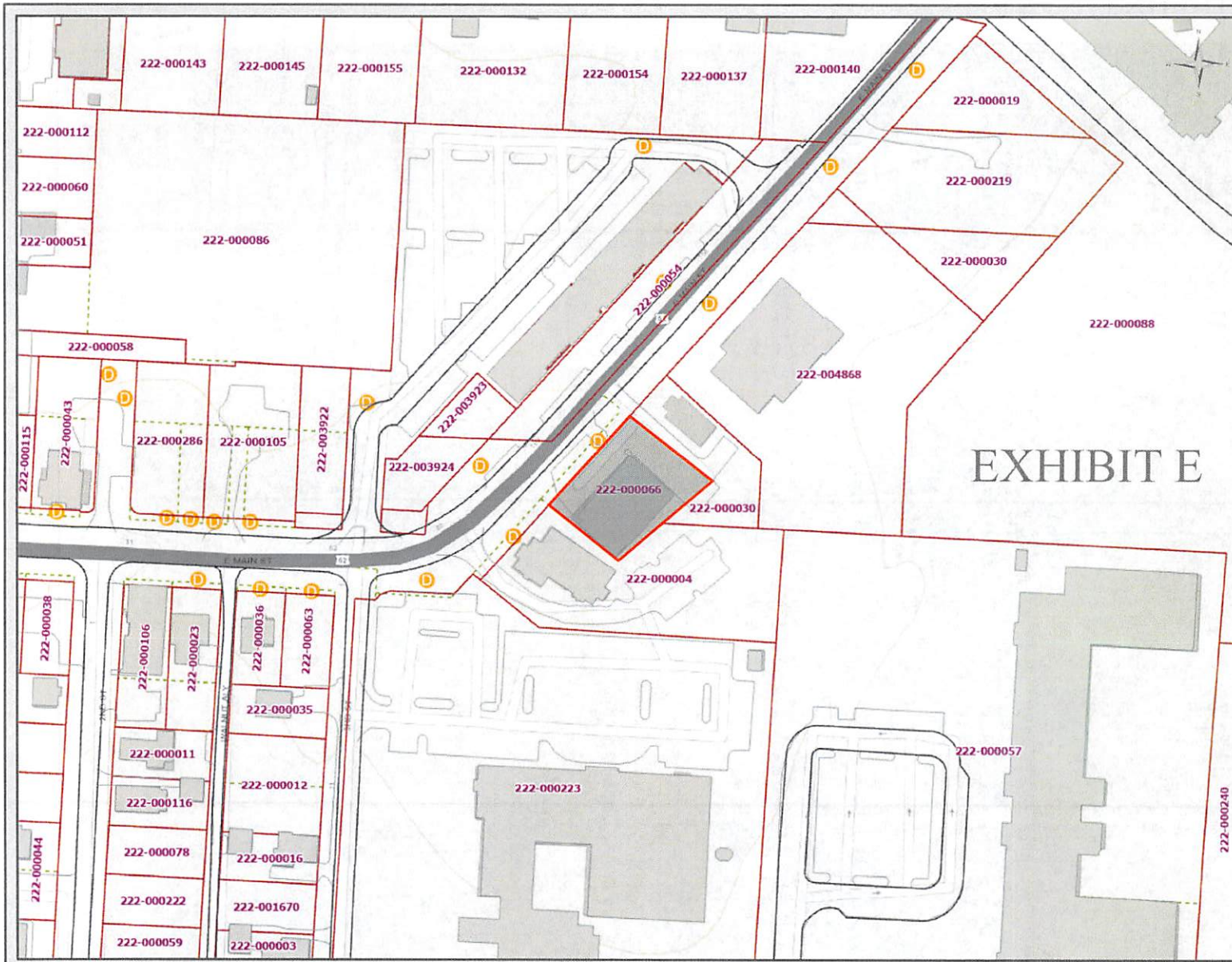
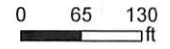


EXHIBIT E

- Planimetric Legend**
 Source: 2021 Aerial Photography
- Edge of Pavement
 - Roadway Centerlines
 - Railroad Centerlines
 - Building Footprints
 - Building Under Construction
 - ~ Creeks, Streams, Ditches
 - ~ Rivers & Ponds
- Topographic Legend**
 Source: OSIP - 2019 LIDAR Collection
- Index Contour
 - Intermediate Contour
- Appraisal Legend**
 Source: Franklin County Auditor & Engineer
- XXXX-XXXXXX Parcel IDs
 - 100 Parcel Dimensions
 - 100 Lot Numbers
 - 123 Main St Site Address
 - ▭ Parcel Boundary
 - ▭ Subdivision Boundary
 - ▭ Condominium Boundary
 - ▭ County Boundary
 - ▭ City or Village Boundary
 - ▭ Tax District Boundary
 - ▭ School District Boundary
 - ▭ Zip Code Boundary

The information on this web site is prepared from the real property inventory maintained by the Franklin County Auditor's Office. Users of this data are notified that the primary information source should be consulted for verification of the information contained on this site. The County and various assessorial legal responsibilities for the information contained on this site. Please notify the Franklin County Auditor's Real Estate Division if any discrepancies.



The data on this map was originally compiled at 1"=100' based on the Ohio State Plane South Coordinate System, North American Datum 1983 with 2' contours based on the North American Vertical Datum 1986 (when displayed).



Franklin County Auditor's Office Auditor
Michael Stinziano
 Map Produced October 30, 2023

E. P. FERRIS
ARCHITECTS
CONSULTING ENGINEERS AND ARCHITECTS
1200 MARKET STREET, SUITE 200
NEW ALBANY, OHIO 45656
TEL: (513) 251-1000
FAX: (513) 251-1001



EXHIBIT F

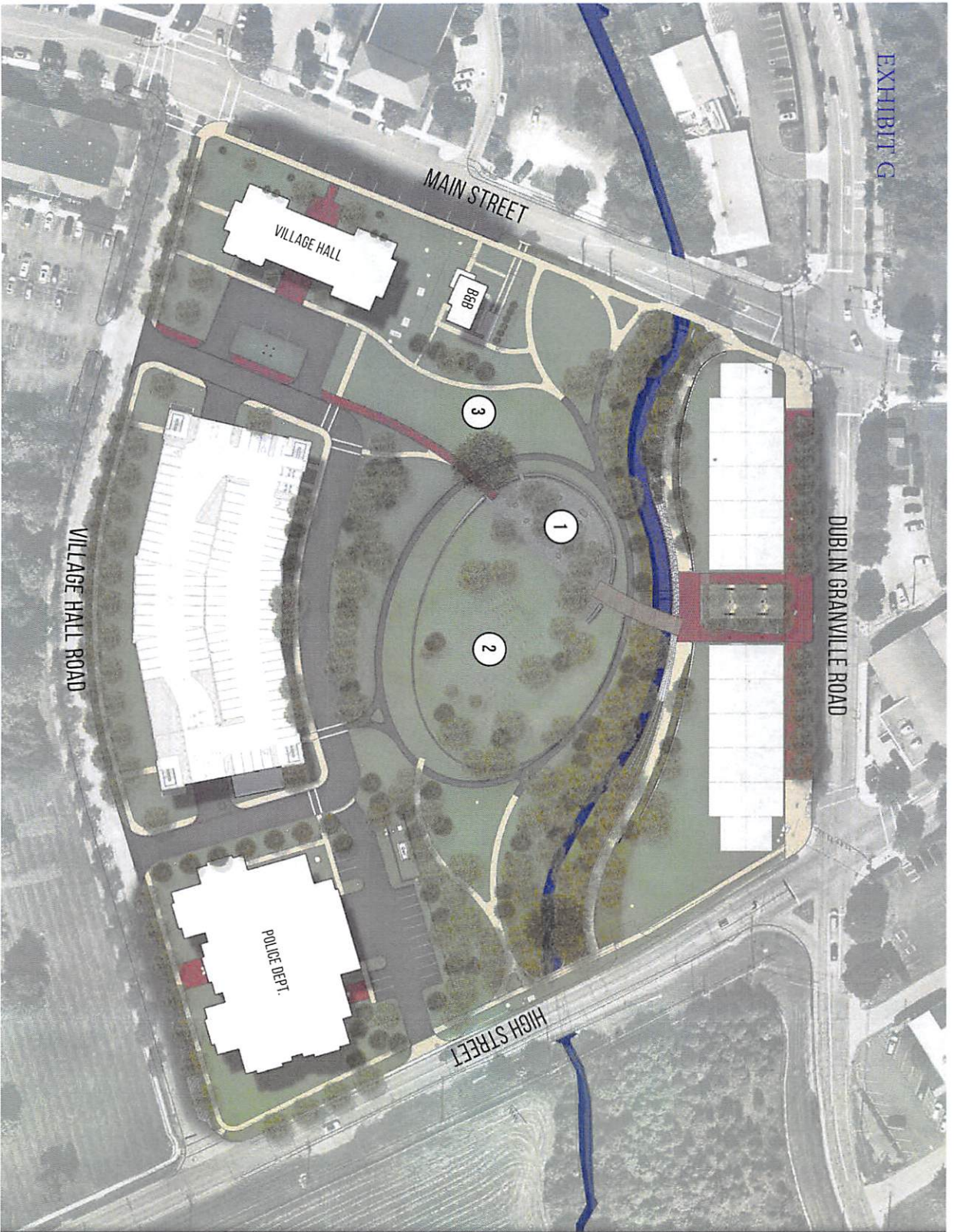
VACATED RIGHT-OF-WAY



NEW ALBANY

MARKET STREET EXTENSION CONCEPTUAL PLAN

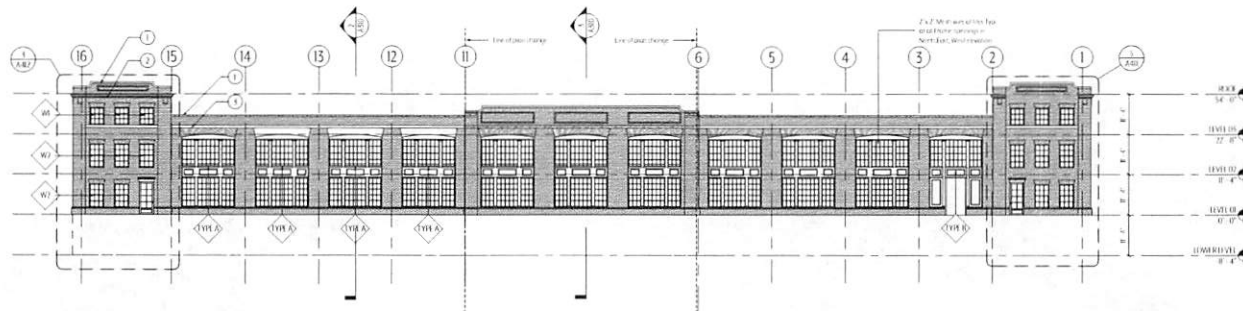
DRAWN
MGS
CHECKED
MLS



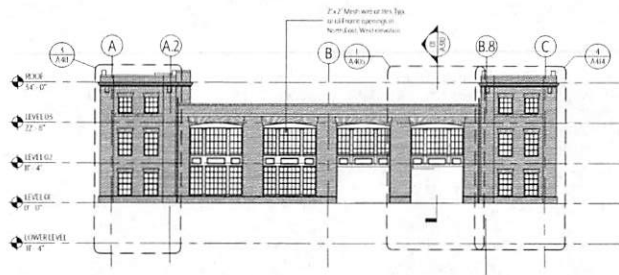
LEGEND

- 1. Veterans Park & Plaza
- 2. Founders Field
- 3. Ceremony Lawn

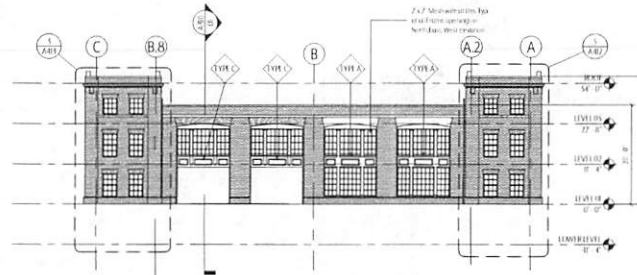
EXHIBIT H



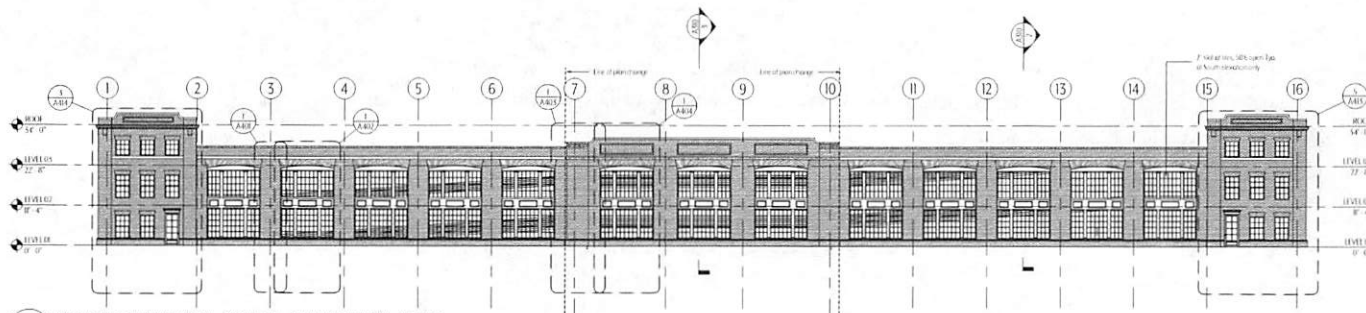
04 BUILDING ELEVATION - NORTH - ROSE RUN
SCALE: 1/8" = 1'-0"



03 BUILDING ELEVATION - WEST - MAYOR'S COURT
SCALE: 1/8" = 1'-0"



02 BUILDING ELEVATION - EAST - POLICE DEPARTMENT
SCALE: 1/8" = 1'-0"



01 BUILDING ELEVATION - SOUTH - VILLAGE HALL ROAD
SCALE: 1/8" = 1'-0"

SHEET NOTES

- 1. Call Notes in Elevation, Refer to sheet A301
- 2. GAPP Contract
- 3. Call Notes in Section, Elevation, Refer to sheet A301
- 4. GAPP Specifiers & Columns

ROSE RUN
PARKING
GARAGE

VILLAGE HALL ROAD, NEW ALBANY, OH 43054



801 North Street
Columbus, OH 43215

EMMT

Principal Engineer
2446 New Albany Road
Columbus, OH 43204

MISK

Principal Engineer
444 North Lane Alley
Columbus, OH 43215

JEZERNAC GEERS & ASSOCIATES, INC.

Principal Engineer
2446 New Albany Road
Columbus, OH 43204

PRATER ENGINEERING ASSOCIATES

Principal Engineer
3680 West 10th Street
Columbus, OH 43228

GENERAL NOTES

△	Date	Description

Seal/Signature

Project Name
ROSE RUN PARKING GARAGE

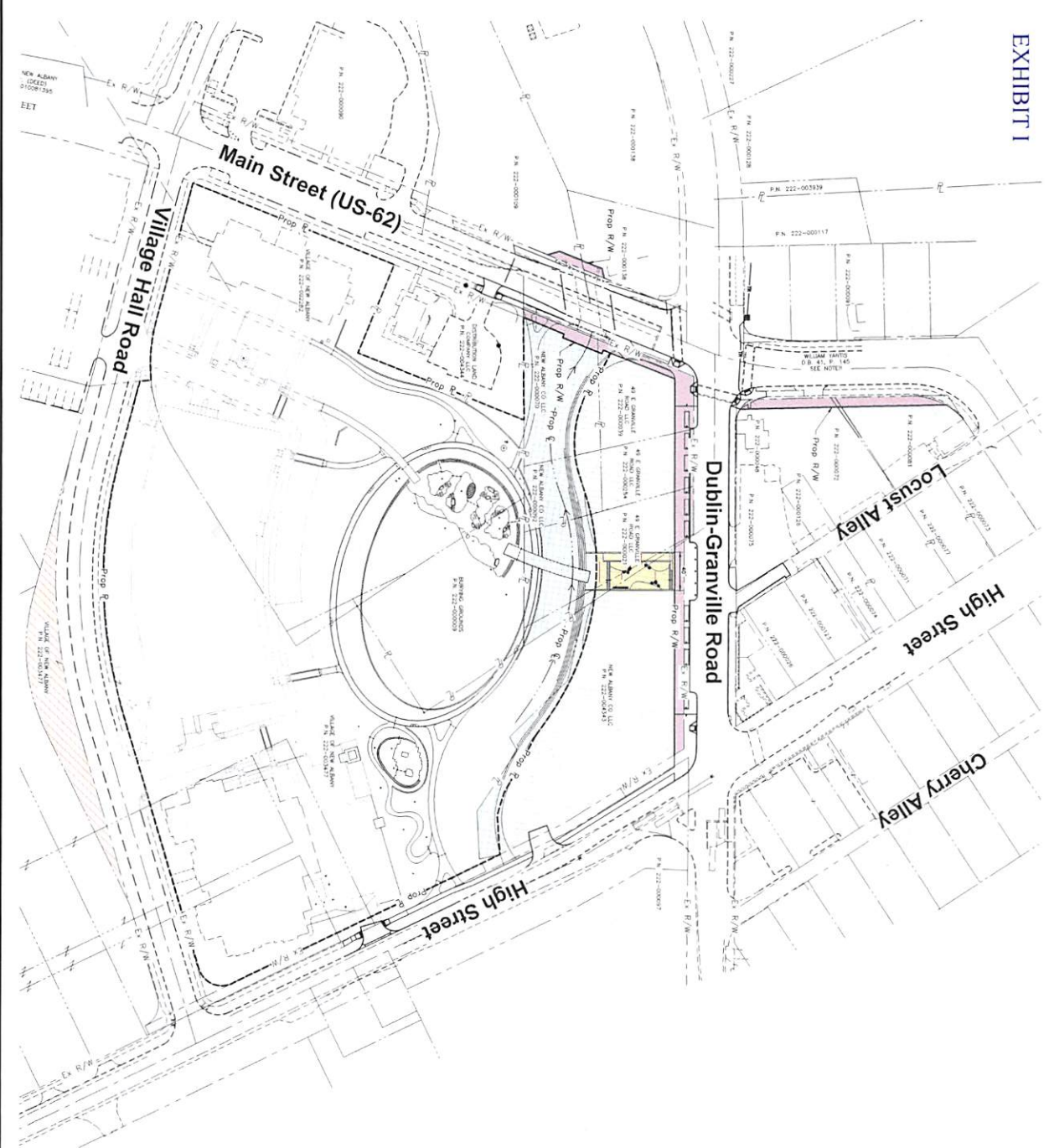
Project Number
A301

Scale
1/8" = 1'-0"

Description
EXTERIOR ELEVATIONS

A301

EXHIBIT I



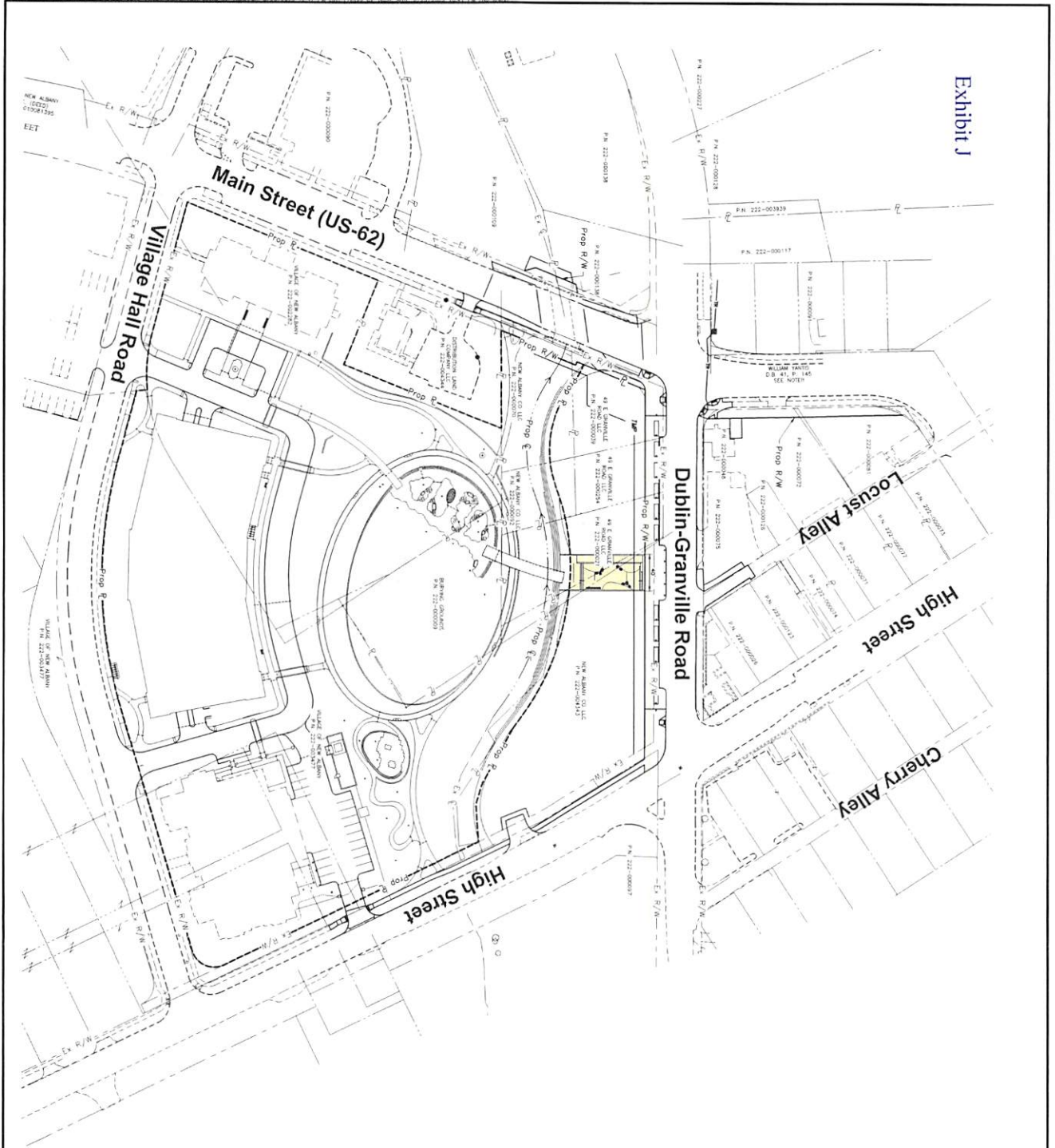
LEGEND

[Symbol]	Proposed Development
[Symbol]	Proposed 1.16 Ac. Transfer to City 10.35 Ac.
[Symbol]	Proposed 8.97 Dup 4.023 Ac.
[Symbol]	Proposed 1.01 Ac. Transfer to City 10.21 Ac.
[Symbol]	Proposed 1.01 Ac. Transfer to MCO
[Symbol]	Active Agreement
[Symbol]	Excluding Property Boundary
[Symbol]	Proposed Property Boundary
[Symbol]	Overall City Parcel



<p>EMHT ENGINEERING, MECHANICAL, ARCHITECTURE & INTERIOR DESIGN, INC. 4000 New Albany Road, Columbus, OH 43224 Phone: 614.775.4600 Fax: 614.775.3444 www.emht.com</p>	<p>CITY OF NEW ALBANY, FRANKLIN COUNTY, OHIO EXHIBIT II ROSE RUN II PROPERTY BOUNDARY REALIGNMENT</p>	<p>CITY OF NEW ALBANY</p>	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3">REVISIONS</th> </tr> <tr> <th>MARK</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	REVISIONS			MARK	DATE	DESCRIPTION									
REVISIONS																		
MARK	DATE	DESCRIPTION																
<p>DATE: August 23, 2012 SCALE: 1" = 40' SHEET: 2012-1888 TOTAL: 1/1</p>																		

Exhibit J



LEGEND

- Access Easement
- Existing Property Boundary
- Proposed Property Boundary



<p>DATE: August 13, 2013</p> <p>SCALE: 1" = 40'</p> <p>PROJECT: 2011-0008</p> <p>SHEET: 1/1</p>	<p>EMHT</p> <p>Engineering • Measurement • Planning • Surveying</p> <p>3800 New Albany Road, Columbus, OH 43260</p> <p>Phone: 614.775.0000 Fax: 614.775.0001</p> <p>www.emht.com</p>	<p>CITY OF NEW ALBANY, FRANKLIN COUNTY, OHIO</p> <p>EXHIBIT G</p> <p>ROSE RUN II</p> <p>ACCESS EASEMENT</p>	<p>CITY OF NEW ALBANY</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>MARK</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	MARK	DATE	DESCRIPTION									
MARK	DATE	DESCRIPTION													

ROSE RUN STREAM WALL

Exhibit K

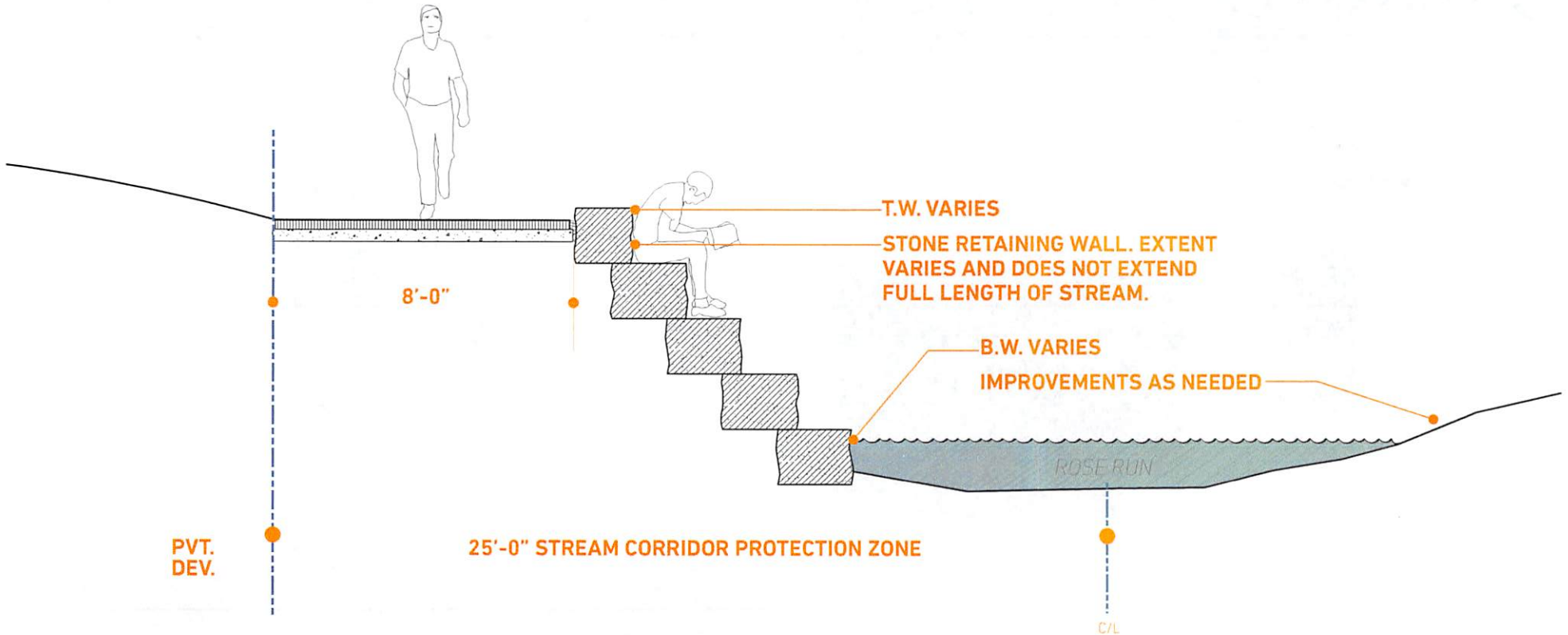


EXHIBIT L | PEDESTRIAN GATEWAY

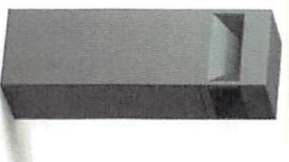
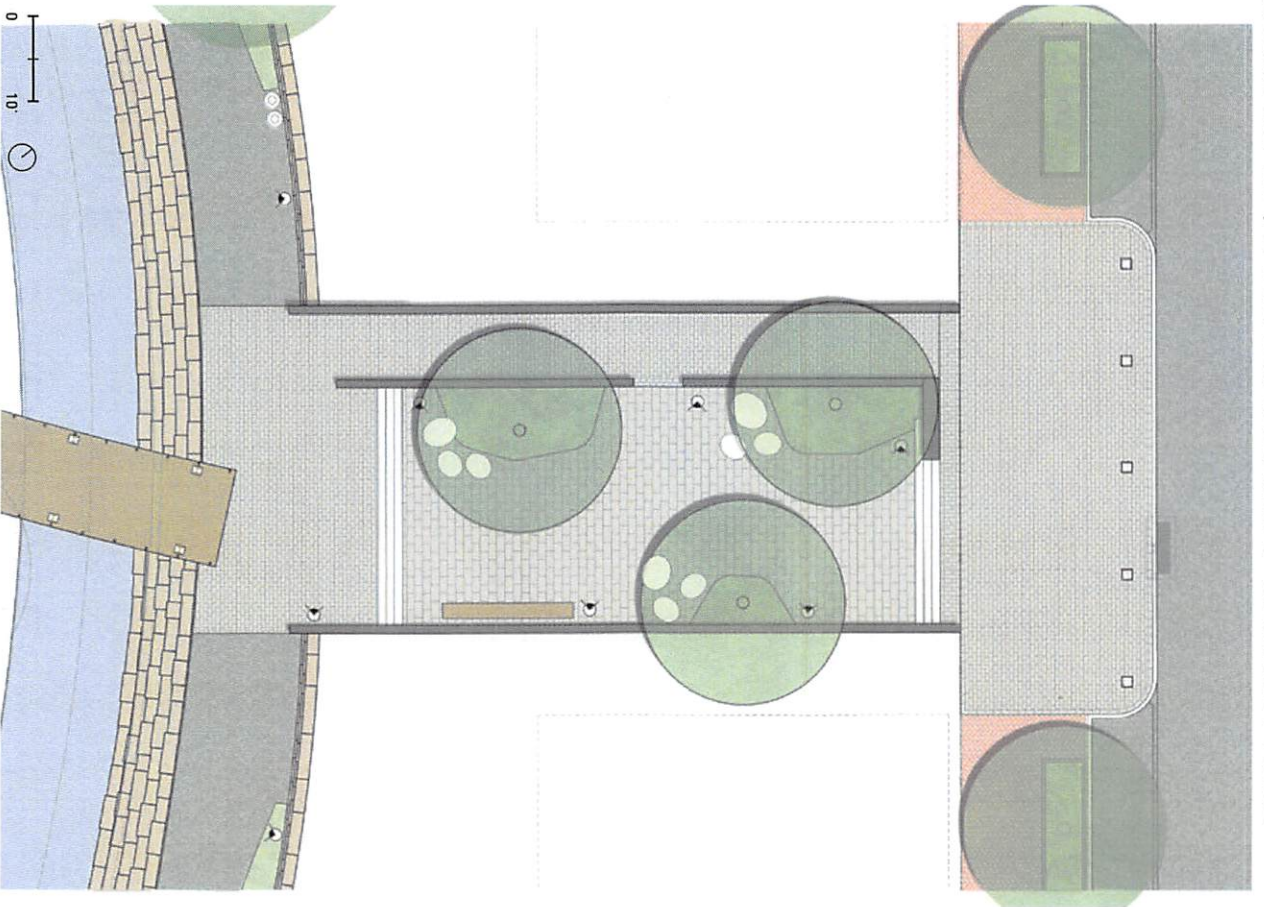




Exhibit M



Copyright Yearmap 2015

EXHIBIT N

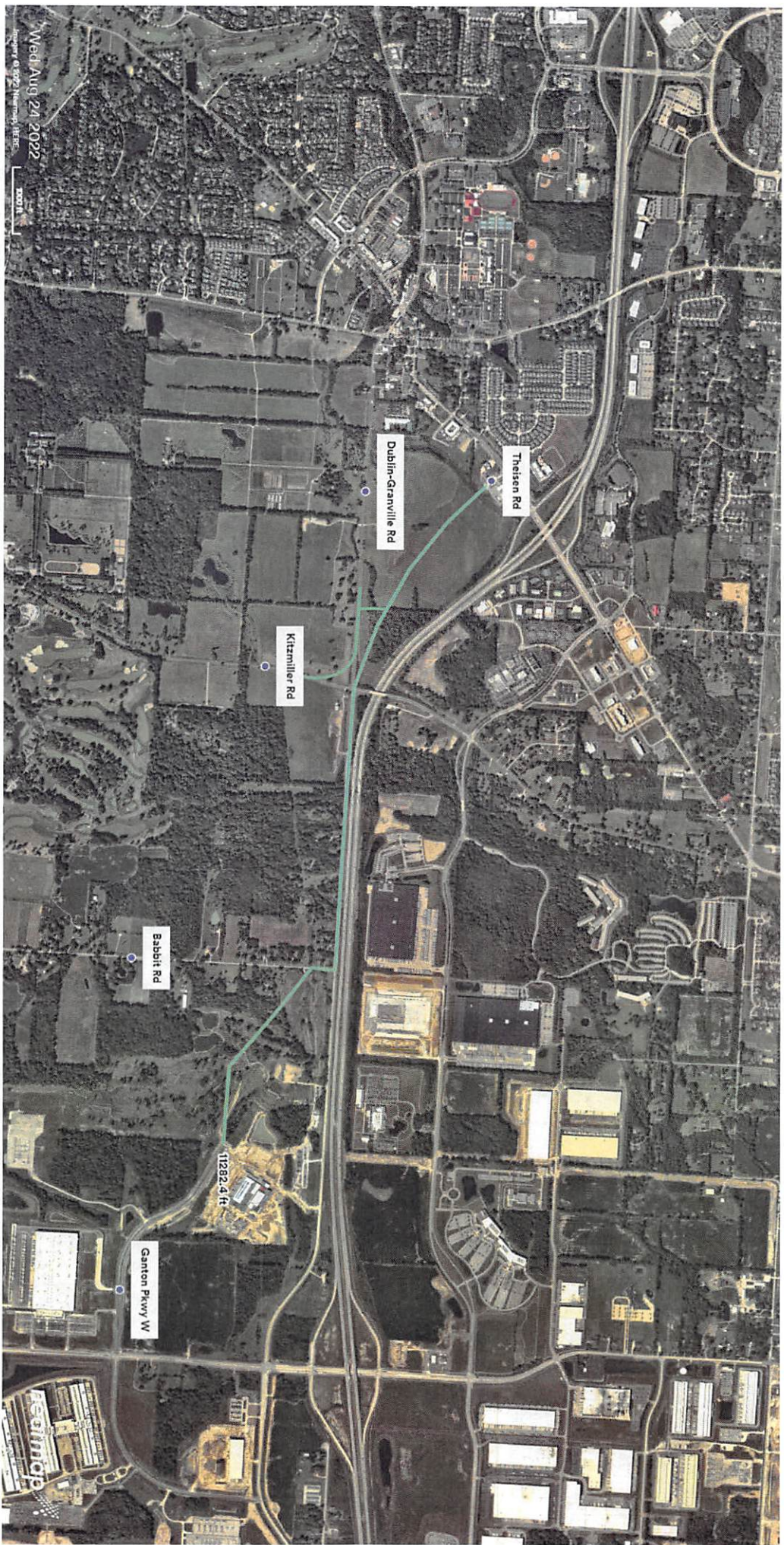


Exhibit O

0 50 100 US Feet





RESOLUTION R-48-2023

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LIMITED NOTICE TO PROCEED AGREEMENT WITH MESSER CONSTRUCTION FOR PHASE TWO OF THE ROSE RUN PARK PROJECT

WHEREAS, the continued development of the Village Center is a priority for the city of New Albany; and

WHEREAS, the second phase of the Rose Run Park project implements a vision that has been planned for years with extensive community input that will honor the community's veterans, increase amenities for residents and be a catalyst for economic development within the Village Center; and

WHEREAS, the second phase of the project includes a Veteran's Memorial, a parking garage, a bridge over Rose Run Creek, stream restoration, public walking paths, roadway improvements, and utility undergrounding; and

WHEREAS, council approved Resolution R-59-2021 that authorized a Construction Manager at Risk (CMR) contract with Messer Construction for phase 2 of the Rose Run Park project, and

WHEREAS, Resolution R-59-2021 specifies that a Guaranteed Maximum Price (GMP) will be established for Rose Run Park Phase 2 and council will be presented with additional legislation authorizing the city manager to enter into a Guaranteed Maximum Price Amendment to the contract; and

WHEREAS, the project is in the bidding process and the parties are working toward a GMP Amendment to present to council; and

WHEREAS, the project has a significant amount of work that is needed to be done to accommodate city operations before construction of the project's components can begin, the CMR would like to mobilize prior to the execution of the GMP Amendment; and

WHEREAS, this Limited Notice to Proceed (LNTP) in a not to exceed amount of \$3,024,972 will allow the CMR to proceed with a portion of the work, and

WHEREAS, this Limited Notice to Proceed (LNTP) is only intended to facilitate mobilization and the limited amount of work outlined in the document; and

WHEREAS, the CMR construction delivery method is exempt from traditional competitive bidding requirements under Section 123.32 of the New Albany Codified Ordinances.

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

Section 1. The city manager is hereby authorized to enter into a Limited Notice to Proceed Agreement not to exceed \$3,024,972 with Messer Construction for phase 2 of Rose Run Park.

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

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

CERTIFIED AS ADOPTED this _____ 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: 11/07/2023

Revised:

Adopted:

Effective: