



## ORDINANCE O-01-2023

### AN ORDINANCE TO ACCEPT THE EXPEDITED TYPE 1 ANNEXATION OF 61.26+/- ACRES FROM JERSEY TOWNSHIP, LICKING COUNTY TO THE CITY OF NEW ALBANY

**WHEREAS**, pursuant to the petition filed by Underhill & Hodge, LLC, agents for petitioner, with the Licking County Development and Planning Department, on October 6, 2022, and

**WHEREAS**, the foregoing Resolution #116-62 of the Licking County Commissioners granting the petition was delivered to the City of New Albany on October 31, 2022, and more than sixty (60) days have lapsed since the foregoing resolution and transcript was transmitted to the City of New Albany, and

**WHEREAS**, pursuant to Resolution R-01-2022 of the City of New Albany signed on January 04, 2022, the New Albany City Manager was authorized to enter into a Roadway Maintenance Agreement with the Licking County Board of Commissioners for the maintenance of sections of roadways impacted by this annexation, and

**WHEREAS**, pursuant to New Albany Codified Ordinance 1125.05, all newly annexed areas shall immediately be zoned into the Agricultural District and shall be subject to the regulations and restrictions pertaining thereto, and

**WHEREAS**, the real estate is located in Licking County and is subject to the "New Albany East Community Authority" and subject to a special property assessment in compliance therewith, and

**WHEREAS**, The New Albany City Council has determined that annexation of the real estate is in the best interests of the residents of the City of New Albany.

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

**Section 1:** The application of property owners set forth in Licking County requesting the annexation of 61.26+/- acres, which is contiguous to the City of New Albany, is hereby accepted, and the corporate boundaries of New Albany shall be extended to include the territory, more particularly described in Exhibit A, attached hereto and incorporated herein as if fully written.

**Section 2:** An accurate map of the territory attached as Exhibit B, the petition for its annexation, other related documents, and a certified transcript of the proceedings of the Licking County Board of Commissioners regarding the annexation proceedings have been on file with the

Clerk of Council of the City of New Albany for sixty (60) days prior to being presented to this Council as required by law, and are hereby accepted.

**Section 3:** Council of the City of New Albany hereby accepts the annexation of a 61.26+/-acre tract, situated in Jersey Township, Licking County, Ohio, the same being land of the owners set forth above, for annexation to the City of New Albany.

**Section 4:** The clerk is herewith directed to deliver certified copies of this ordinance and other proceedings relative to the annexation to the County Auditor, County Recorder, and the Secretary of State.

**Section 5:** It is hereby found and determined that all formal actions of council concerning and relating to the adoption of this legislation were adopted in an open meeting of council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

**Section 6:** Pursuant to Article VI, Section 6.07(B) 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: 12/15/2022  
Introduced: 01/03/2023  
Revised:  
Adopted:  
Effective:

**CERTIFICATION BY CLERK OF COUNCIL  
OF PUBLICATION OF LEGISLATION**

I certify that copies of Ordinance **O-01-2023** were posted in accordance with Article VI, Section 6.12 of the Charter of the City of New Albany, for 30 days starting on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jennifer Mason, Clerk of Council

\_\_\_\_\_  
Date

## Exhibit A - O-01-2023

### **EXHIBIT "A"** **PROPOSED ANNEXATION OF** **61.26± ACRES**

**FROM: JERSEY TOWNSHIP**

**TO: CITY OF NEW ALBANY**

Situated in the State of Ohio, County of Licking, Township of Jersey, in Lots 1, 10-12 & 15, Quarter Township 1, Township 2, Range 15, United States Military Lands, being comprised of all of the following tracts of land. That 13.912 acre tract conveyed to Robert A. Carr and Deborah B. Carr by deed of record in Instrument Number 201109230017882, that 11.865 acre tract conveyed to Louis R. Powell and Linda S. Powell, Trustees of the Powell Family Trust, by deed of record in Instrument Number 201706200012941, that 35.745 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 202207200017782, and that 0.539 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 202205100011767, (all references refer to the records of the Recorder's Office, Licking County, Ohio), and more particularly bounded and described as follows:

Beginning, for reference, at the centerline intersection of Mink Street with Jug Street Road;

Thence North 24° 19' 48" East, with the centerline of said Mink Street, a distance of 504.77 feet to the northeasterly corner of that 5.179 acre tract conveyed to Geraldine M. Campbell by deed of record in Official Record 706, Page 82, the TRUE POINT OF BEGINNING for this description;

Thence North 86° 38' 49" West, with the northerly line of said 5.179 acre tract, a distance of 1021.31 feet to a point in the easterly line of that 6.440 acre tract conveyed to Chris A. Anderson and Colleen F. Anderson by deed of record in Instrument Number 201206010012102;

Thence North 02° 53' 04" East, with the easterly line of said 6.440 acre tract, the easterly line of that 111.82 acre tract conveyed to Mary Alice Foster, Alice M. Schlaegel, Judith A. Anderson, Susan K. Bishop, Nancy M. Loshbough, Thomas M. Foster, John C. Foster, Joseph D. Foster and Emma K. Kiser by deeds of record in Deed Book 577, Page 214, Official Record 207, Page 821, Instrument Numbers 201502120002686, Instrument Number 201605130009477 and Instrument Number 202205020010802, and the existing City of New Albany corporation line, as established by Ordinance Number O-11-2022, of record in Instrument Number 202205120011951, a distance of 1920.63 feet to appoint in the southerly line of that 251.333 acre tract conveyed to MCVGCM Holdings LLC by deed of record in Instrument Number 202206210015330;

Thence South 87° 23' 13" East, with the southerly line of said 251.333 acre tract and said corporation line, a distance of 1746.36 feet to a point;

Thence North 05° 03' 09" East, with the easterly line of said 251.333 acre tract, an easterly line of that 237.574 acre tract conveyed to Intel Corporation by deed of record in Instrument Number 202207180017547, and said corporation line, a distance of 208.54 feet to a point;

Thence South 87° 59' 17" East, with a southerly line of said 237.574 acre tract and said corporation line, a distance of 168.13 feet to a point in the centerline of said Mink Street;

Thence with the centerline of said Mink Street the following courses and distances:

South 22° 34' 48" West, a distance of 366.21 feet to a point; and

South 24° 23' 13" West, a distance of 844.00 feet to the northeasterly corner of that 1.952 acre tract conveyed to Michael D. Sadilek and Christina K. Sadilek by deed of record in Instrument Number 201709150019732;

**PROPOSED ANNEXATION OF  
61.26± ACRES**

-2-

Thence North 86° 51' 47" West, with the northerly line of said 1.952 acre tract, a distance of 589.76 feet to the northwesterly corner thereof;

Thence South 04° 06' 19" West, with the westerly line of said 1.952 acre tract and the westerly line of that 1.663 acre tract conveyed to Anthony Verdone and Wendy Verdone by deed of record in Instrument Number 200503100007065, a distance of 303.59 feet to the southwesterly corner thereof;

Thence South 86° 16' 17" East, with the southerly line of said 1.663 acre tract, a distance of 453.40 feet to a point in the centerline of said Mink Street;

Thence with the centerline of said Mink Street the following courses and distances:

South 27° 47' 52" West, a distance of 513.09 feet to a point; and

South 26° 54' 15" West, a distance of 268.46 feet to the TRUE POINT OF BEGINNING, containing 61.260 acres of land, more or less.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Matthew A. Kirk*

5 OCT 22

Matthew A. Kirk

Professional Surveyor No. 7865





# EXHIBIT "B"

## ANNEXATION OF 61.26± ACRES

### TO THE CITY OF NEW ALBANY FROM THE TOWNSHIP OF JERSEY

#### LOTS 1, 10, 11, 12 & 15, QUARTER TOWNSHIP 1, TOWNSHIP 2, RANGE 15

#### UNITED STATES MILITARY LANDS

#### TOWNSHIP OF JERSEY, COUNTY OF LICKING, STATE OF OHIO

Proposed Annexation  
of 61.26 acres to the City of New Albany

The within map marked exhibit "A" and made a part of the petition of annexation filed with the Board of Commissioners of Licking County, Ohio, on \_\_\_\_\_, 20\_\_\_\_, under Chapter 709 of the Ohio Revised Code, is submitted as an accurate map of the territory in said petition described under the requirements of said Chapter 709 of the Ohio Revised Code.

Agent for Petitioners

The Board of County Commissioners of Licking County, Ohio, having received a petition bearing the signed names and addresses of the parties interested in the annexation to the City of New Albany, Ohio, of the territory shown hereon and having given due consideration to the prayer of said petition, do hereby grant the same.

Board of Licking County Commissioners

Petition Received \_\_\_\_\_, 20\_\_\_\_, Commissioner

Petition Approved \_\_\_\_\_, 20\_\_\_\_, Commissioner

Commissioner

Transferred this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon the duplicates of this office.

Containing \_\_\_\_\_ acres.

Received for Record \_\_\_\_\_, 20\_\_\_\_, at (AM-PM) and recorded \_\_\_\_\_, 20\_\_\_\_, in plat ordinance, petition, etc. in Plat Book Volume \_\_\_\_\_, Page \_\_\_\_\_.

Plat Fee \_\_\_\_\_

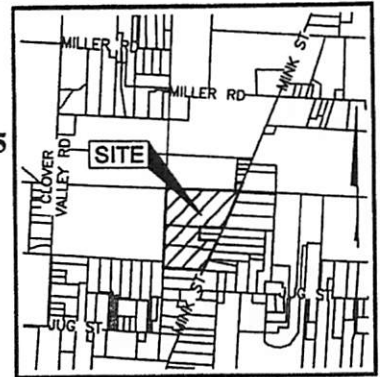
Ordinance, etc. Fee \_\_\_\_\_

Licking County Recorder

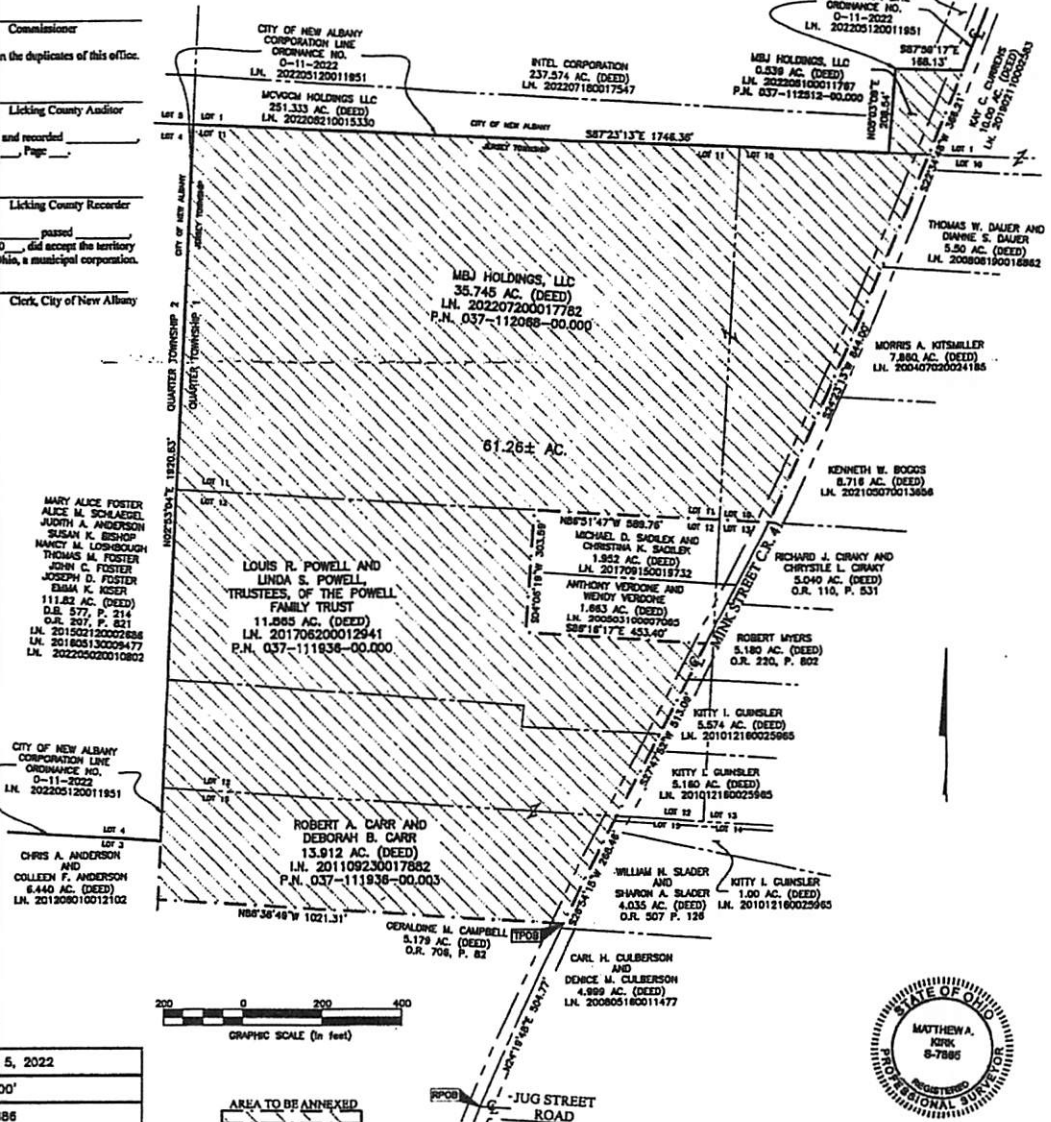
Council for the City of New Albany, Ohio, by ordinance \_\_\_\_\_ passed \_\_\_\_\_, 20\_\_\_\_, and approved by the mayor on \_\_\_\_\_, 20\_\_\_\_, did accept the territory shown hereon for annexation to the City of New Albany, Ohio, a municipal corporation.

Attest

Clerk, City of New Albany



LOCATION MAP AND BACKGROUND DRAWING  
NOT TO SCALE



By Matthew A. Kirk Date 5 Oct 22  
Matthew A. Kirk  
Professional Surveyor No. 7865  
mkirk@emht.com

<b>EMHT</b>		Date: October 5, 2022
Survey, Mapping, Hydrographic & Erosion, Inc. Engineers • Surveyors • Planners • Scientists 4050 New Albany Road, Columbus, OH 43264 Phone: 614.775.4920 Fax: 614.775.3446 emht.com		Scale: 1" = 100'
Job No: 20220886		Sheet: 1 of 1
REVISIONS		
MARK	DATE	DESCRIPTION



**ORDINANCE O-02-2023**

**AN ORDINANCE TO ACCEPT THE EXPEDITED TYPE 1  
ANNEXATION OF 6.15+/- ACRES FROM JERSEY TOWNSHIP,  
LICKING COUNTY TO THE CITY OF NEW ALBANY**

**WHEREAS**, pursuant to the petition filed by Underhill & Hodge, LLC, agents for petitioner, with the Licking County Development and Planning Department, on October 6, 2022, and

**WHEREAS**, the foregoing Resolution #116-61 of the Licking County Commissioners granting the petition was delivered to the City of New Albany on October 31, 2022, and more than sixty (60) days have lapsed since the foregoing resolution and transcript was transmitted to the City of New Albany, and

**WHEREAS**, pursuant to Resolution R-01-2022 of the City of New Albany adopted on January 4, 2022, the New Albany City Manager was authorized to enter into a Roadway Maintenance Agreement with the Licking County Board of Commissioners for the maintenance of sections of roadways impacted by this annexation, and

**WHEREAS**, pursuant to New Albany Codified Ordinance 1125.05, all newly annexed areas shall immediately be zoned into the Agricultural District and shall be subject to the regulations and restrictions pertaining thereto, and

**WHEREAS**, the real estate is located in Licking County and is subject to the "New Albany East Community Authority" and subject to a special property assessment in compliance therewith, and

**WHEREAS**, The New Albany City Council has determined that annexation of the real estate is in the best interests of the residents of the City of New Albany.

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

**Section 1:** The application of property owners set forth in Licking County requesting the annexation of 6.15+/- acres, which is contiguous to the City of New Albany, is hereby accepted, and the corporate boundaries of New Albany shall be extended to include the territory, more particularly described in Exhibit A, attached hereto and incorporated herein as if fully written.

**Section 2:** An accurate map of the territory attached as Exhibit B, the petition for its annexation, other related documents, and a certified transcript of the proceedings of the Licking County Board of Commissioners regarding the annexation proceedings have been on file with the

Clerk of Council of the City of New Albany for sixty (60) days prior to being presented to this Council as required by law, and are hereby accepted.

**Section 3:** Council of the City of New Albany hereby accepts the annexation of a 6.15+/-acre tract, situated in Jersey Township, Licking County, Ohio, the same being land of the owners set forth above, for annexation to the City of New Albany.

**Section 4:** The clerk is herewith directed to deliver certified copies of this ordinance and other proceedings relative to the annexation to the County Auditor, County Recorder, and the Secretary of State.

**Section 5:** It is hereby found and determined that all formal actions of council concerning and relating to the adoption of this legislation were adopted in an open meeting of council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

**Section 6:** Pursuant to Article VI, Section 6.07(B) 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: 12/15/2022  
Introduced: 01/03/2023  
Revised:  
Adopted:  
Effective:

**CERTIFICATION BY CLERK OF COUNCIL  
OF PUBLICATION OF LEGISLATION**

I certify that copies of Ordinance **O-02-2023** were posted in accordance with Article VI, Section 6.12 of the Charter of the City of New Albany, for 30 days starting on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jennifer Mason, Clerk of Council

\_\_\_\_\_  
Date

**EXHIBIT "A"**  
**PROPOSED ANNEXATION OF**  
**6.15± ACRES**

**FROM: JERSEY TOWNSHIP**

**TO: CITY OF NEW ALBANY**

Situated in the State of Ohio, County of Licking, Township of Jersey, in Lot 1, Quarter Township 2, and Section 13, Quarter Township 3, Township 2, Range 15, United States Military Lands, being comprised of all of that 1.944 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 202208010018731, all of that 1.973 acre tract conveyed to Pamela S. Howell by deed of record in Instrument Number 200906180013304, and all of that 2.231 acre tract conveyed to Ronald Lee Howell and Pamela Sue Howell by deed of record in Official Record 532, Page 258, (all references refer to the records of the Recorder's Office, Licking County, Ohio), and more particularly bounded and described as follows:

BEGINNING at the centerline intersection of Mink Street (County Road 41) with Beaver Road;

Thence South 29° 32' 02" West, with the centerline of said Mink Street, a distance of 200.50 feet to the northeasterly corner of that 11.620 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201603300006016, in the existing City of New Albany corporation line, as established by Ordinance Number O-13-2016, of record in Instrument Number 201608100016925;

Thence North 86° 19' 43" West, with the northerly line of said 11.620 acre tract and said corporation line, a distance of 651.97 feet to a point in the easterly line of that 42.286 acre tract conveyed to COI New Albany 525, LLC by deed of record in Instrument Number 202112290039574;

Thence North 32° 40' 17" East, with said easterly line and said corporation line, a distance of 480.47 feet to the southwesterly corner of that 31.726 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 202105060013587, in the existing City of New Albany corporation line, as established by Ordinance Number O-33-2021, of record in Instrument Number 202110260032776;

Thence South 86° 19' 43" East, with the southerly line of said 31.726 acre tract and said corporation line, a distance of 622.75 feet to a point in the centerline of said Mink Street;

Thence South 29° 32' 02" West, with said centerline, a distance of 266.50 feet to the POINT OF BEGINNING, containing 6.15 acres of land, more or less.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Matthew A. Kirk*

14 SEP 22

Matthew A. Kirk  
Professional Surveyor No. 7865



**EXHIBIT "A"**  
**PROPOSED ANNEXATION OF**  
**6.15± ACRES**

**FROM: JERSEY TOWNSHIP**

**TO: CITY OF NEW ALBANY**

Situated in the State of Ohio, County of Licking, Township of Jersey, in Lot 1, Quarter Township 2, and Section 13, Quarter Township 3, Township 2, Range 15, United States Military Lands, being comprised of all of that 1.944 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 202208010018731, all of that 1.973 acre tract conveyed to Pamela S. Howell by deed of record in Instrument Number 200906180013304, and all of that 2.231 acre tract conveyed to Ronald Lee Howell and Pamela Sue Howell by deed of record in Official Record 532, Page 258, (all references refer to the records of the Recorder's Office, Licking County, Ohio), and more particularly bounded and described as follows:

**BEGINNING** at the centerline intersection of Mink Street (County Road 41) with Beaver Road;

Thence South 29° 32' 02" West, with the centerline of said Mink Street, a distance of 200.50 feet to the northeasterly corner of that 11.620 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201603300006016, in the existing City of New Albany corporation line, as established by Ordinance Number O-13-2016, of record in Instrument Number 201608100016925;

Thence North 86° 19' 43" West, with the northerly line of said 11.620 acre tract and said corporation line, a distance of 651.97 feet to a point in the easterly line of that 42.286 acre tract conveyed to COI New Albany 525, LLC by deed of record in Instrument Number 202112290039574;

Thence North 32° 40' 17" East, with said easterly line and said corporation line, a distance of 480.47 feet to the southwesterly corner of that 31.726 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 202105060013587, in the existing City of New Albany corporation line, as established by Ordinance Number O-33-2021, of record in Instrument Number 202110260032776;

Thence South 86° 19' 43" East, with the southerly line of said 31.726 acre tract and said corporation line, a distance of 622.75 feet to a point in the centerline of said Mink Street;

Thence South 29° 32' 02" West, with said centerline, a distance of 266.50 feet to the **POINT OF BEGINNING**, containing 6.15 acres of land, more or less.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

Matthew A. Kirk  
Professional Surveyor No. 7865

<b>PRE-APPROVAL</b>	
LICKING COUNTY ENGINEER	
APPROVED	CONDITIONAL
<input checked="checked" type="checkbox"/>	<input type="checkbox"/>
APPROVED BY:	<i>MAK</i>
DATE:	9/7/22

Union County Assessor's Office / 20220000-10-000-0000-00



**ORDINANCE O-03-2023**

**AN ORDINANCE TO ACCEPT THE EXPEDITED TYPE 1  
ANNEXATION OF 13.874+/- ACRES FROM JERSEY TOWNSHIP,  
LICKING COUNTY TO THE CITY OF NEW ALBANY**

**WHEREAS**, pursuant to the petition filed by Underhill & Hodge, LLC, agents for petitioner, with the Licking County Development and Planning Department, on October 6, 2022, and

**WHEREAS**, the foregoing Resolution #116-60 of the Licking County Commissioners granting the petition was delivered to the City of New Albany on October 31, 2022, and more than sixty (60) days have lapsed since the foregoing resolution and transcript was transmitted to the City of New Albany, and

**WHEREAS**, pursuant to Resolution R-03-2022 of the City of New Albany adopted January 4, 2022, the New Albany City Manager was authorized to enter into any necessary Roadway Maintenance Agreements with the Licking County Board of Commissioners and/or Jersey Township Trustees for the maintenance of sections of roadways impacted by this annexation, and

**WHEREAS**, pursuant to New Albany Codified Ordinance 1125.05, all newly annexed areas shall immediately be zoned into the Agricultural District and shall be subject to the regulations and restrictions pertaining thereto, and

**WHEREAS**, the real estate is located in Licking County and is subject to the "New Albany East Community Authority" and subject to a special property assessment in compliance therewith, and

**WHEREAS**, The New Albany City Council has determined that annexation of the real estate is in the best interests of the residents of the City of New Albany.

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

**Section 1:** The application of property owners set forth in Licking County requesting the annexation of 13.874+/- acres, which is contiguous to the City of New Albany, is hereby accepted, and the corporate boundaries of New Albany shall be extended to include the territory, more particularly described in Exhibit A, attached hereto and incorporated herein as if fully written.

**Section 2:** An accurate map of the territory attached as Exhibit B, the petition for its annexation, other related documents, and a certified transcript of the proceedings of the Licking County Board of Commissioners regarding the annexation proceedings have been on file with the

Clerk of Council of the City of New Albany for sixty (60) days prior to being presented to this Council as required by law, and are hereby accepted.

**Section 3:** Council of the City of New Albany hereby accepts the annexation of a 13.874+/- acre tract, situated in Jersey Township, Licking County, Ohio, the same being land of the owners set forth above, for annexation to the City of New Albany.

**Section 4:** The clerk is herewith directed to deliver certified copies of this ordinance and other proceedings relative to the annexation to the County Auditor, County Recorder, and the Secretary of State.

**Section 5:** It is hereby found and determined that all formal actions of council concerning and relating to the adoption of this legislation were adopted in an open meeting of council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

**Section 6:** Pursuant to Article VI, Section 6.07(B) 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: 12/15/2022  
Introduced: 01/03/2023  
Revised:  
Adopted:  
Effective:

**CERTIFICATION BY CLERK OF COUNCIL  
OF PUBLICATION OF LEGISLATION**

I certify that copies of Ordinance **O-03-2023** were posted in accordance with Article VI, Section 6.12 of the Charter of the City of New Albany, for 30 days starting on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jennifer Mason, Clerk of Council

\_\_\_\_\_  
Date



**EXHIBIT "A"**  
**PROPOSED ANNEXATION OF**  
**13.87± ACRES**

**FROM: JERSEY TOWNSHIP**

**TO: CITY OF NEW ALBANY**

Situated in the State of Ohio, County of Licking, Township of Jersey, in Lot 11, Quarter Township 2, Township 2, Range 15, United States Military Lands, being comprised of all of that 4.846 acre tract conveyed to Michael F. Reilly and Erin M. Reilly by deed of record in Instrument Number 202007280018692, all of that 4.794 acre tract conveyed to Helen L. Campbell, Trustee of the Helen L. Campbell Trust by deed of record in Instrument Number 201507080013979, and all of that 4.309 acre tract conveyed to MJB Holdings, LLC by deed of record in Instrument Number 202209190022766, (all references refer to the records of the Recorder's Office, Licking County, Ohio), and more particularly bounded and described as follows:

Beginning, for reference, at the centerline intersection of Miller Road with Clover Valley Road;

Thence North 86° 29' 18" West, with the centerline of said Miller Road, a distance of 1449.96 feet to a northwesterly corner of that 116.861 acre tract conveyed to MJB Holdings, LLC by deed of record in Instrument Number 202206130014670, the existing City of New Albany corporation line, as established by Ordinance Number O-11-2022, of record in Instrument Number 202205120011951, the TRUE POINT OF BEGINNING for this description;

Thence with the boundary of said 116.861 acre tract and said corporation line, the following courses and distances:

South 01° 01' 05" West, a distance of 688.52 feet to a point;

North 87° 29' 49" West, a distance of 882.12 feet to a point; and

North 03° 38' 13" East, a distance of 706.71 feet to a point in the centerline of said Miller Road;

Thence South 86° 15' 55" East, with said centerline and said existing City of New Albany corporation line, a distance of 850.49 feet to the TRUE POINT OF BEGINNING, containing 13.87 acres of land, more or less.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Matthew A. Kirk*

22 SEP 22

Matthew A. Kirk  
Professional Surveyor No. 7865



# EXHIBIT "B"

## ANNEXATION OF 13.87± ACRES

### TO THE CITY OF NEW ALBANY FROM THE TOWNSHIP OF JERSEY

#### LOT 11, QUARTER TOWNSHIP 2, TOWNSHIP 2, RANGE 15

#### UNITED STATES MILITARY LANDS

#### TOWNSHIP OF JERSEY, COUNTY OF LICKING, STATE OF OHIO

Proposed Annexation  
of 13.87 acres to the City of New Albany

The within map marked exhibit "A" and made a part of the petition of annexation filed with the Board of Commissioners of Licking County, Ohio, on 20, under Chapter 709 of the Ohio Revised Code, is submitted as an accurate map of the territory in said petition described under the requirements of said Chapter 709 of the Ohio Revised Code.

*[Signature]*  
Agent for Petitioners

The Board of County Commissioners of Licking County, Ohio, having received a petition bearing the signed names and addresses of the parties interested in the annexation to the City of New Albany, Ohio, of the territory shown hereon and having given due consideration to the prayer of said petition, do hereby grant the same.

Board of Licking County Commissioners

Petition Received \_\_\_\_\_, 20\_\_\_\_  
Commissioner

Petition Approved \_\_\_\_\_, 20\_\_\_\_  
Commissioner

Commissioner

Transferred this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon the duplicates of this office.

Containing \_\_\_\_\_ acres.  
Transfer Fee \_\_\_\_\_  
Licking County Auditor

Received for Record \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ (AM-PM) and recorded  
20\_\_\_\_, in plat ordinance, petition, etc. in Plat Book Volume \_\_\_\_\_, Page \_\_\_\_\_.

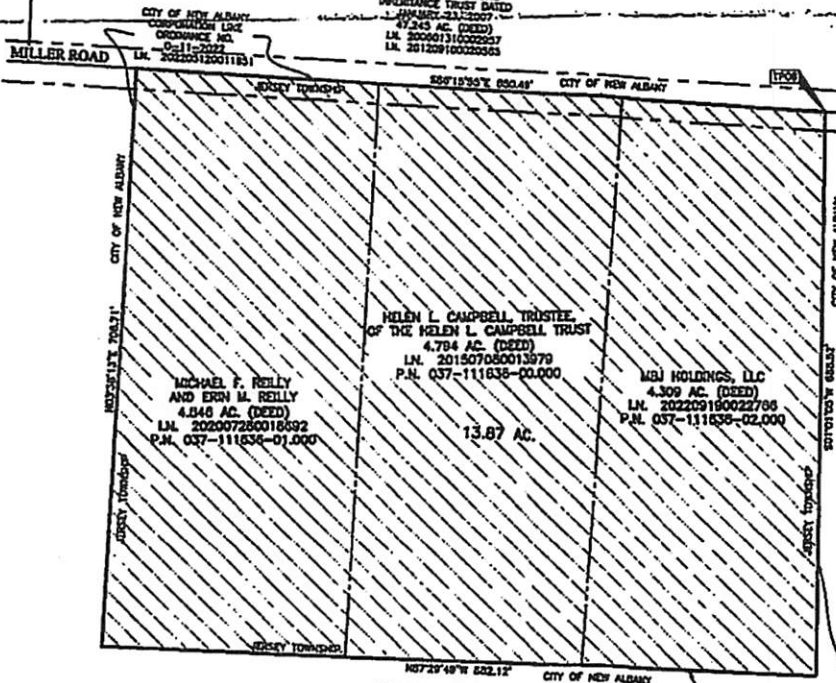
Plat Fee \_\_\_\_\_  
Ordinance, etc. Fee \_\_\_\_\_  
Licking County Recorder

Council for the City of New Albany, Ohio, by ordinance \_\_\_\_\_ passed  
20\_\_\_\_, and approved by the mayor on \_\_\_\_\_, 20\_\_\_\_, did accept the territory  
shown hereon for annexation to the City of New Albany, Ohio, a municipal corporation.

Attest  
City of New Albany

DEVILY JEAN BUSH  
CHERYL ANN BUSH  
SHARON LYNN BUSH  
LORI ELLEN BUSH  
CHERYL A. BUSH, TRUSTEE OF  
THE BUSH KEYSTONE  
DEPENDANCE TRUST DATED  
JANUARY 23, 2007  
47,243 AC. (DEED)  
L.N. 200601310002207  
L.N. 201228180000005

MSJ HOLDINGS, LLC  
25.484 AC. (DEED)  
L.N. 202207100017548



**EMHIT**

Date: September 22, 2022  
Scale: 1" = 100'  
Job No: 20220885  
Sheet: 1 of 1

DATE	DESCRIPTION

MSJ HOLDINGS, LLC  
PARCEL B  
116,521 AC. (DEED)  
L.N. 202208130014670

CITY OF NEW ALBANY  
CORPORATION LDC  
ORDINANCE NO.  
O-11-2022  
L.N. 202205120011951

AREA TO BE ANNEXED

PROPOSED CITY OF NEW ALBANY CORPORATION LINE  
EXISTING CITY OF NEW ALBANY CORPORATION LINE

Contiguity Note:  
Total perimeter of annexation area is 2127.84 feet, all of which is contiguous with the City of New Albany, giving 100% perimeter contiguity.



By *[Signature]* 22 SEP 22  
Matthew A. Kirk  
Professional Surveyor No. 7865  
mkirk@emhit.com



## **ORDINANCE O-04-2023**

### **AN ORDINANCE TO ACCEPT THE EXPEDITED TYPE 1 ANNEXATION OF 312.86+/- ACRES FROM JERSEY TOWNSHIP, LICKING COUNTY TO THE CITY OF NEW ALBANY**

**WHEREAS**, pursuant to the petition filed by Underhill & Hodge, LLC, agents for petitioner, with the Licking County Development and Planning Department, on October 6, 2022, and

**WHEREAS**, the foregoing Resolution #116-59 of the Licking County Commissioners granting the petition was delivered to the City of New Albany on October 31, 2022, and more than sixty (60) days have lapsed since the foregoing resolution and transcript was transmitted to the City of New Albany, and

**WHEREAS**, pursuant to Resolution R-03-2022 of the City of New Albany adopted January 4, 2022, the New Albany City Manager was authorized to enter into any necessary Roadway Maintenance Agreements with the Licking County Board of Commissioners and/or Jersey Township Trustees for the maintenance of sections of roadways impacted by this annexation, and

**WHEREAS**, pursuant to New Albany Codified Ordinance 1125.05, all newly annexed areas shall immediately be zoned into the Agricultural District and shall be subject to the regulations and restrictions pertaining thereto, and

**WHEREAS**, the real estate is located in Licking County and is subject to the "New Albany East Community Authority" and subject to a special property assessment in compliance therewith, and

**WHEREAS**, The New Albany City Council has determined that annexation of the real estate is in the best interests of the residents of the City of New Albany.

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

**Section 1:** The application of property owners set forth in Licking County requesting the annexation of 312.86+/- acres, which is contiguous to the City of New Albany, is hereby accepted, and the corporate boundaries of New Albany shall be extended to include the territory, more particularly described in Exhibit A, attached hereto and incorporated herein as if fully written.

**Section 2:** An accurate map of the territory attached as Exhibit B, the petition for its annexation, other related documents, and a certified transcript of the proceedings of the Licking County Board of Commissioners regarding the annexation proceedings have been on file with the

Clerk of Council of the City of New Albany for sixty (60) days prior to being presented to this Council as required by law, and are hereby accepted.

**Section 3:** Council of the City of New Albany hereby accepts the annexation of a 312.86+/- acre tract, situated in Jersey Township, Licking County, Ohio, the same being land of the owners set forth above, for annexation to the City of New Albany.

**Section 4:** The clerk is herewith directed to deliver certified copies of this ordinance and other proceedings relative to the annexation to the County Auditor, County Recorder, and the Secretary of State.

**Section 5:** It is hereby found and determined that all formal actions of council concerning and relating to the adoption of this legislation were adopted in an open meeting of council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

**Section 6:** Pursuant to Article VI, Section 6.07(B) 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: 12/15/2022  
Introduced: 01/03/2023  
Revised:  
Adopted:  
Effective:

**CERTIFICATION BY CLERK OF COUNCIL  
OF PUBLICATION OF LEGISLATION**

I certify that copies of Ordinance **O-04-2023** were posted in accordance with Article VI, Section 6.12 of the Charter of the City of New Albany, for 30 days starting on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jennifer Mason, Clerk of Council

\_\_\_\_\_  
Date

**EXHIBIT "A"**  
**PROPOSED ANNEXATION OF**  
**312.86± ACRES**

**FROM: JERSEY TOWNSHIP**

**TO: CITY OF NEW ALBANY**

Situated in the State of Ohio, County of Licking, Township of Jersey, in Lots 21 - 24, Quarter Township 2, Township 2, Range 15, United States Military Lands, being comprised of all of the following tracts of land. That 53.97 acre tract conveyed to Miller Road Homestead, LLC by deed of record in Instrument Number 201906130011623, that 46.80 acre tract conveyed to HS & JA, LLC by deed of record in Instrument Number 201906130011619, that 5.07 acre tract conveyed to MJB Holdings, LLC by deed of record in Instrument Number 202204210009982, that 2.001 acre tract conveyed to MJB Holdings, LLC by deed of record in Instrument Number 202205180012411, that 5.010 acre tract conveyed to MJB Holdings, LLC by deed of record in Instrument Number 202207070016647, that 5.01 acre tract conveyed to MJB Holdings, LLC by deed of record in Instrument Number 202207070016648, that 5.01 acre tract conveyed to Arthur J. Bull and Amy Louise Bull by deed of record in Instrument Number 201806290013268, that 2.75 acre tract conveyed to Kevin M. Crawford and Shannon H. Crawford by deed of record in Instrument Number 201209280022440, that 30.05 acre tract conveyed to Robert E. Haycock by deed of record in Official Record 429, Page 382, that 5.01 acre tract conveyed to Sherri L. Mullins, Trustee of the Sherri L. Mullins Trust by deed of record in Instrument Number 200902200003325, that 11.000 acre tract conveyed to Matthew W. Gibson, Trustee of the Schoeff Legacy Trust by deed of record in Instrument Number 202209150022489, that 41.666 acre tract conveyed to Hendren Farms Partnership by deed of record in Instrument Number 201105100008721, that 24.4384 acre tract conveyed to Keith G. Mainzer and Stacia G. Mainzer by deed of record in Official Record 768, Page 536, that 44.4384 acre tract conveyed to Dennis Dotson and Jackie Dotson by deed of record in Official Record 683, Page 921, and that 50.0 acre tract conveyed to Daniel D. Potter, Trustee of the Daniel D. Potter Trust by deed of record in Instrument Number 202203160006679, (all references refer to the records of the Recorder's Office, Licking County, Ohio), and more particularly bounded and described as follows:

BEGINNING, at the southwesterly corner of the subdivision entitled "Wagoner Farms Section 2", of record in Plat Book 16, Page 146, in the northerly line of that 476.757 acre tract conveyed to MJB Holdings, LLC by deed of record in Instrument Number 201912030026846, in the existing City of New Albany corporation line, as established by Ordinance Number O-12-2019, of record in Instrument Number 201906210012317,

Thence North 86° 32' 09" West, with said northerly line, said corporation line, and the northerly line of that 61.832 acre tract conveyed to New Albany Data Center SPE, LLC by deed of record in Instrument Number 202207200017785, a distance of 1357.18 feet to a northeasterly corner of said 61.832 acre tract;

Thence North 03° 26' 29" East, with the easterly line of said 61.832 acre tract, said corporation line, the easterly line of that 50 acre tract conveyed as Tract Three, First Parcel to Hendren One LLC by deed of record in Instrument Number 201304180009917, the easterly line of that 47.365 acre tract conveyed as Tract Three, Second Parcel to Hendren One LLC by deed of record in Instrument Number 201304180009917, and the easterly line of that 50 acre tract conveyed to Charles A. Wilson and Daniel E. Wilson, Co-Trustees by deed of record in Instrument Number 201105190009421, a distance of 3483.17 feet to a point in the centerline of Miller Road;

Thence North 03° 26' 40" East, with the easterly line of that 100 acre tract conveyed as Tract One to Hendren One LLC by deed of record in Instrument Number 201304180009917, a distance of 1674.62 feet to the southeasterly corner of that 91.173 acre tract conveyed to Deborah Tripp and Sharon Smart, Co-Trustees by deed of record in Instrument Number 201104140007147;

**PROPOSED ANNEXATION OF  
312.86± ACRES**

-2-

Thence North 03° 35' 59" East, with the easterly line of said 91.173 acre tract, a distance of 886.70 feet to the southwesterly corner of that 10.003 acre tract conveyed to Robert A. Parsons and Beth A. Parsons, Trustees of the Parsons Trust by deed of record in Instrument Number 201703210005737;

Thence South 86° 54' 22" East, with the southerly line of said 10.003 acre tract, a distance of 526.18 feet to the southeasterly corner of said 10.003 acre tract;

Thence North 03° 02' 45" East, with the easterly line of said 10.003 acre tract, a distance of 833.79 feet to a point in the centerline of Green Chapel Road;

Thence South 86° 54' 44" East, with said centerline, a distance of 2228.03 feet to the northwesterly corner of that 47.874 acre tract conveyed to Cheryl A. Bush, Trustee of the Bush Keystone Inheritance Trust by deed of record in Instrument Number 201209100020565, and to Beverly Jean Bush, Cheryl Ann Bush, Sharon Lynn Bush, and Lori Ellen Bush by deed of record in Instrument Number 200601310002957, in the existing City of New Albany corporation line, as established by Ordinance Number O-11-2022, of record in Instrument Number 202205120011951;

Thence South 03° 47' 39" West, with the westerly line of said 47.874 acre tract, said corporation line, and the westerly line of that 47.245 acre tract conveyed to Cheryl A. Bush, Trustee of the Bush Keystone Inheritance Trust by deed of record in Instrument Number 201209100020565, and to Beverly Jean Bush, Cheryl Ann Bush, Sharon Lynn Bush, and Lori Ellen Bush by deed of record in Instrument Number 200601310002957, a distance of 3413.94 feet to a point in the centerline of said Miller Road;

Thence North 86° 27' 47" West, with said centerline, a distance of 1365.69 feet to the northwesterly corner of that 4.591 acre tract conveyed as Parcel Two to Henry J. Cook and Steven P. Ripple by deed of record in Instrument Number 200112140045310;

Thence South 03° 33' 26" West, with the westerly line of said 4.591 acre tract, the westerly line of the subdivision entitled "Wagoner Farms Section 4 Phase 3", of record in Plat Book 17, Page 219, the westerly line of the subdivision entitled "Wagoner Farms Section 4 Phase 1", of record in Plat Book 16, Page 298, the westerly line of the subdivision entitled "Wagoner Farms Section 3", of record in Plat Book 16, Page 178, the westerly line of said "Wagoner Farms Section 2", a distance of 3484.15 feet to the POINT OF BEGINNING, containing 312.86 acres of land, more or less.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Matthew A. Kirk*

20 SEP 22

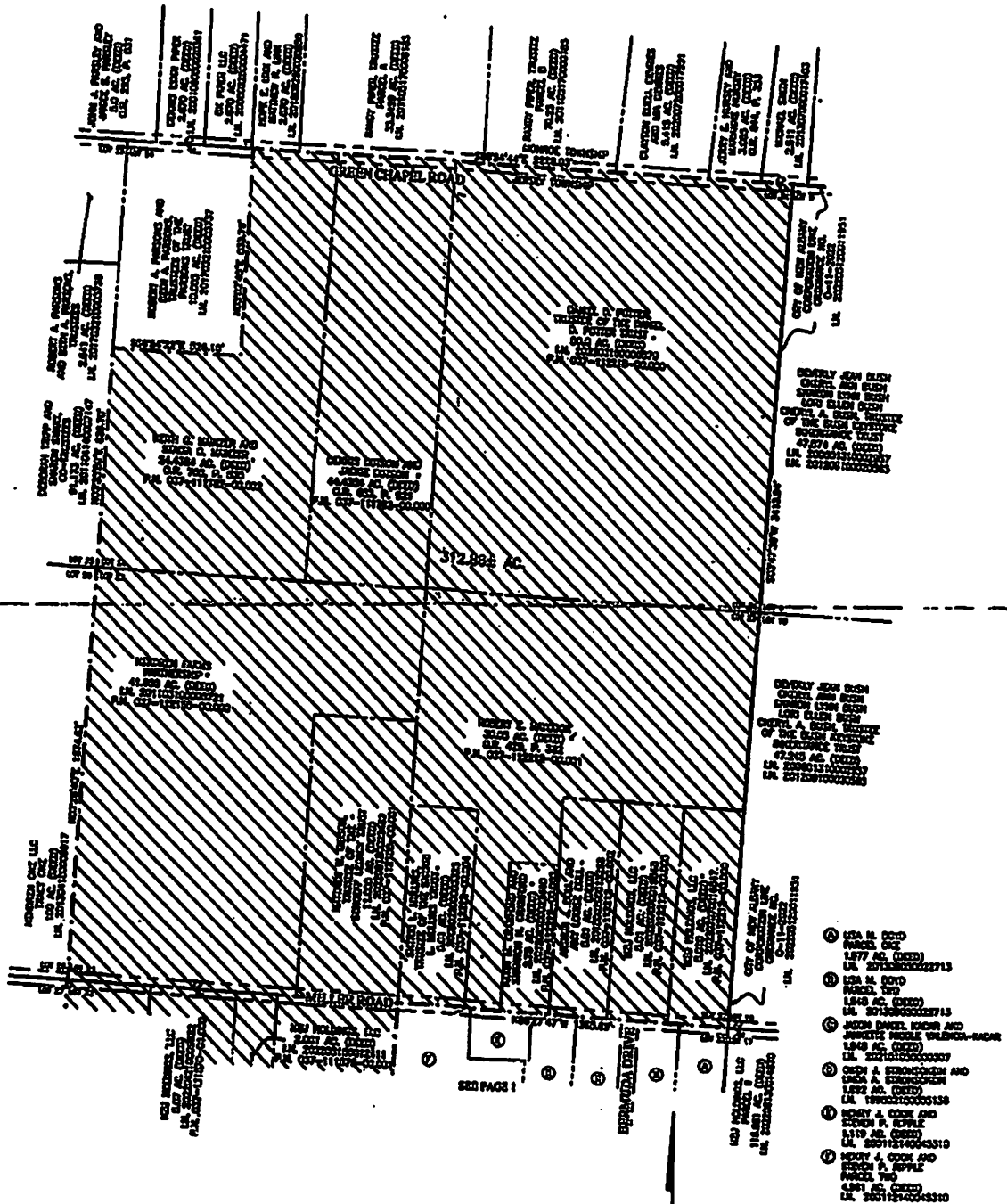
Matthew A. Kirk

Professional Surveyor No. 7865





**ANNEXATION OF 312.86± ACRES  
TO THE CITY OF NEW ALBANY FROM THE TOWNSHIP OF JERSEY  
LOTS 21, 22, 23 & 24, QUARTER TOWNSHIP 2, TOWNSHIP 2, RANGE 1S  
UNITED STATES MILITARY LANDS  
TOWNSHIP OF JERSEY, COUNTY OF LICKING, STATE OF OHIO**

[illegible]





## ORDINANCE O-05-2023

### AN ORDINANCE TO ACCEPT THE EXPEDITED TYPE 1 ANNEXATION OF 15.03+/- ACRES FROM JERSEY TOWNSHIP, LICKING COUNTY TO THE CITY OF NEW ALBANY

**WHEREAS**, pursuant to the petition filed by Underhill & Hodge, LLC, agents for petitioner, with the Licking County Development and Planning Department, on October 6, 2022, and

**WHEREAS**, the foregoing Resolution #116-58 of the Licking County Commissioners granting the petition was delivered to the City of New Albany on October 31, 2022, and more than sixty (60) days have lapsed since the foregoing resolution and transcript was transmitted to the City of New Albany, and

**WHEREAS**, pursuant to Resolution R-37-2021 of the City of New Albany adopted on August 03, 2021, the New Albany City Manager was authorized to enter into a Roadway Maintenance Agreement with the Licking County Board of Commissioners for the maintenance of sections of roadways impacted by this annexation, and

**WHEREAS**, pursuant to New Albany Codified Ordinance 1125.05, all newly annexed areas shall immediately be zoned into the Agricultural District and shall be subject to the regulations and restrictions pertaining thereto, and

**WHEREAS**, the real estate is located in Licking County and is subject to the "New Albany East Community Authority" and subject to a special property assessment in compliance therewith, and

**WHEREAS**, The New Albany City Council has determined that annexation of the real estate is in the best interests of the residents of the City of New Albany.

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

**Section 1:** The application of property owners set forth in Licking County requesting the annexation of 15.03+/- acres, which is contiguous to the City of New Albany, is hereby accepted, and the corporate boundaries of New Albany shall be extended to include the territory, more particularly described in Exhibit A, attached hereto and incorporated herein as if fully written.

**Section 2:** An accurate map of the territory attached as Exhibit B, the petition for its annexation, other related documents, and a certified transcript of the proceedings of the Licking County Board of Commissioners regarding the annexation proceedings have been on file with the

Clerk of Council of the City of New Albany for sixty (60) days prior to being presented to this Council as required by law, and are hereby accepted.

**Section 3:** Council of the City of New Albany hereby accepts the annexation of a 15.03+/-acre tract, situated in Jersey Township, Licking County, Ohio, the same being land of the owners set forth above, for annexation to the City of New Albany.

**Section 4:** The clerk is herewith directed to deliver certified copies of this ordinance and other proceedings relative to the annexation to the County Auditor, County Recorder, and the Secretary of State.

**Section 5:** It is hereby found and determined that all formal actions of council concerning and relating to the adoption of this legislation were adopted in an open meeting of council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

**Section 6:** Pursuant to Article VI, Section 6.07(B) 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: 12/15/2022  
Introduced: 01/03/2023  
Revised:  
Adopted:  
Effective:

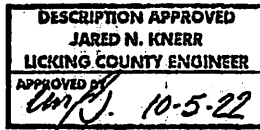
**CERTIFICATION BY CLERK OF COUNCIL  
OF PUBLICATION OF LEGISLATION**

I certify that copies of Ordinance **O-05-2023** were posted in accordance with Article VI, Section 6.12 of the Charter of the City of New Albany, for 30 days starting on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jennifer Mason, Clerk of Council

\_\_\_\_\_  
Date

Exhibit A - O-05-2023



**EXHIBIT "A"**  
**PROPOSED ANNEXATION OF**  
**15.03± ACRES**

**FROM: JERSEY TOWNSHIP**

**TO: CITY OF NEW ALBANY**

Situated in the State of Ohio, County of Licking, Township of Jersey, in Lot 14, Quarter Township 2, Township 2, Range 15, United States Military Lands, being comprised of that 5.004 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 202208120019793, that 5.004 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 202208160020043, and that 5.004 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 202209300023824 (all references refer to the records of the Recorder's Office, Licking County, Ohio), and more particularly bounded and described as follows:

Beginning, for reference, at the centerline intersection of Jug Street Road and Harrison Road;

Thence South 86° 41' 20" East, with the centerline of said Jug Street Road, a distance of 537.95 feet to the southeasterly corner of that 31.878 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 202206060014020, in the existing City of New Albany corporation line, as established by Ordinance Number O-11-2022, of record in Instrument Number 202205120011951, the TRUE POINT OF BEGINNING for this description;

Thence North 04° 02' 15" East, with the easterly line of said 31.878 acre tract and said corporation line, a distance of 872.48 feet to a point;

Thence South 86° 12' 17" East, with a southerly line of said 31.878 acre tract and said corporation line, a distance of 750.78 feet to a point in the westerly line of that 62.547 acre tract conveyed to Robert A. Carr and Deborah B. Carr by deed of record in Instrument Number 201909180019849;

Thence South 03° 51' 20" West, with said westerly line and said corporation line, a distance of 868.46 feet to a point in the centerline of said Jug Street Road, in the existing City of New Albany corporation line, as established by Ordinance Number O-31-2015, of record in Instrument Number 201601070000270;

Thence North 86° 30' 36" West, with said centerline and said corporation line, a distance of 753.56 feet to the TRUE POINT OF BEGINNING, containing 15.03 acres of land, more or less.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Matthew A. Kirk*

3 OCT 22

Matthew A. Kirk  
Professional Surveyor No. 7865



# EXHIBIT "B"

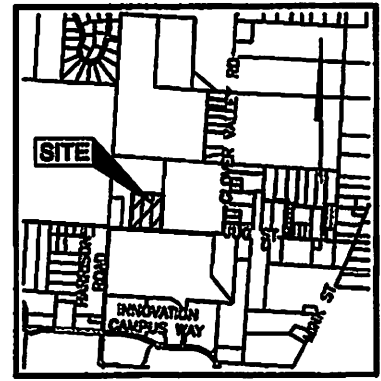
## ANNEXATION OF 15.03± ACRES

### TO THE CITY OF NEW ALBANY FROM THE TOWNSHIP OF JERSEY

#### LOT 14, QUARTER TOWNSHIP 2, TOWNSHIP 2, RANGE 15

#### UNITED STATES MILITARY LANDS

#### TOWNSHIP OF JERSEY, COUNTY OF LICKING, STATE OF OHIO



LOCATION MAP AND BACKGROUND DRAWING  
NOT TO SCALE

Proposed Annexation  
of 15.03 acres to the City of New Albany

The within map marked exhibit "A" and made a part of the petition of annexation filed with the Board of Commissioners of Licking County, Ohio, on \_\_\_\_\_, 20\_\_\_\_, under Chapter 709 of the Ohio Revised Code, is returned as an accurate map of the territory in said petition described under the requirements of said Chapter 709 of the Ohio Revised Code.

Agree the Petitioners

The Board of County Commissioners of Licking County, Ohio, having received a petition bearing the signed names and addresses of the parties interested in the annexation to the City of New Albany, Ohio, of the territory shown hereon and having given due consideration to the prayer of said petition, do hereby grant the same.

Board of Licking County Commissioners

Petition Received \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_

Petition Approved \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_

Transferred this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon the expiration of this office.

Commissioner \_\_\_\_\_

Transfer Fee \_\_\_\_\_

Recorded for Record \_\_\_\_\_, 20\_\_\_\_, (AM-PM) and recorded \_\_\_\_\_

20\_\_\_\_, in first entrance, petition, etc. in First Book Volume \_\_\_\_\_, Page \_\_\_\_\_

File Fee \_\_\_\_\_

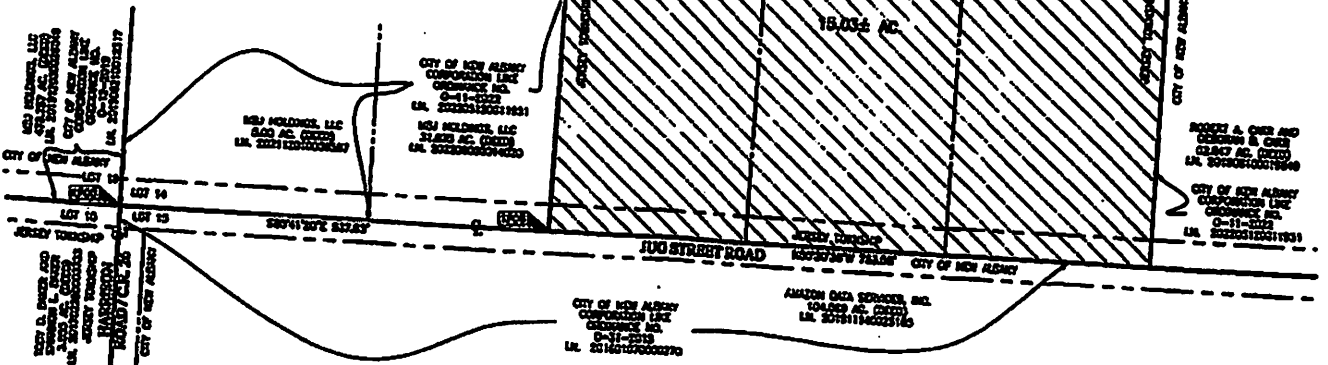
Commissioner, etc. For \_\_\_\_\_

Consent for the City of New Albany, Ohio, by ordinance \_\_\_\_\_ passed \_\_\_\_\_

20\_\_\_\_, and approved by the mayor on \_\_\_\_\_, 20\_\_\_\_, did accept the territory shown hereon for annexation to the City of New Albany, Ohio, a municipal corporation.

Attest \_\_\_\_\_

Clerk, City of New Albany



GRAPHIC SCALE (in feet)

AREA TO BE ANNEXED

PROPOSED CITY OF NEW ALBANY CORPORATION LINE

EXISTING CITY OF NEW ALBANY CORPORATION LINE

Contiguity Note:  
Total perimeter of annexation area is 3241.28 feet, all of which is contiguous with the City of New Albany, giving 100% perimeter contiguity.



By Matthew A. Eitz Date 2.05.23  
Matthew A. Eitz  
Professional Engineer No. 94388  
eatz@eatz.com

<b>EMH-T</b> Survey & Mapping Division 1000 N. Main Street, Suite 100 Columbus, OH 43215 Phone: (614) 444-1111 Fax: (614) 444-1112 Website: www.emh-t.com	Date: October 3, 2022	
	Scale: 1" = 100'	
	Job No: 20220385	
	Sheet: 1 of 1	
<b>REVISIONS</b>		
NO.	DATE	DESCRIPTION



## ORDINANCE O-06-2023

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF NEW ALBANY BY AMENDING THE ZONING MAP TO REZONE 403+/- ACRES OF LAND GENERALLY LOCATED SOUTH OF GREEN CHAPEL ROAD, WEST OF MINK STREET, EAST OF BEECH ROAD AND NORTH OF JUG STREET FROM AGRICULTURAL (AG) TO TECHNOLOGY MANUFACTURING DISTRICT (TMD) AS REQUESTED BY MBJ HOLDINGS LLC, C/O AARON UNDERHILL**

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

**WHEREAS**, the New Albany Planning Commission and 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 MBJ Holdings LLC, c/o Aaron Underhill, Esq., the Planning Commission has reviewed the proposed ordinance amendment and recommended its approval unanimously.

**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. 403+/- acres generally located south of Green Chapel Road, west of Mink Street, east of Beech Road and north of Jug Street from its current zoning of Agricultural (AG) to Technology Manufacturing District (TMD).
- B. The zoning district's boundary map is 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: 12/15/2022

Introduced: 01/03/2023

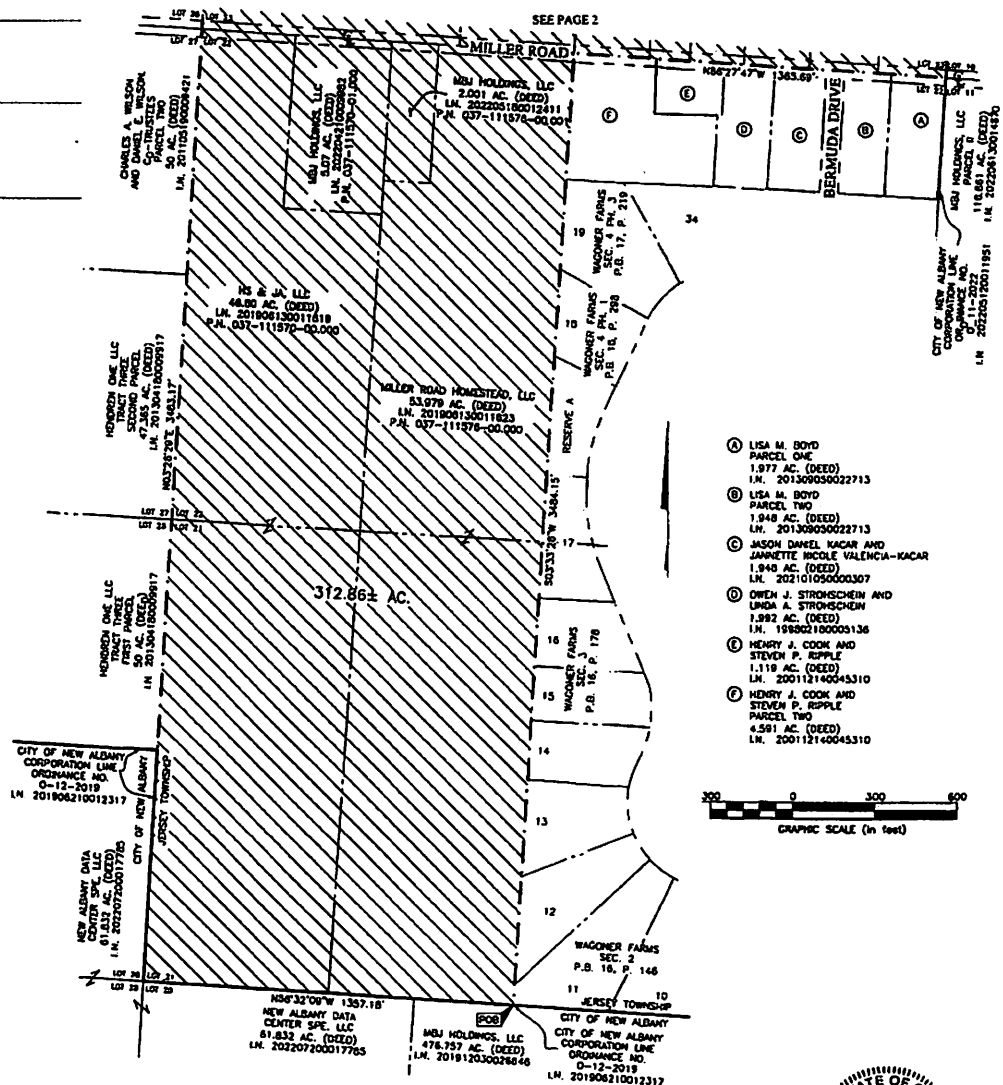
Revised:


Adopted:

Effective:



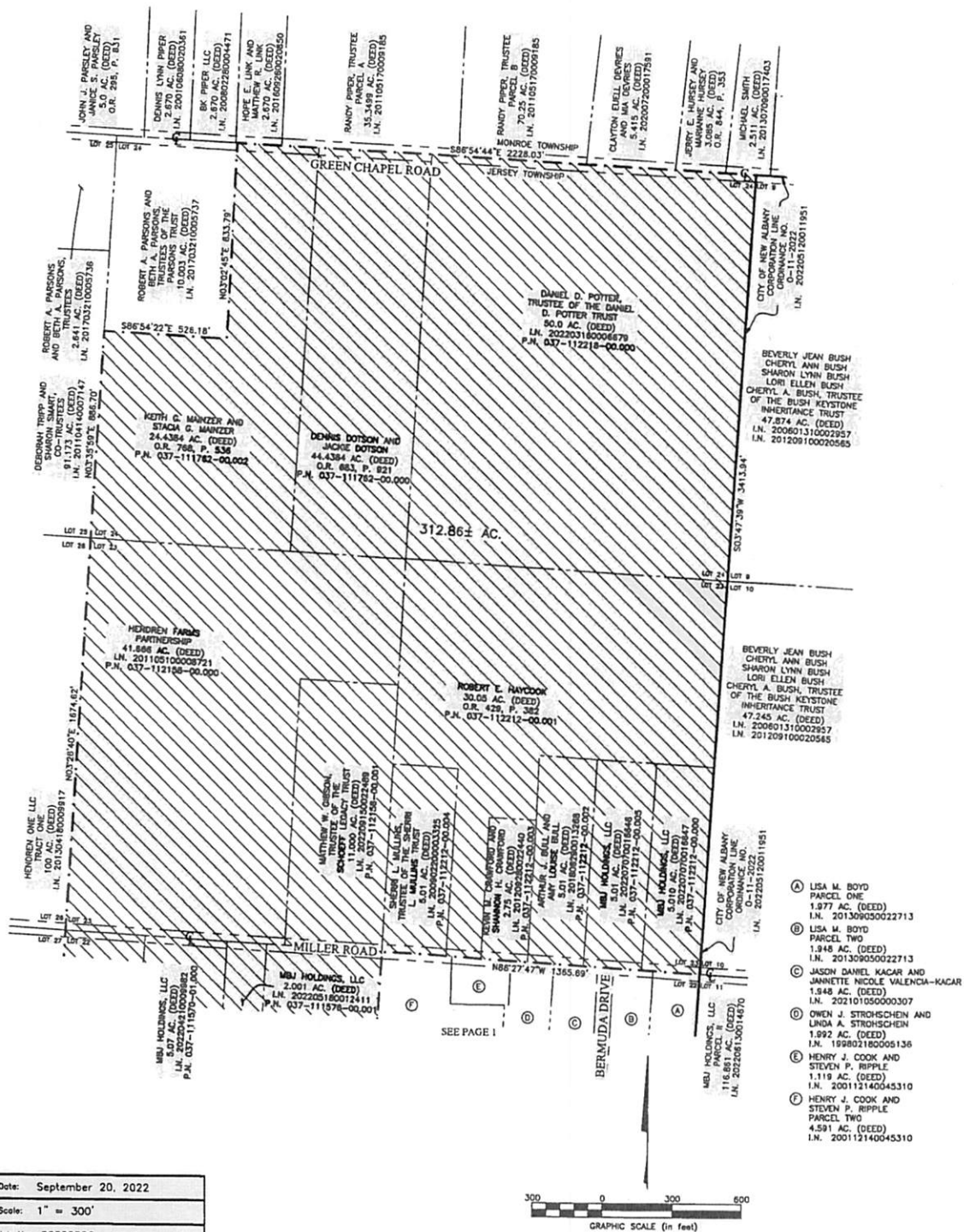
**Not to Scale**



 <p> <b>Steve, Merchants, Mortenson &amp; Tilton, Inc.</b>  <b>Engineers • Surveyors • Planners • Scientists</b>  <b>500 West Alhambra Blvd., Columbus, GA 31904</b>  <b>Phone: 614.773.4523 Fax: 614.773.4546</b>  <b>emht.com</b> </p>	<b>Date:</b> September 20, 2022
	<b>Scale:</b> 1" = 300'
	<b>Job No:</b> 20220885
	<b>Sheet:</b> 1 of 2

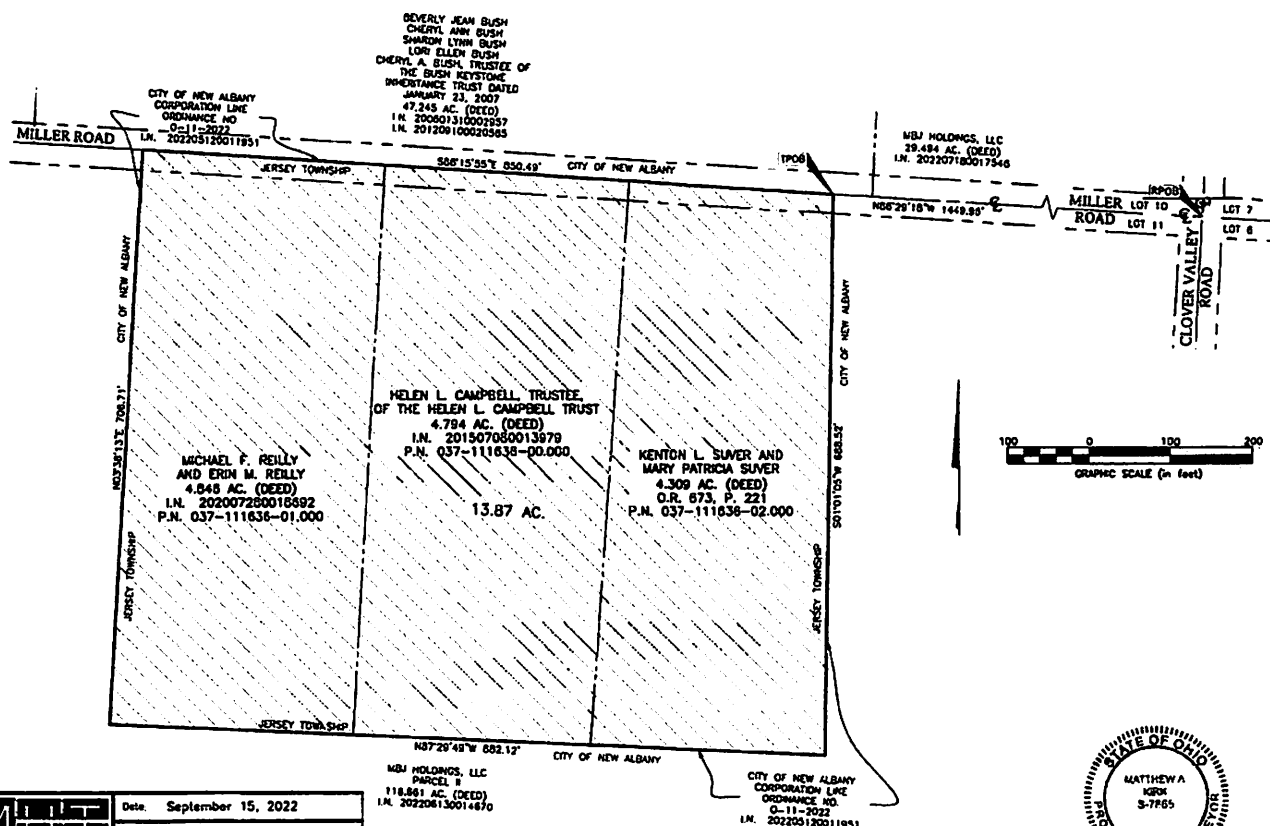
By Matthew A. Kirk 20 58 22  
Matthew A. Kirk Date  
Professional Surveyor No. 7865  
mkirk@cmht.com

# REZONING OF 312.86± ACRES

[illegible]




**LOCATION MAP AND BACKGROUND DRAWING**  
**NOT TO SCALE**



By Matthew A. Kirk  
Matthew A. Kirk  
Professional Surveyor No. 7855  
mkirk@earthlink.net

15 Sep 20  
Date

 <p style="margin-top: 10px;">             3901, Meachurst, Hambleton &amp; Tiam, Inc.              Engineers • Surveyors • Planners • Scientists              3300 West Albany Road, Columbus, OH 43224              Phone: (614) 778-4320    Toll Free: (800) 775-3466  <a href="http://www.emt.com">www.emt.com</a> </p>	<p>Date: <b>September 15, 2022</b></p> <p>Scale: <b>1" = 100'</b></p> <p>Job No: <b>20220886</b></p> <p>Sheet: <b>1 of 1</b></p>
--	--

[illegible]

By Matthew A. Kirk 5/27/22  
Matthew A. Kirk Date  
Professional Surveyor No. 7865  
mkirk@cmti.com

<b>EMHT</b>			Date: September 15, 2022
Environmental, Mechanical, Humidification & Drying, Inc. Engineers • Surveyors • Planners • Scientists 8320 New Albany Road, Cincinnati, OH 45234 Phone: 513-773-6707 Fax: 513-773-6849 <a href="http://emht.com">emht.com</a>			Scale: 1" = 100'
Job No: 20220886			Sheet 1 of 1
Title: <b>REVISIONS</b> MND:      MNT:      NAK:			

**CITY OF NEW ALBANY CORPORATION LINE**  
ORDINANCE NO. 0-11-2022  
L.N. 202205120011851

**INTEL CORPORATION**  
237.574 AC. (DEED)  
L.N. 202207180017547

**MBJ HOLDINGS, LLC**  
0.539 AC. (DEED)  
L.N. 202203100011787  
P.N. 037-112512-00.000

**MBJ HOLDINGS, LLC**  
35.745 AC. (DEED)  
L.N. 202207200017782  
P.N. 037-112088-00.000

**61.264 AC.**

**LOUIS R. POWELL AND LINDA S. POWELL TRUSTEES, OF THE POWELL FAMILY TRUST**  
11.865 AC. (DEED)  
L.N. 201706200012941  
P.N. 037-111836-00.000

**ROBERT A. CARR AND DEBORAH B. CARR**  
13.912 AC. (DEED)  
L.N. 201109230017882  
P.N. 037-111836-00.003

**CHRIS A. ANDERSON AND COLLEEN F. ANDERSON**  
8.440 AC. (DEED)  
L.N. 201208010012102

**GERALDINE M. CAMPBELL**  
5.179 AC. (DEED)  
O.R. 708, P. 82

**CARL H. CALDERSON AND DORCE M. CALDERSON**  
4.999 AC. (DEED)  
L.N. 200603180011477

**THOMAS W. DAUER AND DIANNE S. DAUER**  
5.50 AC. (DEED)  
L.N. 200508190018582

**MORRIS A. KITSCHLER**  
7.860 AC. (DEED)  
L.N. 200407030014185

**KENNETH W. BOGGS**  
0.718 AC. (DEED)  
L.N. 20105070013456

**RICHARD J. CRANKY AND CHRISTYLE L. CRANKY**  
5.040 AC. (DEED)  
O.R. 110, P. 531

**ROBERT MYERS**  
3.180 AC. (DEED)  
O.R. 220, P. 802

**KITTY I. GUNSLER**  
5.574 AC. (DEED)  
L.N. 201012160025985

**KITTY I. GUNSLER**  
3.180 AC. (DEED)  
L.N. 201012160025985

**WILLIAM H. SLADER**  
5.574 AC. (DEED)  
O.R. 507, P. 126

**KITTY I. GUNSLER**  
1.00 AC. (DEED)  
L.N. 201012160025985

**SHARON A. SLADER**  
4.035 AC. (DEED)  
O.R. 507, P. 126

**CITY OF NEW ALBANY CORPORATION LINE**  
ORDINANCE NO. 0-11-2022  
L.N. 202205120011851

**QUARTER TOWNSHIP 2**  
**QUARTER TOWNSHIP 1**

**MARK STREET**  
**JUG STREET**  
**ROAD**


**GRAPHIC SCALE (in feet)**  
0 200 400

**STATE OF OHIO**  
**MATTHEW A. YORK**  
**5-7865**  
**PROFESSIONAL SURVEYOR**



By Matthew A. Kirk  
Matthew A. Kirk  
Professional Surveyor No. 7865  
mkirk@emhs.com

4/5/22  
Date

	Date	September 14, 2022
	1" = 100'	
Gerald MacSwart, Hazzardtown & Dixon, Inc. Engineers • Surveyors • Planners • Scientists 3500 New Albany Road, Columbus, Ohio 43264 Project #14-774-030 Tel. Faxon: 614.774.3448 cwh1.com	Job No:	20220885
	Sheet:	1 of 1



**ORDINANCE O-07-2023**

**AN ORDINANCE TO AMEND CHAPTER 159 "RULES OF PROCEDURE FOR BOARDS AND COMMISSIONS" OF THE CITY OF NEW ALBANY, OHIO'S CODIFIED ORDINANCES AS REQUESTED BY THE CITY OF NEW ALBANY**

**WHEREAS**, Chapter 159 of the Codified Ordinances of the City of New Albany sets forth the rules of procedure for boards and commissions established by the New Albany City Council; and

**WHEREAS**, the last Standard Rules of Procedure for Boards and Commissions revision was contained in Ordinance O-16-2007 adopted on April 17, 2007 and, since that time, the Village of New Albany has become a city, and some practices and procedures have been updated to run the boards and commissions more efficiently; and

**WHEREAS**, the New Albany City Council now finds it advisable to revise Chapter 159 "Rules of Procedure for Boards and Commissions."

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

**Section 1:** That Codified Ordinance Chapter 159 "Rules of Procedure for Boards and Commissions" be amended as described in Exhibit A.

**Section 3.** It is hereby found and determined that all formal actions of the New Albany City Council concerning and relating to the adoption of this legislation were adopted in an open meeting, and that all deliberations of this 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 4.** 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: 12/16/2022

Introduced: 01/03/2023

Revised:

Adopted:

Effective:

## 159.01 - PREAMBLE.

The A commission/board is shall be established in accordance with the authority of the New Albany Charter and/or ordinances passed by the New Albany City~~Village~~ Council. No provision or section of these rules which conflicts with, or restricts those rights provided by the Constitution of the United States, the Ohio Constitution or the New Albany Charter shall have any force or effect.

These rules and regulations shall control the conduct of all New Albany commission/board meetings unless otherwise specified. The latest revised edition of Robert's Rules of Order shall control where no provision is made in these rules and regulations. Technical violations of these rules or of an applicable provision of the latest revised edition of Robert's Rules of Order ~~parliamentary procedure~~ shall not invalidate board/commission actions.

These rules and regulations may be temporarily suspended in whole or in part at any meeting of the commission/board by a two-thirds (2/3) vote of those members in attendance, provided a quorum exists.

## 159.02 - MEETINGS.

(a) Organizational Meeting/Officers. An organizational meeting shall be held annually between the months of January and June ~~in March~~ for the purpose of taking the following actions:

- (1) Swearing in all members;
- (2) Electing from its current membership a chairperson, vice-chairperson and secretary;
- (3) To establish the date, time and place of a regular meeting; and
- (4) To review the attendance policy
- (5) To conduct such other business as shall come before the commission/board.

Should the office of chairperson, vice-chairperson or secretary become vacant, the commission/board shall elect a successor from its membership within the next two (2) regular meetings when all commission/board members are present. The commission/board may elect an interim officer, if necessary.

(b) Regular and Special Meetings. The commission/board shall hold regular meetings as established by subsection (a) hereof. Special meetings, informal reviews, and work sessions may be called as needed by the chairperson, provided written notice is given to all members at least seventy-two (72) hours prior thereto, which notice shall set forth the time, place, and purpose of the meeting.

The regular meeting schedule of the commission/board shall be provided to the ~~Village~~ council clerk or applicable department designee immediately after the organizational meeting. The regular meeting schedule, in accordance with ORC Ch. 121.22(F), shall be posted on the city's website and on bulletin boards kept at the Village Hall, and the Public Service Complex. Notice of the time, place and purpose of any special meeting, shall be provided (written or personal contact), at least twenty-four (24) hours in advance to each member of the commission/board.

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Pursuant to Section 10.01 of the New Albany ~~Village~~ Charter and ORC Ch. 121.~~22~~, except as otherwise authorized by the laws of the State of Ohio, all meetings of the commission/board shall be open to the public.

- (c) Quorum. A majority of the members of the commission/board shall constitute a quorum for the transaction of business.
- (d) Attendance of Members. Attendance is defined as in-person presence during the hearing and consideration of all applications without a conflict of interest before that commission/board at that meeting. Attendance of all current serving members of the commission/board is encouraged, and three (3) consecutive absences by any member or four (4) absences in any 12-month period year shall be considered a forfeiture of the membership to the commission/board. The forfeiture would occur regardless of the reason for the absences. ~~Attendance would be defined as presence during the hearing and consideration of all applications without a conflict of interest before that commission/board at that meeting.~~ The applicable department designee would then notify the clerk of council so that ~~she~~they can inform council that a new appointment needs to be made.
- (e) Attendance of Staff. The city manager ~~Village Administrator~~ or designee shall determine, in conjunction with the chairperson, whether city~~Village~~ Sstaff representatives or employees are necessary to provide support and guidance to the commission/board at the meetings. The appointed staff representative or employee shall provide professional and clerical assistance as needed and shall prepare a report prior to hearing as required by the commission/board.  
  
The law director~~Village Attorney~~ may attend meetings upon a request of the chairperson to the city manager~~Village Administrator~~ or designee, or as deemed necessary solely by the city manager~~Administrator~~, for purposes of providing guidance and advice on legal issues which may arise.
- (f) Attendance of Applicant. The applicant, or person empowered to act on behalf of the applicant with authority to bind the applicant to conditions, shall be notified and invited to attend meetings at which the applicant's case is to be heard or discussed. The commission/board may table, dismiss without a hearing, or take other appropriate table action on an application before it at which the applicant or applicant's representative is not present at the time the matter is called pursuant to the agenda and order of business.

### **159.03 - POWER AND DUTIES OF CHAIRPERSON, VICE- CHAIRPERSON, AND SECRETARY.**

Nothing in these rules shall deprive the chairperson, vice-chairperson or secretary of their duties and obligations as a voting member of the commission/board.

- (a) Chairperson. The chairperson shall preside over the commission/board and control the conduct and order of meetings, and sign on behalf of the commission/board all recommendations, approvals and other official actions arising from matters coming before the commission/board.
- (b) Vice-Chairperson. The vice-chairperson shall preside over the commission/board and carry out the duties of the chairperson in the absence of the chairperson.

- (c) Secretary. The secretary, or when a staff/consultant clerk is not provided, shall prepare the minutes of each meeting/work session of the commission/board. Minutes shall contain sufficient facts and information of the meeting to properly inform the public of matters discussed and action taken, which may include a complete restatement of all motions and recording of votes, complete statement of the conditions or recommendations made on any action, and recording of attendance. ~~All~~ Communications, actions, and resolutions may ~~shall~~ be attached to the minutes. The official records for each meeting/work session shall be filed in the clerk of council's office or in the applicable liaison department promptly after each meeting/work session. The "liaison department" shall be the department and staff designated by the city manager ~~Village Administrator~~ to facilitate the commission/board's activities.

#### **159.04 - ORDER AND CONDUCT OF MEETINGS.**

- (a) Agenda. Staff shall prepare and distribute an agenda to each member for each meeting ~~and shall be available to each member for pick-up at the Village Hall during business hours,~~ at least forty-eight (48) hours prior to each regular meeting of the commission/board, or five (5) days for the Board of Zoning Appeals, and twenty-four (24) hours prior to any special meeting.

The agenda for all meetings shall contain:

- (1) A listing, by descriptive words and case number, if any, of each public hearing to be considered.
  - (2) A listing, by descriptive words and case number, if any, of each appeal to be considered.
  - (3) A listing of any other item of known business.
- (b) Order of Business. The presiding officer shall conduct commission/board meetings in the order outlined in the agenda, which order shall be substantially similar to theas followings:
- (1) Call meeting to order.
  - (2) Roll call.
  - (3) Approve minutes of prior meeting.
  - (4) Additions or corrections to agenda.
  - (5) Hearing of visitors.
  - (6) Acceptance of staff reports and related documents into the record.
  - (7) Public hearings, including presentation of staff report and recommendations.
  - (8) Other business.
  - (9) Poll members for comment.
  - (10) Adjournment.



## **159.05 - PROCEDURE FOR PUBLIC HEARINGS.**

- (a) Hearings Informal. All hearings conducted by the commission/board, with the exception of the Board of Zoning Appeals, ~~Board of Construction Appeals~~, and the Personnel Appeals Board are intended to be informal. ~~Strict rules of evidence shall not apply and p~~ Procedures may vary as necessary to help ensure the applicant a fair hearing. The purpose of a hearing is to bring out sufficient information to permit the commission/board to arrive at a just decision.
- (b) Procedures for Public Hearings. All hearings shall be conducted in the following manner:
- (1) The presiding officer shall call each case set for hearing separately.
  - (2) The presiding officer, or a designated commission/board member or ~~city~~Village staff representative or employee, shall briefly describe the background of the item(s) under consideration pursuant to the application and the particular relief sought by the applicant.
  - (3) At hearings before the Board of Zoning Appeals, Personnel Appeals Board, or at any other board or commission where such board or commission is acting in a quasi-judicial capacity, any person who intends to testify and/or present evidence in favor of or against the matter under consideration shall be administered the following oath by the presiding officer:  
  
"Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?"
  - (4) The applicant shall make an initial presentation, not to exceed fifteen (15) minutes, of evidence which may include oral testimony, affidavits, maps, drawings or photographs, and any other documents or material relevant to the purpose of the hearing. Applicants shall be expected to present evidence sufficient for the commission/board to grant the particular relief requested.
  - (5) Other persons in attendance may offer similar counter-testimony if it is relevant to the issue at hand. All persons presenting evidence or speaking against the application shall identify themselves by name and address. The chairperson may set time limitations for speakers, which collectively shall not exceed twenty (20) minutes.
  - (6) The applicant shall be given five (5) minutes to rebut evidence offered in opposition to the applicant's case and to give a final presentation to the commission/board.
  - (7) After the presentation of evidence and opinions by the applicant and others in attendance, the commission/board may ask questions of any person in attendance that may assist them.
  - (8) In all instances where the commission/board seeks to impose reasonable conditions and/or restrictions upon an application and such conditions/restrictions are permitted by law, the presiding officer shall inquire of the applicant or their designee as to whether or not said conditions and/or restrictions are acceptable. Should the condition and/or restriction not be acceptable by the applicant, or their designee, the application, as originally submitted, shall be voted upon by the commission/board.

## **159.06 - ACTIONS.**

- (a) Form. All decisions, findings, or recommendations by the commission/board shall be in written entry form.
- (b) Consideration of Application by Commission/Board. After receiving the application, staff report and any additional information and testimony at the meeting, the commission/board shall make its findings, which action shall be final except as provided in subsection (c) hereof. The commission/board may table an application if there is insufficient time in which to review new information, or with the consent of the applicant or its designee.
- (c) Reconsideration of Commission/Board Action. The commission/board may reconsider any action it has taken upon its own motion for good cause shown.

Any action denying or disapproving an application, other than one involving an incomplete application, may be reconsidered no later than the second regular meeting after the original action from which reconsideration is being requested was taken, only if the applicant or its designee clearly demonstrates one of the following:

- (1) Circumstances affecting the subject property or item under consideration have substantially changed; or
- (2) New information is available that could not with reasonable diligence have been presented at a previous hearing.

## **159.07 - VOTING.**

A simple majority vote of a quorum of the commission/board is required to take action on any issue. Voting shall ordinarily be by voice vote, provided however that a roll call vote shall be required if requested by any voting member present. A member voting "no" shall indicate their reasons for dissent.

## **159.08 - APPLICATIONS.**

Submittal requirements and fees are as outlined in the zoning code, the codified ordinances of the city~~Village~~, and policies set by the administration. Applications not deemed to be complete in accordance with the zoning code, ~~Village or the~~ codified ordinances of the city, or the and administrative policies of the city, or for which all fees have not been paid in full shall not be considered.

An applicant may, in writing or during a meeting, withdraw an application at any time or may request to table or postpone further action. A ~~Such~~ requests to table shall require approval by a majority of the commission/board members in attendance at the meeting. ~~If the request is made verbally during a meeting, the applicant shall submit the request in writing to the liaison department within seven (7) days.~~

#### **159.09 - CONFLICT OF INTEREST AND ETHICS.**

Unless otherwise provided in the New Albany Charter or by council, the laws of the State of Ohio, pertaining to conflicts of interest, criminal ~~misbehavior,~~ and ethics shall apply to all commission/board members. Any member of a commission/board who feels that they have a conflict of interest on any matter that is on the agenda shall voluntarily excuse himself or herself and refrain from discussion on that matter.

#### **159.10 EX PARTE CONTACT.**

Commission and board members should avoid *ex-parte* contact with the applicant or representative. However, if the ~~city manager~~Village Administrator or his designee deems that such contacts are reasonable and necessary, any such contacts and communications shall take place with a staff member present. If the applicant persists in offering *ex-parte* contact except in the circumstances under which the ~~city manager~~Village Administrator has authorized such contact, the member should report these contacts.



## **ORDINANCE O-08-2023**

**AN ORDINANCE TO RENEW THE APPROVAL OF THE FINAL PLAT FOR 60 SINGLE FAMILY LOTS ON 38.09+/- ACRES AND ACCEPT RESERVES "A", "B", "C" AND "D" FOR THE WOODHAVEN SUBDIVISION LOCATED AT 7555 BEVELHYMER ROAD AND 7325 WALNUT STREET AS REQUESTED BY BOB WEBB GROUP C/O BRANDON BELLI**

**WHEREAS**, an application to approve the Woodhaven final plat has been submitted; and

**WHEREAS**, 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 September 20, 2021, recommended approval of this final plat; and

**WHEREAS**, the Woodhaven final plat includes approximately 38.09+/- acres of land to be subdivided into 60 residential lots in addition to the public streets; and

**WHEREAS**, the 35.7+/- acre Woodhaven final plat includes approximately 14.52+/- acres of parkland and open space; and

**WHEREAS**, the Woodhaven final plat includes the commitment to dedicate reserves A, B, C and D; and

**WHEREAS**, New Albany City Council has agreed to the terms and conditions by which this parkland will be donated; and

**WHEREAS**, the city engineer certifies that the Woodhaven final plat meets all the requirements of Chapter 1187 of the Codified Ordinances, stormwater 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 said Woodhaven final plat is attached to this ordinance as Exhibit A and made a part herein is approved.

**Section 2.** Council hereby accepts the lands shown on the map attached hereto as Exhibit A, under the terms and conditions outlined and the covenants and restrictions stipulated in the deed and final plat.

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

**Section 4.** Pursuant to Article 6.07(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: 12/16/2022

Introduced: 01/03/2023

Revised:

Adopted:

Effective:

# WOODHAVEN

1/2

Situated in the State of Ohio, County of Franklin, City of New Albany, and in Half Section 17, Section 9, Quarter Township 1, Township 2, Range 16, United States Military Lands, containing 38.093 acres of land, more or less, said 38.093 acres being comprised of all of those tracts of land conveyed to **BOB WEBB WOODHAVEN, LLC** by deed of record in Instrument Number 202109280172399, Recorder's Office, Franklin County, Ohio.

The undersigned, **BOB WEBB WOODHAVEN, LLC**, by \_\_\_\_\_, does hereby certify that this plat correctly represents its "WOODHAVEN", a subdivision containing Lots numbered 1 to 60, both inclusive, and areas designated as Reserve "A", Reserve "B", Reserve "C" and Reserve "D", does hereby accept the plat of same and dedicates to public use, as each, all of Bevelthymor Road, Haven Green Lane, Steepchase Lane North, Steeple Wood Drive, Walnut Street, Wood Edge Lane, Wood Grove Drive, Woodhaven Drive, Woodhaven Loop North, Woodhaven Loop South and Woodhaven Loop West shown hereon and not heretofore dedicated.

Easements are hereby reserved in, over and under areas designated on this plat as "Easement" or "Drainage Easement". Each of the aforementioned designated easements permit the construction, operation and maintenance of all public and quasi-public utilities above, beneath, and on 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 above ground storm water drainage facilities. No above grade structures, dams or other obstructions to the flow of storm water runoff are permitted within Drainage Easement areas as delineated on this plat unless approved by the New Albany Municipal Engineer. Improvements related to the passive park may be located within the areas containing a Drainage Easement. No building shall be constructed in any area over which easements are hereby reserved.

In \_\_\_\_\_ Witness \_\_\_\_\_ Whereof \_\_\_\_\_  
hereto set his hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, of **BOB WEBB WOODHAVEN, LLC**, has

Signed and Acknowledged  
In the presence of: **BOB WEBB WOODHAVEN, LLC**

By \_\_\_\_\_

STATE OF OHIO  
COUNTY OF FRANKLIN ss:

Before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_ of **BOB WEBB WOODHAVEN, LLC**, who acknowledged the signing of the foregoing instrument to be his voluntary act and deed and the voluntary act and deed of said **BOB WEBB WOODHAVEN, LLC** for the uses and purposes expressed herein.

In Witness Whereof, I have hereto set my hand and affixed my official seal this day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires \_\_\_\_\_ Notary Public, State of Ohio

Approved this \_\_\_\_\_ Day of \_\_\_\_\_  
20\_\_\_\_ Mayor, New Albany, Ohio

Approved this \_\_\_\_\_ Day of \_\_\_\_\_  
20\_\_\_\_ City Engineer, New Albany, Ohio

Approved this \_\_\_\_\_ Day of \_\_\_\_\_  
20\_\_\_\_ Council Representative to Planning Commission, New Albany, Ohio

Approved this \_\_\_\_\_ Day of \_\_\_\_\_  
20\_\_\_\_ Chairperson, Planning Commission, New Albany, Ohio

Approved this \_\_\_\_\_ Day of \_\_\_\_\_  
20\_\_\_\_ Finance Director, New Albany, Ohio

Approved and accepted by Resolution No. \_\_\_\_\_, passed \_\_\_\_\_, 20\_\_\_\_, wherein all of Bevelthymor Road, Haven Green Lane, Steepchase Lane North, Steeple Wood Drive, Walnut Street, Wood Edge Lane, Wood Grove Drive, Woodhaven Drive, Woodhaven Loop North, Woodhaven Loop South and Woodhaven Loop West shown dedicated hereon are accepted, as such, by the Council for the City of New Albany, Ohio.

Transferred this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ Auditor, Franklin County, Ohio

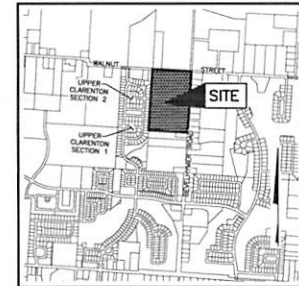
Deputy Auditor, Franklin County, Ohio

Filed for record this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ at \_\_\_\_\_ M. Fee \$ \_\_\_\_\_ Recorder, Franklin County, Ohio

File No. \_\_\_\_\_

Recorded this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ Deputy Recorder, Franklin County, Ohio

Plat Book \_\_\_\_\_, Pages \_\_\_\_\_



LOCATION MAP AND BACKGROUND DRAWING  
NOT TO SCALE

## SURVEY DATA:

**BASIS OF BEARINGS:** The bearings shown hereon are based on the Ohio State Plane Coordinate System, South Zone, NAD83 (1986). Control for bearings was from coordinates of monuments FCGS 8824 and FCGS 8825, having a bearing of North 86° 29' 28" East between said monuments, as established by the Franklin County Engineering Department using Global Positioning System procedures and equipment.

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

**IRON PINS:** Iron pins, where indicated hereon, unless otherwise noted, are to be set and are iron pipes, thirteen-sixteenths inch inside diameter, thirty inches long with a plastic plug placed in the top end bearing the initials EMHT INC.

**PERMANENT MARKERS:** Permanent markers, where indicated hereon, are to be one-inch diameter, thirty-inch long, solid iron pins, are to be set to monument the points indicated and are to be set with the top end flush with the surface of the ground and then capped with an aluminum cap stamped EMHT INC. 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 City of New Albany, Ohio's acceptance of these infrastructure improvements. The New Albany, Ohio, Municipal Engineer shall be notified in writing when the markers are in place.

SURVEYED & PLATTED  
BY



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 (See Survey Data)
- = MAG Nail to be set
- ⊗ = Permanent Marker (See Survey Data)
- = FCGS Monument found

By \_\_\_\_\_ Professional Surveyor No. 7885 Date \_\_\_\_\_

CLINE NO.	DELTA	CHORD	CHORD BEARING	CHORD DISTANCE
C1	90°00'00"	70.71	N 47°36'32" W	70.71
C2	90°00'00"	70.71	S 47°36'32" E	70.71
C3	90°00'00"	70.71	S 47°36'32" E	70.71
C4	90°00'00"	70.71	S 47°36'32" E	70.71
C5	90°00'00"	70.71	S 47°36'32" E	70.71
C6	90°00'00"	70.71	S 47°36'32" E	70.71
C7	90°00'00"	70.71	S 47°36'32" E	70.71
C8	90°00'00"	70.71	S 47°36'32" E	70.71
C9	90°00'00"	70.71	S 47°36'32" E	70.71
C10	90°00'00"	70.71	S 47°36'32" E	70.71
C11	90°00'00"	70.71	S 47°36'32" E	70.71
C12	90°00'00"	70.71	S 47°36'32" E	70.71
C13	90°00'00"	70.71	S 47°36'32" E	70.71
C14	90°00'00"	70.71	S 47°36'32" E	70.71
C15	90°00'00"	70.71	S 47°36'32" E	70.71
C16	90°00'00"	70.71	S 47°36'32" E	70.71
C17	90°00'00"	70.71	S 47°36'32" E	70.71
C18	90°00'00"	70.71	S 47°36'32" E	70.71
C19	90°00'00"	70.71	S 47°36'32" E	70.71
C20	90°00'00"	70.71	S 47°36'32" E	70.71
C21	90°00'00"	70.71	S 47°36'32" E	70.71
C22	90°00'00"	70.71	S 47°36'32" E	70.71
C23	90°00'00"	70.71	S 47°36'32" E	70.71
C24	90°00'00"	70.71	S 47°36'32" E	70.71
C25	90°00'00"	70.71	S 47°36'32" E	70.71
C26	90°00'00"	70.71	S 47°36'32" E	70.71
C27	90°00'00"	70.71	S 47°36'32" E	70.71
C28	90°00'00"	70.71	S 47°36'32" E	70.71
C29	90°00'00"	70.71	S 47°36'32" E	70.71

**NOTE "A" - TREE PRESERVATION ZONE:** Within the delineated Tree Preservation Zone (TPZ) shown herein, only the construction of underground utility lines, underground storm water management infrastructure and pedestrian connections to adjacent developments shall be permitted and designed to be generally perpendicular to the preservation zone. Heavy construction shall be prohibited within this zone unless they conflict with the installation of the permitted utility, storm water management infrastructure and pedestrian connections. After completion of construction, dead plant material, existing plant material, such as poles, trees and other invasive plants may be removed subject to staff approval. Special structures shall be placed at each lot corner marking the edge of the Tree Preservation Zone.

**NOTE "B" -** At the time of platting, the land being platted as Woodhaven is in Zone X (area determined to be outside of the 0.2% annual chance floodplain), as said Zone is designated and delineated on the FEMA Flood Insurance Rate Map for Franklin County Unincorporated areas map number 39040C02060, with effective date of June 17, 2004.

**NOTE "C" - AGRICULTURAL RECOUPMENT:** Grantor, being the duly authorized representative of the developer dedicating the property described in this plat, hereby agrees to indemnify the City of New Albany for, and hold it harmless from, any agricultural reorganizations assessed or levied in the future against the property dedicated herein, which result from grantor's conversion of the property from agricultural use.

**NOTE "D" - ACREAGE BREAKDOWN:**

Total acreage: 38.093 AL.  
 Acreage in right-of-way: 8.196 AL.  
 Acreage in Reserves: 14.520 AL.  
 Acreage in remaining lots: 15.377 AL.

**NOTE "E" - ACREAGE BREAKDOWN:** Woodhaven is comprised of all of the following Franklin County Parcel Numbers:

222-009167 16,537 AL.  
 222-009168 16,053 AL.  
 222-009169 5,498 AL.

**NOTE "F" - DEPRESSURE DRIVEWAYS:** Depressed driveways are hereby prohibited on all lots in Woodhaven. Nothing herein, however, shall prohibit the construction and use of a driveway alongside or to the rear of a residential structure if otherwise permitted by the City of New Albany.

**NOTE "G" -** At the time of platting, electric, cable, and telephone service providers have not issued information required so that easement areas, in addition to those shown on this plat as deemed necessary by these providers for the installation and maintenance of all of their main line facilities, could conveniently be shown on this plat. Existing recorded easement information about Woodhaven or any part thereof can be acquired by a competent examination of the then current public records, including those in the Recorder's Office, Franklin County, Ohio.

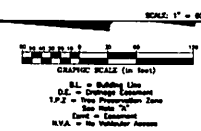
**NOTE "H" - RESERVE "D":** Reserve "D", as designated and delineated herein, shall be owned by the City of New Albany and maintained by an association comprised of the owners of the fee simple lots to the lots in the Woodhaven subdivision in perpetuity until a public road is constructed and Reserve "D" is dedicated to the City as public right-of-way.

**NOTE "I" - RESERVES "A", "B" AND "C":** Reserves "A", "B" and "C", as designated and delineated herein, shall be owned by the City of New Albany and maintained by an association comprised of the owners of the fee simple lots to the lots in the Woodhaven subdivision in perpetuity for the purpose of open space and/or stormwater retention.

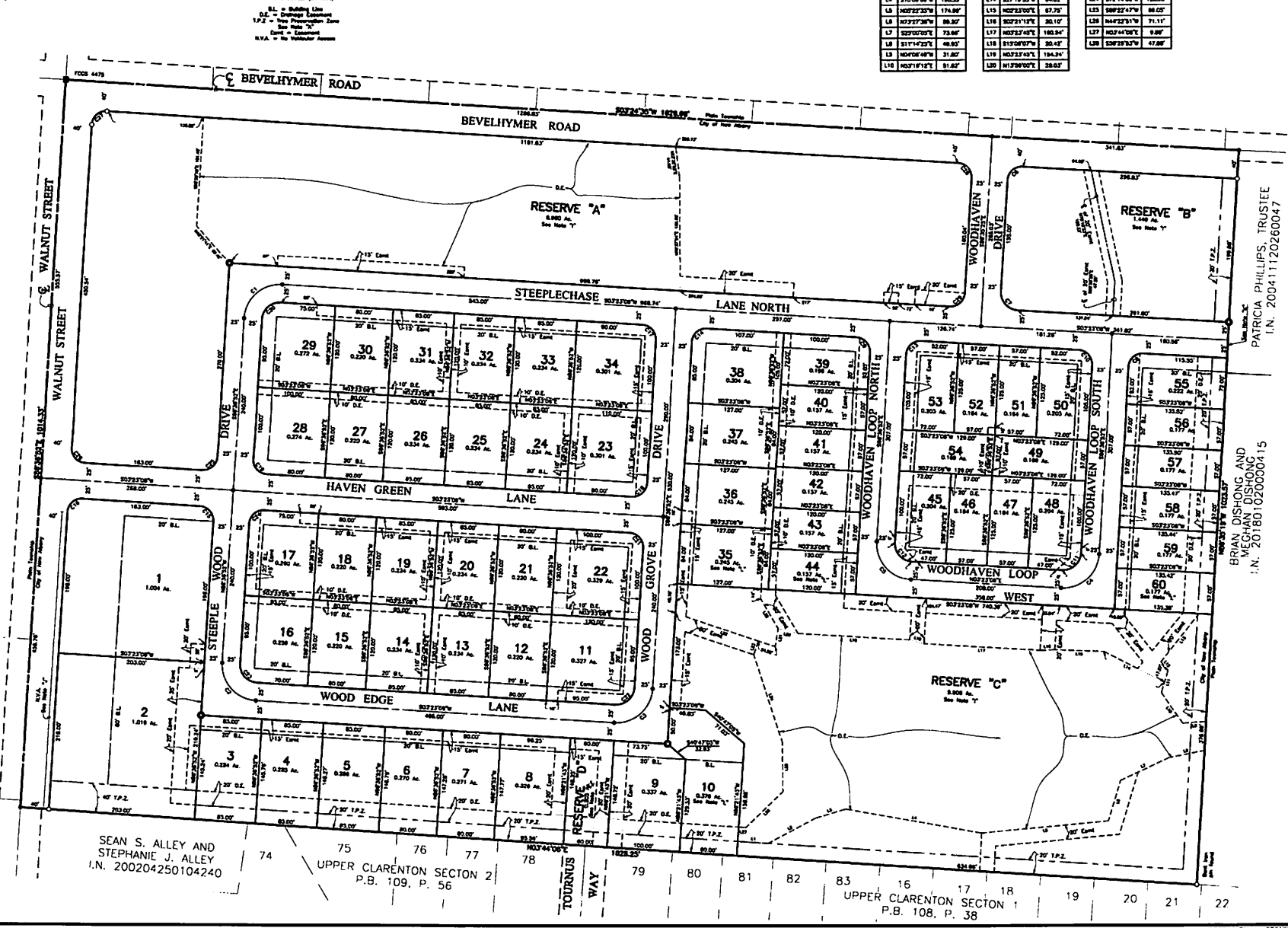
**NOTE "J" -** Lots 1 and 2 shall not have driveway access to Walnut Street and shall be accessed from internal streets.

**NOTE "K" -** No vehicular access to be in effect until such time as the public street right-of-way is extended and dedicated by plat or deed.

**NOTE "L" -** No determination has been made by the City of New Albany, Ohio as to whether the area proposed to be platted contains areas that could be classified as wetlands by the Army Corps of Engineers. It is the developer's responsibility to determine whether wetlands exist on the area hereby platted. The City of New Albany, Ohio approval of this plat of "Woodhaven" does not imply any approval of the site as it may pertain to wetlands.



# WOODHAVEN



SEAN S. ALLEY AND  
STEPHANIE J. ALLEY  
I.N. 200204250104240

UPPER CLARENTON SECTION 2  
P.B. 109, P. 56

UPPER CLARENTON SECTION 1  
P.B. 108, P. 38

BRIAN D. SHONG AND  
MECHAL SHONG  
I.N. 20180102000415

PATRICIA PHILLIPS, TRUSTEE  
I.N. 200411120260047



## ORDINANCE O-09-2023

### AN ORDINANCE TO DETERMINE THE ANNUAL COMPENSATION OF THE MAYOR, COUNCIL MEMBERS, AND ADDITIONAL SALARY FOR THE MAYOR, PRESIDENT PRO TEM, OR DESIGNATED COUNCIL MEMBER PRESIDING OVER MAYOR'S COURT

**WHEREAS**, Section 4.04 of the New Albany Charter authorizes council, by ordinance, to annually determine its compensation and benefits; and

**WHEREAS**, salary amounts for the mayor, members of council, and President *Pro Tem* who presides over Mayor's Court were last set via ordinance O-02-2022; and

**WHEREAS**, as the city grows, so does the work for council, and a cost of living increase of 5% for city staff was approved as part of the 2023 budget; and

**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.** Annual salaries shall be adjusted as set forth below.

**A. SALARY OF THE MAYOR.**

The annual salary of the Mayor shall be Twenty-Seven Thousand Four Hundred and Five dollars and Thirty-Six cents (\$27,405.36) paid bi-weekly.

**B. SALARY FOR MEMBERS OF COUNCIL.**

The annual salary of each Council Member shall be Twelve Thousand Five Hundred Fifty-Eight dollars and Ninety-Nine cents (\$12,558.99) paid bi-weekly. The annual salary of the President *Pro Tem* shall be the same as Council Members, unless said President *Pro Tem* is serving on Mayor's Court, in which case they shall receive additional salary as set forth below.

**C. ADDITIONAL SALARY FOR PRESIDING OVER MAYOR'S COURT**

The additional annual salary of the Mayor and/or the President *Pro Tem* and/or the designated Council Member who is regularly scheduled to preside in Mayor's Court, averaging two court sessions per month, shall be Six Thousand Two Hundred Eighty-Five dollars and Sixty-Three cents (\$6,285.63) paid bi-weekly.

**Section 2.** The salary changes shall be effective as of January 1, 2023.

**Section 3.** It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of 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 4.** Pursuant to Article VI, Section 6.07(B) of the Charter of the City of New Albany, this ordinance shall be in effect 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: 12/20/2022

Introduced: 01/03/2023

Revised:

Adopted:

Effective:



## ORDINANCE O-09-2023

### AN ORDINANCE TO DETERMINE THE ANNUAL COMPENSATION OF THE MAYOR, COUNCIL MEMBERS, AND ADDITIONAL SALARY FOR THE MAYOR, PRESIDENT PRO TEM, OR DESIGNATED COUNCIL MEMBER PRESIDING OVER MAYOR'S COURT

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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.

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**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: 12/20/2022

Introduced: 01/03/2023

Revised:

Adopted:

Effective:



## ORDINANCE O-10-2023

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

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

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

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

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

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

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

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

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

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

**CERTIFIED AS ADOPTED** this \_\_\_\_\_ 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: 01/06/2023

Introduced: 01/17/2023

Revised:

Adopted:

Effective:

**CONSERVATION EASEMENT AGREEMENT**

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

**RECITALS:**

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

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

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

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

**AGREEMENT:**

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

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

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

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

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

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

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

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



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

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

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

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

- A. Disturbed areas shall be seeded with the permanent, native seed mix specified for stream buffers in that certain plan titled Stream and Wetland Restoration for Avis Road Pooled Mitigation and prepared by Evans, Mechwart, Hambleton & Tilton, Inc. (the “Final Mitigation Plan”);
- B. Trees and shrubs shall be replaced on a one-for-one basis; and
- C. Trees and shrubs shall be chosen from the plant list specified for Embankment Trees & Shrubs in the Final Mitigation Plan.

- d. **Use of Property:** The portions of the Property located outside of the boundaries of the Conservation Easement Area are not subject to the restrictions of the Conservation Easement created hereunder. Grantor shall be permitted to use and develop all portions of the Property under its ownership which are located outside of the boundaries of the Conservation Easement Area without restriction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**GRANTOR:**

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

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

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

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

STATE OF OHIO  
COUNTY OF FRANKLIN

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

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

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

**GRANTEE:**

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

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

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

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

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

STATE OF OHIO  
COUNTY OF FRANKLIN

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

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

Approved as to Form:

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

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



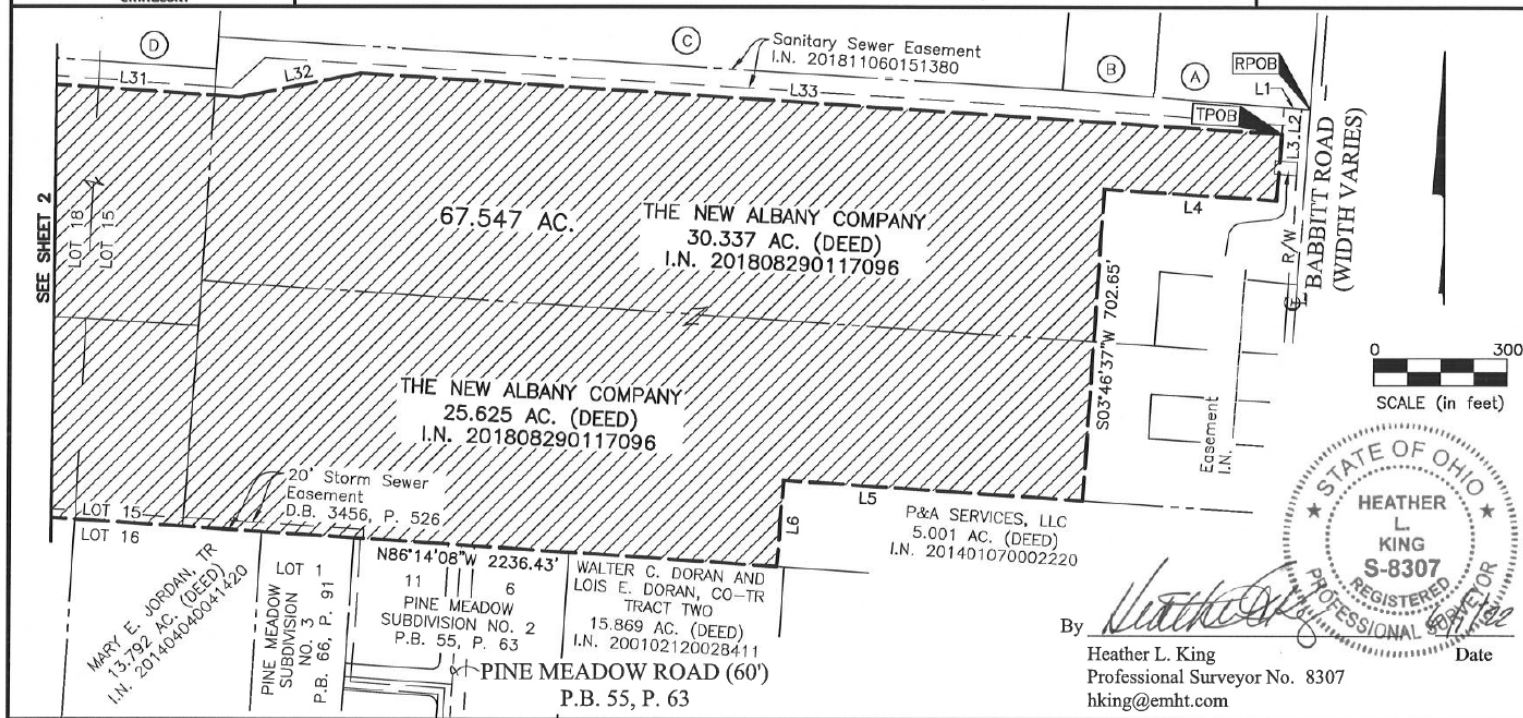


Evans, Mechwart, Hambleton & Tilton, Inc.  
Engineers • Surveyors • Planners • Scientists  
5500 New Albany Road, Columbus, OH 43054  
Phone: 614.775.4500 Toll Free: 888.775.3648  
emht.com

# CONSERVATION EASEMENT

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

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



Depiction of Conservation Easement Area  
Exhibit A



Evans, Mechwart, Hambleton & Tilton, Inc.  
Engineers • Surveyors • Planners • Scientists  
5500 New Albany Road, Columbus, OH 43054  
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# CONSERVATION EASEMENT

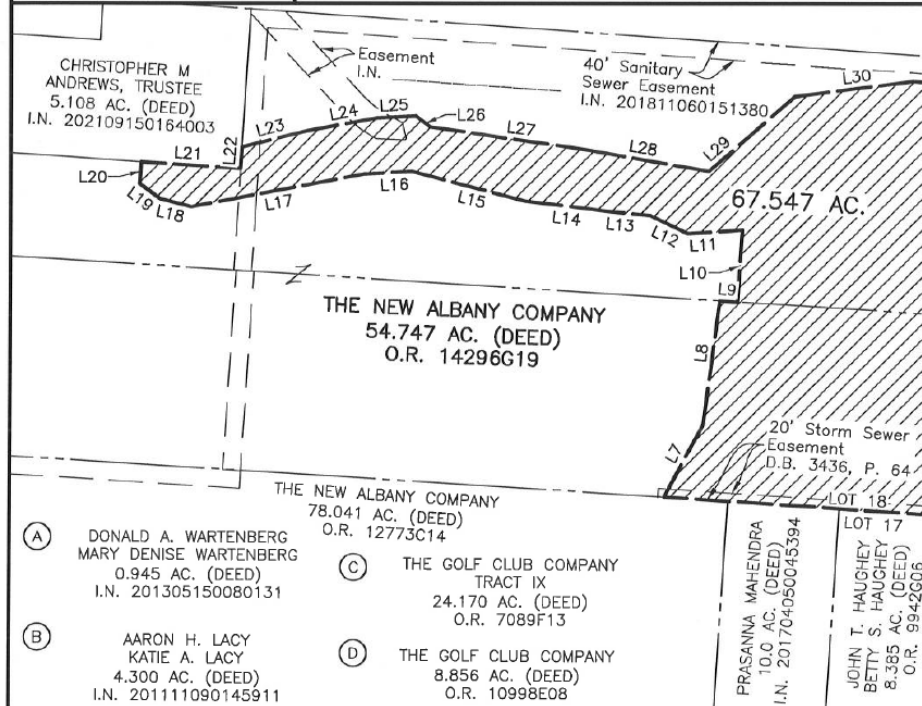
LOTS 15 AND 18, QUARTER TOWNSHIP 4, TOWNSHIP 2, RANGE 16  
UNITED STATES MILITARY DISTRICT  
CITY OF NEW ALBANY, COUNTY OF FRANKLIN, STATE OF OHIO

Date: May 31, 2022

Scale: 1" = 300'

Job No: 2021-0285

Sheet No: 2 of 2



SEE SHEET 1

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N85°34'25"W	59.81'
L2	S04°25'49"W	60.51'
L3	S04°05'13"W	150.00'
L4	N86°19'01"W	390.08'
L5	N86°10'43"W	674.81'
L6	S04°19'17"W	194.53'
L7	N28°12'35"E	185.50'
L8	N07°32'43"E	281.80'
L9	S85°23'28"E	39.83'
L10	N03°46'29"E	163.13'
L11	S86°13'40"W	123.50'
L12	N64°31'38"W	94.13'
L13	N84°04'27"W	99.47'
L14	N83°01'20"W	184.06'
L15	N75°30'52"W	265.76'
L16	S87°03'27"W	109.03'
L17	S79°11'44"W	395.96'

LINE TABLE		
LINE	BEARING	DISTANCE
L18	N76°23'29"W	73.77'
L19	N52°55'30"W	58.26'
L20	N05°29'00"E	48.84'
L21	S86°04'42"E	224.27'
L22	N03°36'18"E	49.40'
L23	N76°03'12"E	149.51'
L24	N79°25'43"E	163.25'
L25	N87°01'02"E	87.17'
L26	S52°37'50"E	40.81'
L27	S81°42'20"E	366.81'
L28	S80°05'09"E	271.66'
L29	N48°54'22"E	257.65'
L30	N82°36'28"E	268.21'
L31	S86°00'15"E	455.06'
L32	N78°42'06"E	280.49'
L33	S86°17'54"E	2081.87'

0 300  
SCALE (in feet)

Exhibit B  
Legal Description of Conservation Easement Area

See attached.

**CONSERVATION EASEMENT  
67.547 ACRES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CONSERVATION EASEMENT  
67.547 ACRES**

-2-

North 75° 30' 52" West, a distance of 265.76 feet to a point;

South 87° 03' 27" West, a distance of 109.03 feet to a point;

South 79° 11' 44" West, a distance of 395.96 feet to a point;

North 76° 23' 29" West, a distance of 73.77 feet to a point;

North 52° 55' 30" West, a distance of 58.26 feet to a point; and

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

Thence South 86° 04' 42" East, with said common line, a distance of 224.27 feet to a point;

Thence North 03° 36' 18" East, with said common line, a distance of 49.40 feet to a point;

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

North 76° 03' 12" East, a distance of 149.51 feet to a point;

North 79° 25' 43" East, a distance of 163.25 feet to a point;

North 87° 01' 02" East, a distance of 87.17 feet to a point;

South 52° 37' 50" East, a distance of 40.81 feet to a point;

South 81° 42' 20" East, a distance of 366.81 feet to a point;

South 80° 05' 09" East, a distance of 271.66 feet to a point;

North 48° 54' 22" East, a distance of 257.65 feet to a point;

North 82° 36' 28" East, a distance of 268.21 feet to a point;

South 86° 00' 15" East, a distance of 455.06 feet to a point;

North 78° 42' 06" East, a distance of 280.49 feet to a point; and

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



EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Heather L. King* 6/1/22  
Heather L. King  
Professional Surveyor No. 8307

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



## ORDINANCE O-11-2023

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

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

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

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

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

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

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

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

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

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

**CERTIFIED AS ADOPTED** this \_\_\_\_\_ 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: 01/06/2023

Introduced: 01/17/2023

Revised:

Adopted:

Effective:

**CONSERVATION EASEMENT AGREEMENT**

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

**RECITALS:**

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

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

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

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

**AGREEMENT:**



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**GRANTOR:**

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

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

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

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

STATE OF OHIO  
COUNTY OF FRANKLIN

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

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



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

**GRANTEE:**

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

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

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

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

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

STATE OF OHIO  
COUNTY OF FRANKLIN

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

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

Approved as to Form:

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

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

Exhibit A  
Depiction of Conservation Easement Area

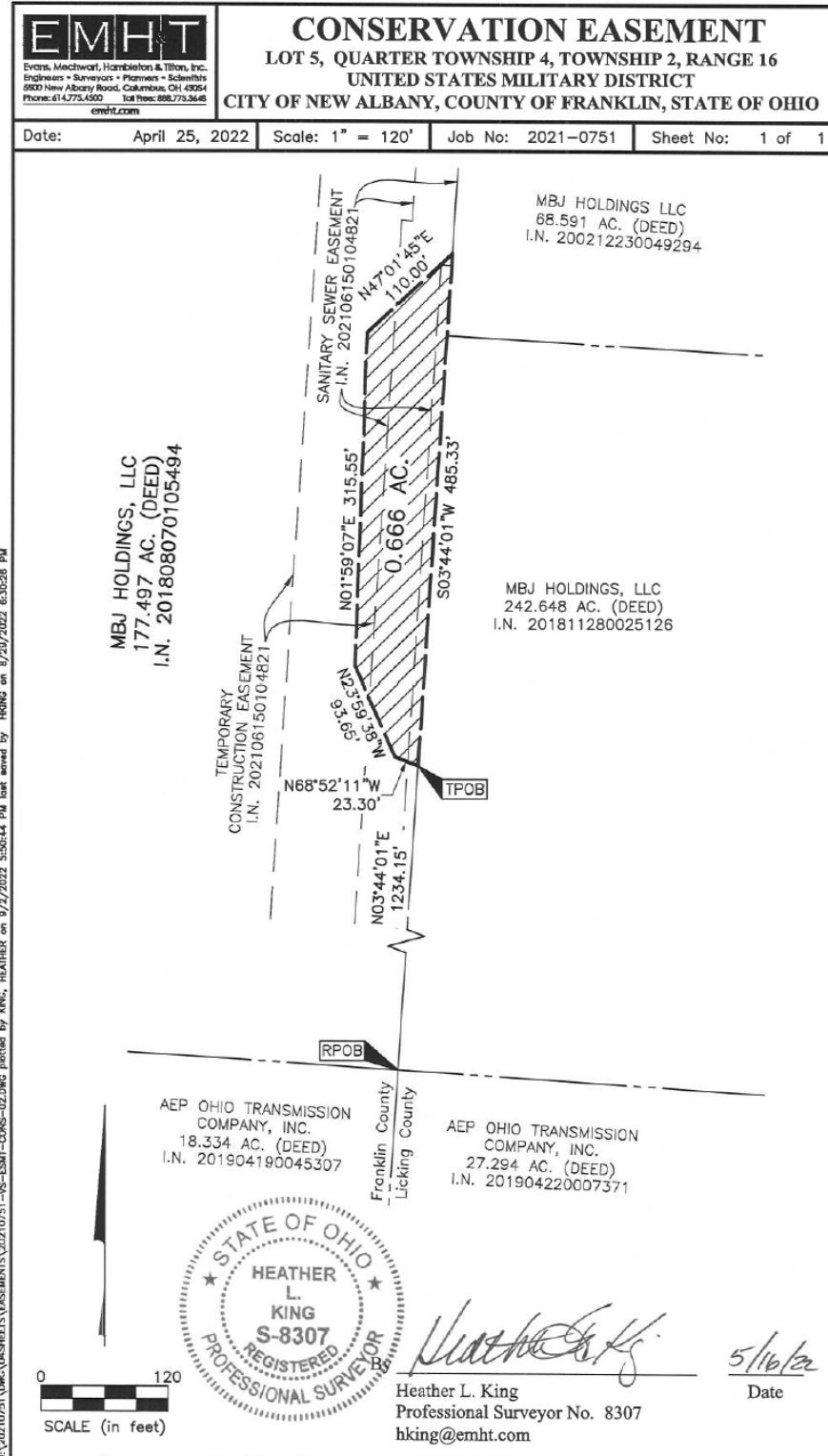


Exhibit B  
Legal Description of Conservation Easement Area

See attached.

**CONSERVATION EASEMENT**  
**0.666 ACRE**

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

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

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

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

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

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

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

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

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



EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Heather L. King* 5/16/22

Heather L. King  
Professional Surveyor No. 8307

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



## ORDINANCE O-12-2023

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

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

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

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

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

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

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

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

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

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

**CERTIFIED AS ADOPTED** this \_\_\_\_\_ 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: 01/06/2023

Introduced: 01/17/2023

Revised:

Adopted:

Effective:

**CONSERVATION EASEMENT AGREEMENT**

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

**RECITALS:**

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

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

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

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

## **AGREEMENT:**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**GRANTOR:**

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

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

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

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

STATE OF OHIO  
COUNTY OF FRANKLIN

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

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

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

**GRANTEE:**

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

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

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

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

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

STATE OF OHIO  
COUNTY OF FRANKLIN

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

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

Approved as to Form:

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

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



Exhibit A  
Depiction of Conservation Easement Area

See attached.

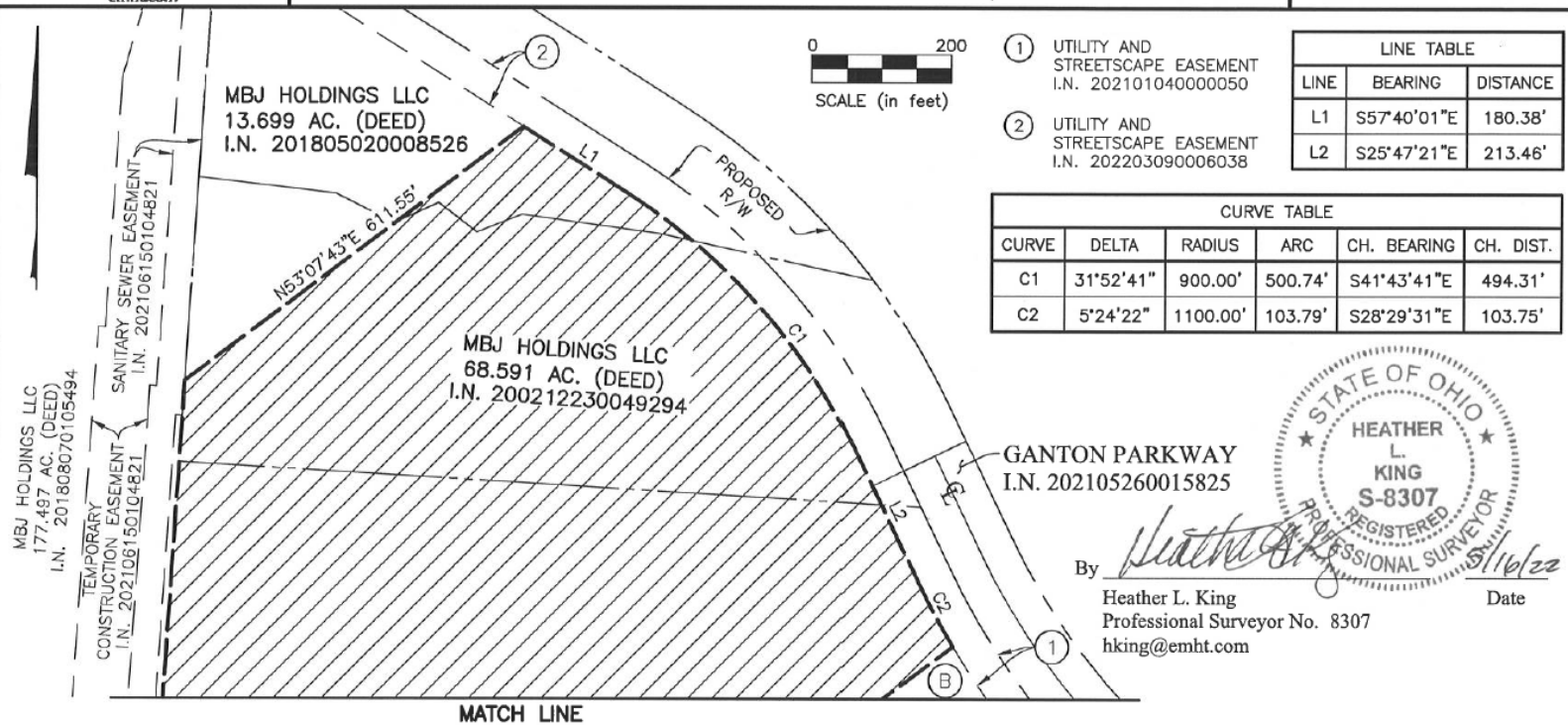


Evans, Mechwart, Hambleton & Tilton, Inc.  
Engineers • Surveyors • Planners • Scientists  
5500 New Albany Road, Columbus, OH 43054  
Phone: 614.775.4500 Toll Free: 888.775.3648  
emht.com

# CONSERVATION EASEMENT

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

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





Evans, Mechwart, Hambleton & Tilton, Inc.  
Engineers • Surveyors • Planners • Scientists  
5000 New Albany Road, Columbus, OH 43054  
Phone: 614.775.4300 Fax: 614.775.3648  
emht.com

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

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

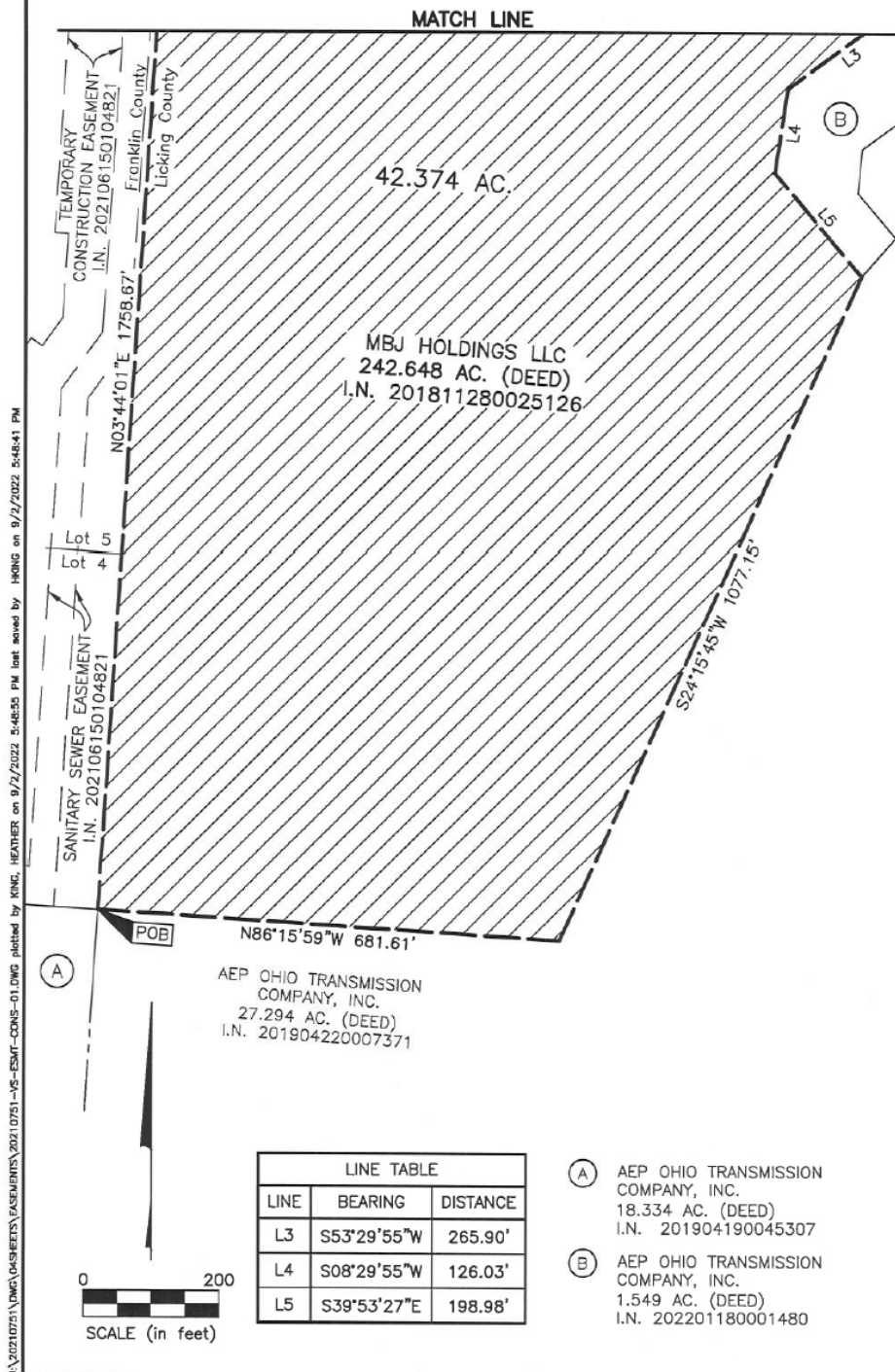


Exhibit B  
Legal Description of Conservation Easement Area

See attached.

**CONSERVATION EASEMENT**  
**42.374 ACRES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Heather L. King* 5/16/22

Heather L. King  
Professional Surveyor No. 8307

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



## ORDINANCE O-13-2023

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

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

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

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

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

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

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

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

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

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

**CERTIFIED AS ADOPTED** this \_\_\_\_\_ 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: 01/06/2023

Introduced: 01/17/2023

Revised:

Adopted:

Effective:

**CONSERVATION EASEMENT AGREEMENT**

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

**RECITALS:**

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

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

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

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



## **AGREEMENT:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**GRANTOR:**

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

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

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

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

STATE OF OHIO  
COUNTY OF FRANKLIN

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

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



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

**GRANTEE:**

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

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

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

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

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

STATE OF OHIO  
COUNTY OF FRANKLIN

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

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

Approved as to Form:

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

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



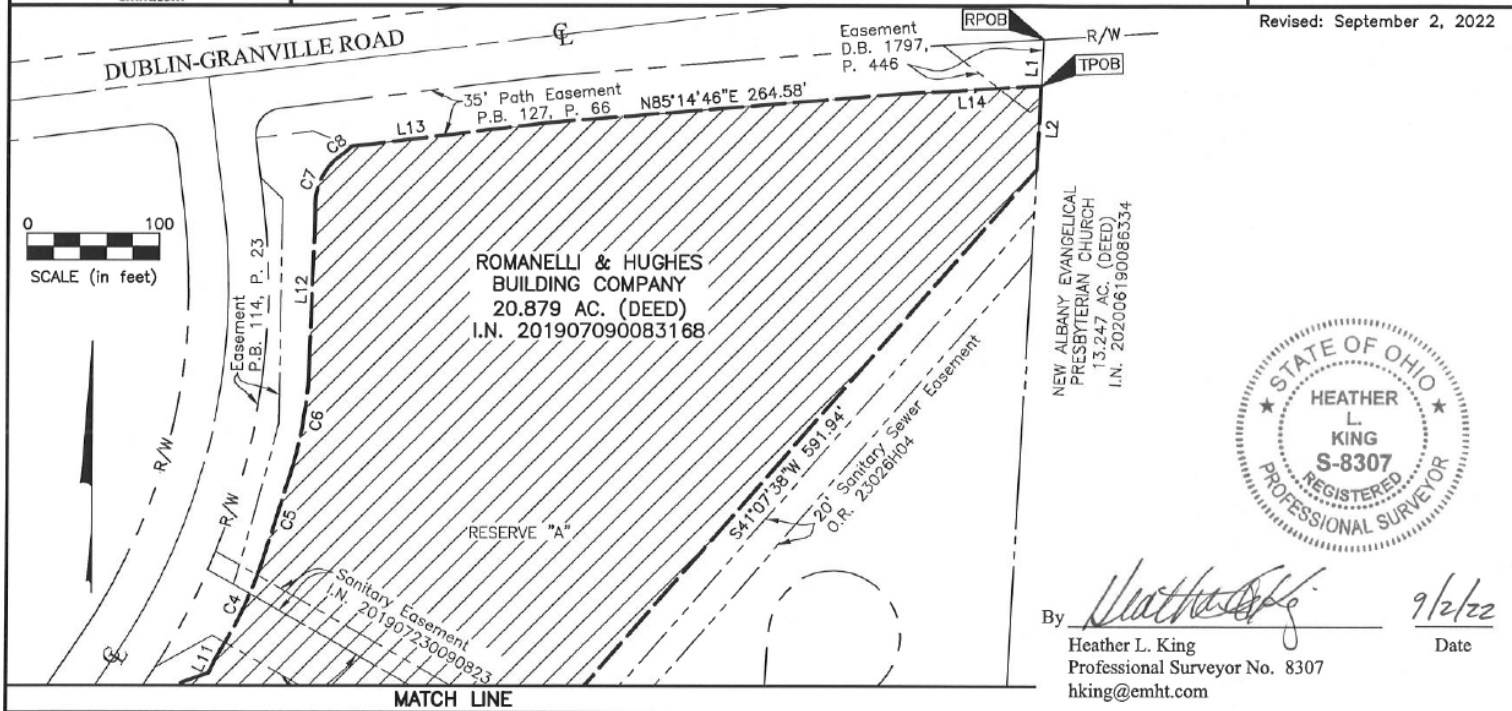
Evans, Mechwart, Hamblen & Tilton, Inc.  
Engineers • Surveyors • Planners • Scientists  
5500 New Albany Road, Columbus, OH 43054  
Phone: 614.775.4500 Toll Free: 888.775.3648  
emht.com

# CONSERVATION EASEMENT

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

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

Revised: September 2, 2022



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Exhibit A  
Depiction of Conservation Easement Area



Evans, Mechwart, Hambleton & Tilton, Inc.  
Engineers • Surveyors • Planners • Scientists  
5500 New Albany Road, Columbus, OH 43054  
Phone: 614.775.4300 Fax: 614.775.3646  
emht.com

## CONSERVATION EASEMENT

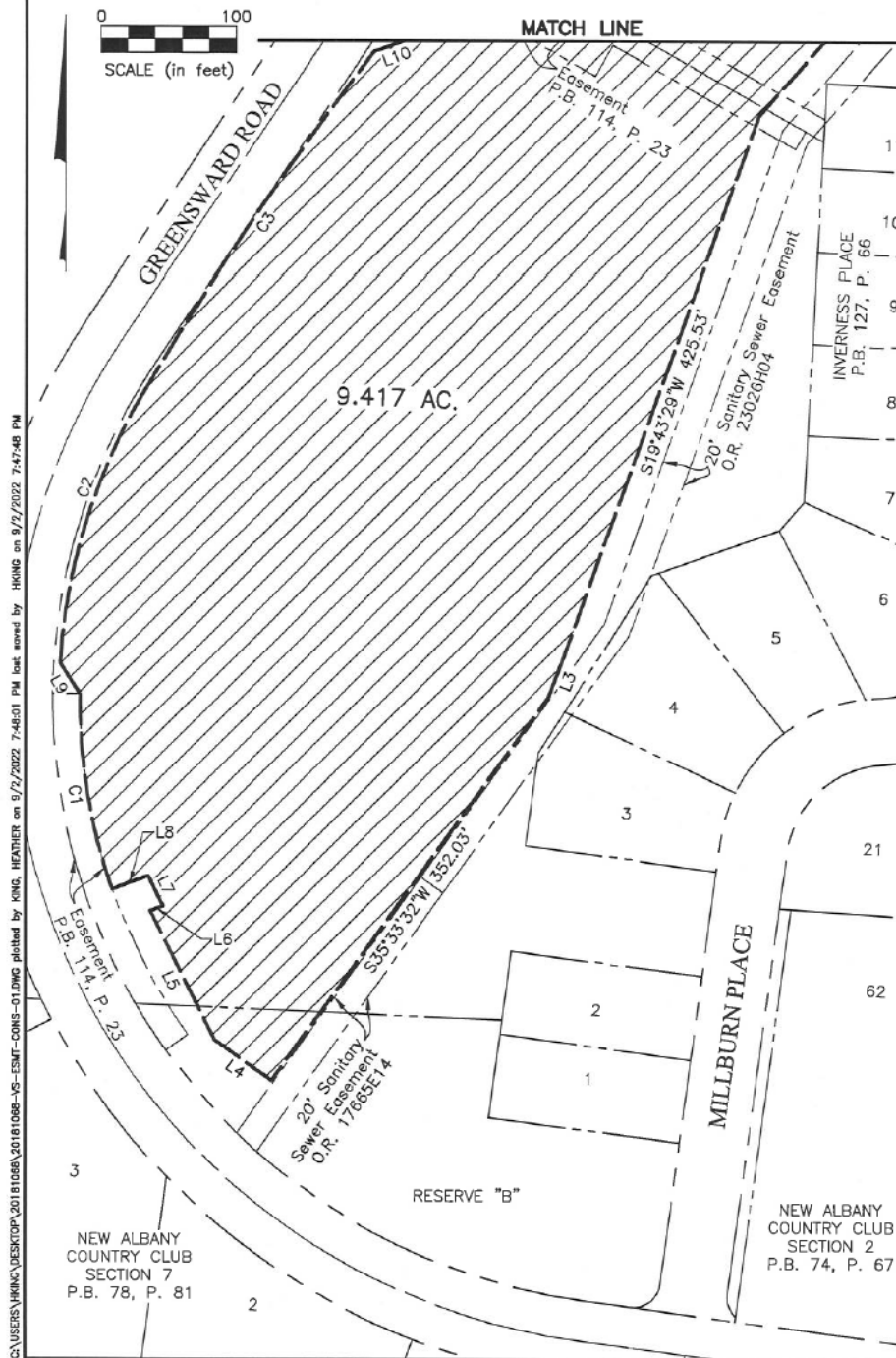
QUARTER TOWNSHIP 3, TOWNSHIP 2, RANGE 16

UNITED STATES MILITARY DISTRICT

CITY OF COLUMBUS, COUNTY OF FRANKLIN, STATE OF OHIO

Date: April 24, 2019 Scale: 1" = 100' Job No: 2018-1068 Sheet No: 2 of 3

Revised: September 2, 2022





Evans, Mechwart, Hambleton & Titus, Inc.  
Engineers • Surveyors • Planners • Scientists  
5500 New Albany Road, Columbus, OH 43254  
Phone: 614.775.6500 Toll Free: 888.775.5648  
emht.com

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

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

Revised: September 2, 2022

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CONSERVATION EASEMENT**

**9.417 ACRES**

**-2-**

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

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

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

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

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

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

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

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



EVANS, MECHWART, HAMBLETON & TILTON, INC.

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

*7/2/22*  
Date

MAK:sy  
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## RESOLUTION R-06-2023

### **A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO A DEVELOPMENT AND SUPPLY AGREEMENT WITH NEW ALBANY DATA CENTER LLC AND NEW ALBANY DATA CENTER SPE, LLC**

**WHEREAS**, pursuant to Resolution No. R-11-2022 adopted by New Albany City Council on March 1, 2022, the City entered into a Development and Supply Agreement with LPC Midwest LLC on March 9, 2022, which sets forth the City's and the Company's assurances and agreements in connection with the development of the Project (as defined in the Development and Supply Agreement); and

**WHEREAS**, on May 13, 2022, the City and LPC Midwest LLC entered into an Assignment and Assumption of the Development and Supply Agreement with New Albany Data Center LLC; and on July 18, 2022, the City and New Albany Data Center LLC entered into a Partial Assignment and Assumption of the Development and Supply Agreement with New Albany Data Center SPE, LLC (the "Companies"); and

**WHEREAS**, in support of the Project, the Companies and the City desire to further amend the Development and Supply Agreement in recognition that the City has seen continuous investment into the New Albany International Business Park, which has prompted the City to evaluate, modify and create new infrastructure to create meaningful and purposeful roadway and other utility connections within the City; and

**WHEREAS**, the need exists to amend the Development and Supply Agreement to reflect new infrastructure improvements that need to be made within the city of New Albany; and

**WHEREAS**, to support the development of other sites in the area, the Companies have agreed to work in good faith with the City to provide right-of-way and any necessary temporary and/or permanent easements along a Horizon Court extension (respectively, the "Horizon Court extension" as defined in the Amendment to Development and Supply Agreement) on commercially reasonable terms and in specific locations acceptable to the Companies.

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

**Section 1. First Amendment to Development and Supply Agreement.** The First Amendment to Development and Supply Agreement, by and between the City and the Companies, in the form presently on file with the Community Development Department, is hereby approved and authorized with any changes therein and amendments thereto not inconsistent with this

Resolution and not substantially adverse to this City which shall be approved by the city manager. The city manager, for and in the name of this City, is hereby authorized to execute the Amendment to Development and Supply Agreement and approve the character of any changes or amendments thereto as not inconsistent with this Resolution and not substantially adverse to this City that are approved by the city manager, which approval shall be conclusively evidenced by the city manager's execution of that CRA Agreement.

**Section 3. Compliance with the Law.** This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in an open meeting of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

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

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

**Attest:**

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

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

**Approved as to form:**

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

**Legislation dates:**

Prepared: 01/05/2023  
Revised: 01/10/2023  
Introduced: 01/17/2023  
Adopted:  
Effective:





## RESOLUTION R-07-2023

### **A RESOLUTION TO APPROVE A FEE PAYMENT IN LIEU OF LEISURE TRAIL CONSTRUCTION IN ACCORDANCE WITH CODIFIED ORDINANCE SECTIONS 1165.06 AND 1187.18 AT 5892 JOHNSTOWN ROAD AS REQUESTED BY MEMMER HOMES**

**WHEREAS**, codified ordinance section 1165.06(b) requires the developer/owner to provide and pay the entire cost of improvements to land including construction of leisure trails; and

**WHEREAS**, codified ordinance section 1165.06(c) allows for a fee-in-lieu of construction of a required leisure trail where special circumstances exist; and

**WHEREAS**, codified ordinance section 1187.18 sets forth the criteria for approval by which council may approve a fee-in-lieu of leisure trail construction and a calculation to determine the fee payment; and

**WHEREAS**, the applicant has submitted a request to pay a fee-in-lieu of construction of a leisure trail at 5892 Johnstown Road and staff has determined that the request is complete according to codified ordinance section 1187.18(c); and

**WHEREAS**, staff has determined that sufficient right-of-way is dedicated in order for the city to complete the trail construction at some time in the future if deemed appropriate.

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

**Section 1:** Council hereby agrees that the developer/owner has proven that the construction of the leisure trail is not appropriate due to one of the following conditions outlined in section 1187.18 of the codified ordinances:

- a. Leisure trail construction is impracticable due to topographical conditions or site constraints;
- b. Leisure trail does not exist in the area, there is not a likelihood for sidewalks and/or trails to be constructed in the near future, and that a fee in-lieu would better serve the community than a sidewalk or trail installed at the required location.

**Section 2.** Council hereby adopts a motion establishing a priority for a fee payment in lieu of leisure trail construction for the subject property.

**Section 3.** Council hereby approves a recommendation from the city engineer regarding the calculation of the fee and, in accordance with codified ordinance section 1187.18(e), requires that permits for construction or improvements will not be issued by the municipality for the subject development until the fee payment is received.

**Section 4.** It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of 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 5.** 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: 01/03/2023  
Introduced: 01/17/2023  
Revised:  
Adopted:  
Effective: