



**ORDINANCE O-39-2024**

**AN ORDINANCE TO ACCEPT THE LIMITED WARRANTY DEED FOR THE PARCEL KNOWN AS 222-000066-00 (97 E. MAIN STREET) FROM THE NEW ALBANY COMPANY LLC**

**WHEREAS**, the City of New Albany has been in discussions with the New Albany United Methodist Church (NAUMC) and Northwest Eye Surgeons (NWES) about right-of-way needs to support the Market Street Extension project; and

**WHEREAS**, the joint-use driveway for NWES and NAUMC requires relocation to accommodate the right-of-way needs for the reconstruction of Third Street and US-62 as part of the Market Street Extension project; and

**WHEREAS**, as a result of the discussions between the City of New Albany and The New Albany Company LLC, The New Albany Company LLC has agreed to donate a parcel of property to the City of New Albany subject to restrictions agreed upon and contained in the Limited Warranty Deed to facilitate the relocation of the NAUMC and NWES joint-use drive; and

**WHEREAS**, the limited warranty deeds have since been provided to the City of New Albany by The New Albany Company LLC; and

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

**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 accepts the land, described in the limited warranty deed attached hereto as Exhibit A and shown on the map attached hereto as Exhibit B.


**Section 2.** The limited warranty deed is attached to this ordinance and made part hereof as is fully reproduced herein.


**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(A) of the charter of the City of New Albany, this ordinance be in effect on and after the earliest period allowed by law.

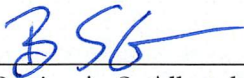
CERTIFIED AS ADOPTED this 05 day of Nov, 2024.

**Attest:**

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

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

**Approved as to form:**

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

<b>Legislation dates:</b>	
Prepared:	10/04/2024
Introduced:	10/15/2024
Revised:	
Adopted:	11/05/2024
Effective:	12/05/2024

**Exhibit A - O-39-2024**

**LIMITED WARRANTY DEED**

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

**Property:** That certain 0.104 +/- acre tract situated in the City of New Albany, Franklin County, Ohio and being more particularly described on Exhibit A attached hereto and incorporated herein (the “**Property**”).

**Tax Parcel No:** A portion of Franklin County Auditor’s Tax Parcel Number 222-000066-00

**Property Address:** 97 E. Main Street, New Albany, Ohio 43054

**Prior Instrument Reference:** Instrument 200705310094771 in the Recorder’s Office, Franklin County, Ohio

The Property conveyed hereby is made subject to: (i) easements, conditions, restrictions and reservations of record, (ii) real property taxes and assessments which are a lien but not yet due and payable, (iii) applicable zoning and building laws, (iv) rights of the public in legal highways, and the following:

1. Without the prior written approval of Grantor, which approval shall not be unreasonably withheld, conditioned or delayed, Grantee shall not (i) place, erect or install any Improvements (as hereinafter defined) on the Property, (ii) install or remove any plants, trees or shrubs, or (iii) excavate, construct, reconstruct or materially alter any

Improvements on the Property. Prior to commencing any Improvements, Grantee shall submit to Grantor for approval a set of plans, drawings and specifications, including color renderings where appropriate, for the Improvements. Grantor shall provide written notice of approval or disapproval of such plans, drawings and/or specifications no later than ten (10) business days after receipt thereof. All Improvements shall be constructed in accordance with the approved plans. If Grantor disapproves of any Improvements, Grantor shall provide suggestions for the modification thereof at the same time it provides its notice of disapproval to Grantee. For purposes of this Limited Warranty Deed (this "**Deed**"), the term "Improvements" means any and all buildings and structures (whether permanent or temporary), parking areas, loading areas, fences, walls, hedges, plantings, ponds, lakes, streams, exterior temporary or permanent signs, bulk or exterior storage/sales area, material changes in any exterior color or shape, excavation and any and all other site work including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing. "Improvements" does not include turf, shrub, or tree repair or replacement or any other minor repair or replacement which does not change exterior colors or exterior appearances.

Grantor shall have the right to prosecute any proceedings at law or in equity against any person violating or attempting to violate or defaulting upon any of the provisions contained in this Deed. Such proceedings shall include, without limitation, the right to restrain by injunction any violation or threatened violation of any of the terms or covenants of this Deed, or to obtain a decree to compel performance of any such term or condition, it being agreed that the remedy at law for a breach of any such term or covenant may not be adequate. In the event that Grantor notifies Grantee that any Improvements have been made or altered on the Property in a manner that violates any approval required hereunder and Grantee does not, within thirty (30) days after Grantee's receipt of Grantor's notice, cure such condition or provide a written plan to Grantor for curing such condition in a manner that is acceptable to Grantor in its reasonable discretion or dispute in writing Grantor's notice of violation, then Grantor shall have a limited right of entry upon the Property for the purpose of curing such offending condition and shall be reimbursed for the costs thereof by Grantee within thirty (30) days after delivering an invoice for such costs to Grantee. The right to cure offending conditions as provided hereunder shall not include the right to remove or alter any buildings or structures or other Improvements the removal or alteration of which would materially and negatively affect the ownership and operation of the Property.

2. No portion of the Property may be used for any of the following uses (collectively "**Prohibited Uses**"):
  - a. Any mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction);
  - b. Any "head shop" or any establishment displaying or selling marijuana or drug paraphernalia;

- c. Any gambling facility or operation, including but not limited to, off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted on the Property;
- d. Any liquor store, carryout or other establishment with its principal purpose being the sale of alcoholic beverages for consumption off the Property;
- e. Any bar or tavern that derives more than thirty percent (30%) of its gross revenues from the sale of alcoholic beverages for consumption on the Property;
- f. Any "drive through" sales of beer, wine or other alcoholic beverages;
- g. Any automobile, truck, recreational vehicle or other vehicle or boat sales, leasing or display; provided, however, that an automobile repair shop or tire store shall be permissible;
- h. Any animal-raising facility, pet shop or boarding facility; provided, however, that a veterinary clinic, pet grooming facility or pet supply shop shall be permissible.
- i. Any mortuary, crematorium, funeral home or similar facility;
- j. Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation;
- k. Any use which is a public or private nuisance;
- l. Any dumping, disposing, incineration or reduction of garbage (exclusive of appropriately screened dumpsters located in the rear of any buildings);
- m. Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
- n. Any use which causes any unreasonably objectionable or unpleasant odors to emanate from any portion of the Property to any adjoining property (normal cooking odors from restaurants not being prohibited);
- o. The placement or permitting of any cellular or mobile telephone or communication towers, aerials or antennae that are visible from the ground;
- p. The placement or permitting of any radio, television or unreasonably loud speaker or amplifier on the roof or outside the Property or where the same can be seen or heard from outside any building or improvement on the Property in a manner which unreasonably annoys any occupants of any property in the New Albany Business Park and their invitees; or

- q. The solicitation of any business through the use of hand-held signs or the distribution of any leaflets or other advertising material in the parking areas or other exterior areas of the Property.

The restrictions set forth in this Section 1 and 2 shall run with and encumber the Property and shall be binding upon Grantee and all individuals or entities now or hereafter having right, title or interest in or to the Property or any part thereof; provided, however, that, notwithstanding any other provision of this Deed, the restrictions in this Section 1 and 2 shall expire and be of no further force or effect on the fiftieth (50<sup>th</sup>) anniversary of the date on which this Deed is recorded.

*[Signature page, acknowledgment, and exhibit follow]*



**Exhibit A**

Please see attached.



**LEGAL DESCRIPTION**  
**0.104 ACRE**  
**LOT SPLIT**

Situated in the State of Ohio, County of Franklin, in the City of New Albany, and being in Lot 39, Quarter Township 4, Township 2, Range 16, United States Military Lands, and being a portion of a 0.271 acre tract, as conveyed to The New Albany Company LLC, as recorded in Instrument Number 200705310094771, all records being of record in the Recorder's Office, Franklin County, Ohio, and being more particularly described as follows:

**COMMENCING** at a found iron pin capped "EP Ferris", being the westerly corner of said 0.271 acre tract, also being the northerly corner of a 0.677 (Orig.) acre tract, as conveyed to NWES Realty Partners III LLC, as recorded in Instrument Number 201605100058023, also being on the southeasterly right-of-way line of Main Street (U.S. 62) also being the easterly corner of a 0.023 acre tract as conveyed to the City of New Albany, Ohio, as recorded in Instrument Number 201204180053605 and also being the southerly corner of a 0.5198 acre tract as conveyed to the City of New Albany, Ohio, as recorded in Instrument Number 201308010129621, said found iron pin being the **TRUE POINT OF BEGINNING**;

Thence along the southeasterly right-of-way line of said Main Street (U.S. 62) and said 0.5198 acre tract, along the northwesterly line of said 0.271 acre tract, North 43°04'57" East, 55.80 feet to an iron pin set;

Thence across said 0.271 acre tract South 47°19'45" East, 94.94 feet to an iron pin set, said pin being on the southeasterly line of said 0.271 acre tract and also being on the northwesterly line of said 0.677 acre tract;

Thence along the southeasterly line of said 0.271 acre tract and along the northwesterly line of said 0.677 acre tract, South 50°40'42" West, 43.75 feet to a found 3/4" iron pin, said iron pin being the southerly corner of said 0.271 acre tract and northerly corner of said 0.677 acre tract;

Thence along the southwesterly line of said 0.271 acre tract and along the northeasterly line of said 0.677 acre tract, North 55°17'17" West, 90.11 feet to a found iron pin capped "EP Ferris", said iron pin being the **TRUE POINT OF BEGINNING**, containing 0.104 acres (4544 S.F.), more or less.

Subject however to all legal easements, restrictions, and rights of way of record and of records in the respective utility offices.

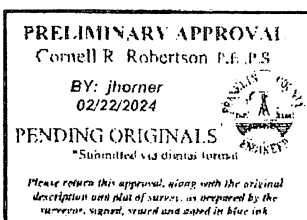
Iron pins set are 5/8" rebar, 30" in length with a yellow plastic cap with "EP FERRIS SURVEYOR 8342" inscribed on top.

The bearings for this survey are based on the Ohio State Plane Coordinate System, South Zone, NAD83 (2011), being the center line of Main Street (U.S. 62), bearing North 43°04'57" East. The bearings originated from field traverse which was referenced to said coordinate system by GPS observations and observations of selected stations in the Ohio Department of Transportation Virtual Reference Station network.

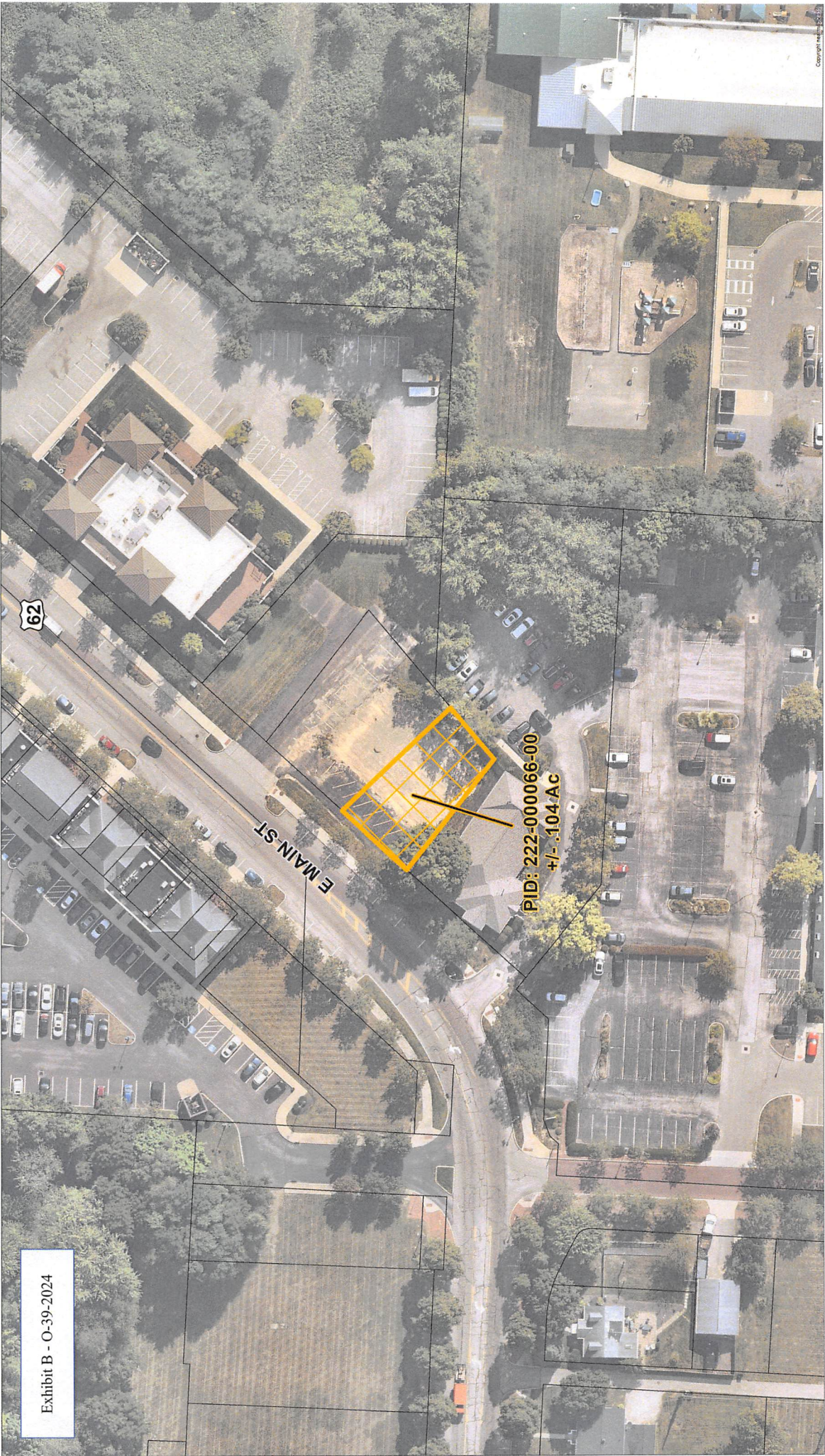
This description was prepared by Matthew Lee Sloat, Ohio Registered Professional Surveyor 8342, of E.P. Ferris and Associates, Inc. on February 21, 2024 and is based on field surveys conducted by E.P. Ferris and Associates, Inc. between March 2021 through Septe 2022 under the direct supervision of Matthew Lee Sloat, Ohio Registered Professional Surveyor 8342.



Matthew Lee Sloat, PS 8342      Date







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E MAIN ST

PID: 222-000066-00  
+/- .104 AC

Exhibit B - O-39-2024

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