



## ORDINANCE O-39-2025

**AN ORDINANCE TO APPROVE THE FINAL PLAT FOR 6 RESIDENTIAL LOTS AND ONE RESERVE ON 0.75 +/- ACRES FOR THE RICHMOND SQUARE LOT 10 SUBDIVISION GENERALLY LOCATED NORTH OF MAIN STREET, SOUTH OF MCDONALD LANE, AND WEST OF KESWICK DRIVE, AS REQUESTED BY AJ SCOTT**

**WHEREAS**, an application to approve the Richmond Square Lot 10 subdivision 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 15, 2025, recommended approval of this final plat (FPL-70-2025); and

**WHEREAS**, the final plat is consistent with the certificate of appropriateness application that the Architectural Review Board approved during their meeting on June 10, 2024 (ARB-106-2023); and

**WHEREAS**, the final plat includes 0.75 +/- acres of land to be subdivided into 6 residential lots and 1 reserve; and

**WHEREAS**, the city engineer certifies that the Richmond Square Lot 10 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 final plat is attached to this ordinance as Exhibit A and made a part herein approved.

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

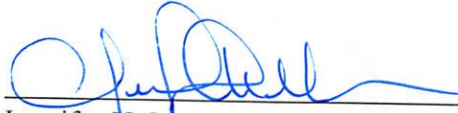
**Section 3.** Pursuant to Article VI, Section 6.07(B) of the City of New Albany Charter, this ordinance shall take effect on and after the earliest period allowed by law.

CERTIFIED AS ADOPTED this 7 day of October, 2025.

Attest:

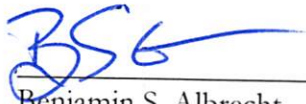


Sloan T. Spalding  
Mayor



Jennifer H. Mason  
Clerk of Council

Approved as to form:



Benjamin S. Albrecht  
Law Director

**Legislation dates:**

Prepared: 09/05/2025

Introduced: 09/16/2025

Revised:

Adopted: 10/07/2025

Effective: 11/06/2025

RESUBDIVISION OF PART OF LOT 10 OF  
NEW ALBANY COUNTRY CLUB SECTION 21  
RICHMOND SQUARE

Situated in the State of Ohio, County of Franklin, City of New Albany, and in Quarter Township 3, Township 2, Range 16, United States Military Lands, containing 0.751 acre of land, more or less, and 0.751 acre being a resubdivision of part of Lot 10 of the subdivision entitled "New Albany Country Club Section 21 Richmond Square" of record in Plat Book 109, Page 5, and part of that tract of land conveyed to McDONALD LANE DEVELOPMENT COMPANY, LLC, by deed of record in Instrument Number 20241227015752, Recorder's Office, Franklin County, Ohio.

The undersigned, McDONALD LANE DEVELOPMENT COMPANY, LLC, in Ohio limited liability company, by TRAVIS LINDNER, Construction Project Manager, owner of the lands platified herein, duly authorized in the premises, does hereby certify that this plat correctly represents an "RESUBDIVISION OF PART OF LOT 10 OF NEW ALBANY COUNTRY CLUB SECTION 21 RICHMOND SQUARE", a subdivision containing Lots numbered 18 to 25, both inclusions, and an area designated as Reserve "A", does hereby accept this plat of same.

Easements are hereby reserved in, over and under areas designated on this plat as "Easements". 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. No building shall be constructed in any area over which easements are hereby reserved.

In Witness Whereof, TRAVIS LINDNER, Construction Project Manager of McDONALD LANE DEVELOPMENT COMPANY, LLC, has hereunto set his hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed and Acknowledged  
In the presence of: McDONALD LANE DEVELOPMENT COMPANY, LLC

By TRAVIS LINDNER,  
Construction Project Manager

STATE OF OHIO  
COUNTY OF FRANKLIN ss:

Before me, a Notary Public in and for said State, personally appeared TRAVIS LINDNER, Construction Project Manager of McDONALD LANE DEVELOPMENT COMPANY, LLC, who acknowledged the genuineness of the foregoing instrument to be his voluntary act and deed and the voluntary act and deed of said McDONALD LANE DEVELOPMENT COMPANY, LLC, for the uses and purposes expressed herein.

In Witness Whereof, I have hereunto 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 \_\_\_\_\_, at such, by the Council for the City of New Albany, Ohio. Approval of this plat shall become null and void unless recorded prior to \_\_\_\_\_, 20\_\_\_\_.

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

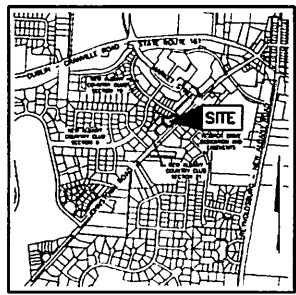
Deputy Auditor, Franklin County, Ohio

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

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

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

Plat Book \_\_\_\_\_, Page \_\_\_\_\_



LOCATION MAP AND BACKGROUND DRAWING  
NOT TO SCALE

SURVEY DATA:

**BASES OF BEARINGS:** The bearings shown herein are based on the same meridian as the bearings shown on the subdivision plat entitled "New Albany Country Club Section 19" of record in Plat Book 101, Page 21, Recorder's Office, Franklin County, Ohio.

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

**IRON PINS:** where indicated herein, unless otherwise noted, are to be set and are iron pins, thirteen-eighths 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 herein, 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 and flange 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 (punch hole) 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 subdivision improvements. The New Albany, Ohio, Municipal Engineer shall be notified when the markers are in place.

SURVEYED & PLATED  
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)

By \_\_\_\_\_  
Professional Surveyor No. 7865 Date \_\_\_\_\_

# RESUBDIVISION OF PART OF LOT 10 OF NEW ALBANY COUNTRY CLUB SECTION 21 RICHMOND SQUARE

2/2

**NOTE "A"** - At the time of platting, all of Resubdivision of Part of Lot 10 of New Albany Country Club Section 21 Richmond Square is within Zone X (Areas determined to be outside 0.2% annual chance floodplain) as delineated on FEMA Flood Insurance Rate Map Community Panel Number 34049N024E, for Franklin County, Ohio and incorporated areas, with an effective date of June 17, 2008.

## NOTE "B" - ACREAGE BREAKDOWN

Total acreage 0.755 Ac.  
Acreage in lots 0.692 Ac.  
Acreage in Reserve 0.063 Ac.

**NOTE "C"** - ACREAGE BREAKDOWN: Resubdivision of Part of Lot 10 of New Albany Country Club Section 21 Richmond Square is comprised of all of the following Franklin County Parcel Number:

122-003914 0.755 Ac.

**NOTE "D"** - DEPRESSED DRIVEWAYS: Depressed driveways are hereby prohibited on all lots in Resubdivision of Part of Lot 10 of New Albany Country Club Section 21 Richmond Square. 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 "E"** - RESERVE "A": Reserve "A" is designated and delineated herein, and any private utilities located within Reserve "A" shall be owned and maintained by an association composed of the owners of Lots 18 to 23.

**NOTE "F"** - 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 Resubdivision of Part of Lot 10 of New Albany Country Club Section 21 Richmond Square does not imply any approval of the use as it may pertain to wetlands.

**NOTE "G"** - The purpose of this plat is to show certain property rights of way and easement boundaries as of the time of platting. There are additional lot setbacks and restrictions in the city zoning regulations that are not reflected on this plat. The limitations and requirements may change from time to time and should be reviewed to determine the then current applicable use and development limitations of the zoning code as adopted by the government authority having jurisdiction. Note "H" should not be construed as a zoning plat or subdivision restriction, private use restrictions, covenants running with the land or title encumbrances of any nature except to the extent specifically identified as such.

**NOTE "H"** - RELEASE OF CERTAIN EASEMENTS: All rights and easements granted to the City of New Albany, Ohio by the subdivision plat entitled "New Albany Country Club Section 21 Richmond Square", of record in Plat Book 109, Page 5, in, over and under the area indicated herein by hatching, is hereby released and rendered null and void.

**NOTE "I"** - 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 these means have facilities, could conveniently be shown on this plat. Existing recorded easement information about Resubdivision of Part of Lot 10 of New Albany Country Club Section 21 Richmond Square 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.

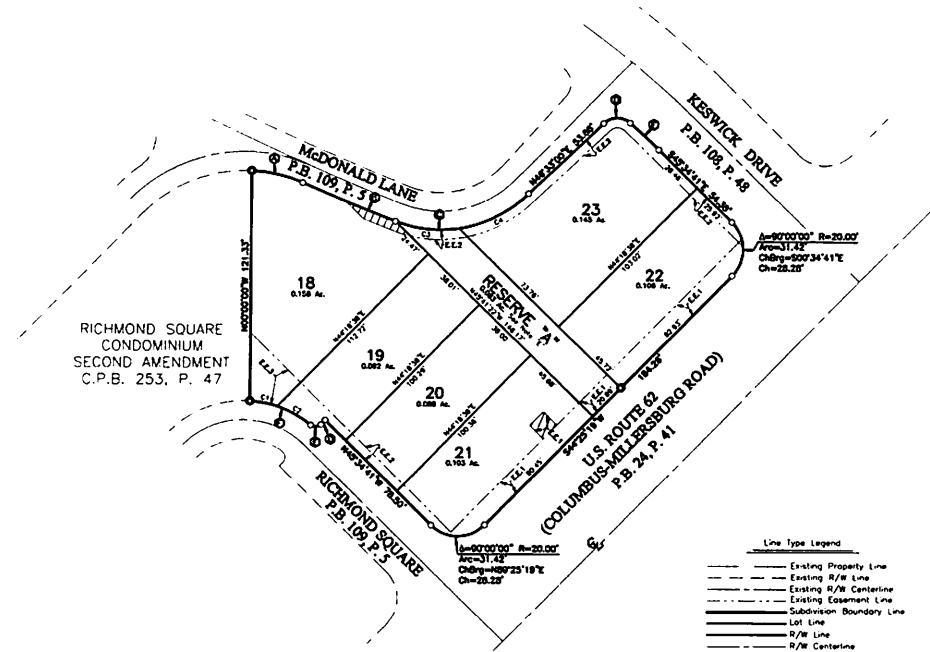


CURVE NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD DISTANCE
C1	15°10'14"	10.00'	14.94'	N 79°03'36" W	14.62'
C2	20°38'08"	55.00'	20.14'	N 80°55'56" W	20.03'
C3	30°15'18"	65.00'	34.32'	S 82°41'35" E	33.93'
C4	34°45'26"	65.00'	41.70'	N 82°48'03" E	40.99'

## Legend

- BL = Building Line
- E.E.1 = Existing 10' Easement P.B. 109, P. 5
- E.E.2 = Existing 5' Easement P.B. 109, P. 5
- E.E.3 = Existing Easement P.B. 109, P. 5
- /// = Easement to be released

- ① A=21°12'21" R=75.00'  
Arc=27.78'  
ChBrg=107°02'28"W  
Ch=27.80'
- ② A=20°40' R=1417.30'  
Arc=52.85'  
ChBrg=09°30'11"E  
Ch=52.85'
- ③ A=67°00'38" R=65.00'  
Arc=76.02'  
ChBrg=40°35'37"E  
Ch=71.78'
- ④ A=67°30'40" R=10.00'  
Arc=13.27'  
ChBrg=N89°10'43"E  
Ch=13.53'
- ⑤ A=2°28'12" R=478.00'  
Arc=20.82'  
ChBrg=54°46'17"E  
Ch=20.81'
- ⑥ S44°25'19"W  
3.21'
- ⑦ A=69°06'19" R=4.00'  
Arc=5.94'  
ChBrg=N89°28'28"E  
Ch=5.41'
- ⑧ A=36°15'23" R=33.00'  
Arc=34.80'  
ChBrg=N89°34'03"W  
Ch=34.23'



- Line Type Legend
- Existing Property Line
- Existing R/W Line
- Existing R/W Centerline
- Existing Easement Line
- Subdivision Boundary Line
- Lot Line
- R/W Line
- R/W Centerline
- Easement Line



## **RESOLUTION R-36-2025**

### **A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A COMMUNITY REINVESTMENT AREA AGREEMENT AND A MEMORANDUM OF UNDERSTANDING WITH BEECH AXIS, LLC, AND MAKING RELATED AUTHORIZATIONS**

**WHEREAS**, Council previously created the current Oak Grove II Community Reinvestment Area by its Resolution No. R-17-09 adopted March 3, 2009, as supplemented by its Resolutions No. R-41-10 adopted July 6, 2010, No. R-72-10 adopted November 16, 2010, No. R-53-12 adopted October 12, 2012, No. R-26-13 adopted July 16, 2013, No. R-72-14 adopted September 9, 2014, No. R-49-2015 adopted November 17, 2015, No. R-45-16 adopted November 1, 2016, No. R-02-17 adopted February 7, 2017, No. R-17-18 adopted July 17, 2018, No. R-41-18 adopted November 6, 2018, No. R-05-2019 adopted February 19, 2019, No. R-37-2019 adopted August 6, 2019, No. R-15-2021 adopted April 6, 2021, No. R-46-2021 adopted September 21, 2021, No. R-09-2022 adopted February 1, 2022, No. R-18-2022 adopted May 3, 2022, No. R-38-2022 adopted November 15, 2022, No. R-21-2023 adopted April 18, 2023, No. R-46-2023 adopted November 7, 2023, and No. R-25-2025 adopted July 15, 2025; and

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

**WHEREAS**, Beech Axis, LLC (the "Company") has submitted to the City the application attached to the Community Reinvestment Area Agreement (the "CRA Agreement") referred to in Section 1 of this Resolution (the "Agreement Application"), together with the fee referred to in Section 6 of that CRA Agreement; and

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

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

**WHEREAS**, the Boards of Education of both the Johnstown-Monroe Local School District and the Licking County Joint Vocational School District (also known as "Career and Technology Education Centers of Licking County" or "C-TEC") have each waived their rights to receive

notice under Section 5709.83 of the Revised Code in accordance with their respective compensation agreements entered into with the city of New Albany; and

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

**Section 1. Community Reinvestment Area Agreement.** The CRA Agreement for the Project, by and between the City and the Company, in the form presently on file with the Clerk of the Council which provides for a 100% CRA exemption up to 15-years for the proposed Project is hereby approved and authorized with any changes therein and amendments thereto not inconsistent with this Resolution and not substantially adverse to this City which shall be approved by the city manager. The city manager, for and in the name of this City, is hereby authorized to execute that CRA Agreement and approve the character of any changes or amendments thereto as not inconsistent with this Resolution and not substantially adverse to this City that are approved by the city manager, which approval shall be conclusively evidenced by the city manager's execution of that CRA Agreement.

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

**Section 3. Further Authorizations.** This Council hereby further authorizes and directs the city manager, the director of law, the director of finance, the community development director, the clerk of council, or any such other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions (including by not limited to making application and preliminary arrangements for financing that is then subject to formal approval by this Council) as may be appropriate to implement this Resolution and the transactions referenced or contemplated in this Resolution and the CRA and the MOU authorized and approved in this Resolution.

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

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

CERTIFIED AS ADOPTED this 7 day of October, 2025

Attest:

  
Sloan T. Spalding  
Mayor

  
Jennifer H. Mason  
Clerk of Council

Approved as to form:

  
Benjamin S. Albrecht  
Law Director

**Legislation dates:**

Prepared: 09/24/2025

Introduced: 10/07/2025

Revised:

Adopted: 10/07/2025

Effective: 10/07/2025



## **RESOLUTION R-37-2025**

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A THIRD AMENDED AND RESTATED JOINT OPERATING AGREEMENT TO GOVERN THE OPERATIONS OF THE JEANNE B. MCCOY CENTER FOR THE ARTS AND TO REPLACE THE SECOND AMENDED AND RESTATED JOINT OPERATING AGREEMENT PREVIOUSLY AUTHORIZED BY COUNCIL ON DECEMBER 13, 2016**

**WHEREAS**, in 2004, the Village of New Albany, Franklin County, Ohio (the "Village") entered into agreements with the New Albany Plain Local School District, Plain Township, and the New Albany Community Authority relating to the joint financing, construction, operation and maintenance of a New Albany Performing Arts Center; and

**WHEREAS**, the parties memorialized their understanding and commitment in writing in several documents including a Joint Operating Agreement and a Facilities Financing Agreement together with such additional documents as were necessary or appropriate to carry out the intentions of the parties concerning financing, construction, operation, and maintenance of the Performing Arts Center; and

**WHEREAS**, after 8 years of successful operation benefiting the New Albany community and surrounding central Ohio region, the parties to the initial Joint Operating Agreement determined that an updated agreement was necessary to reflect the management structure of the Jeanne B. McCoy Center for the Arts at that time and to provide a mechanism for the funding of the facility's future capital repairs; therefore, the New Albany City Council adopted Resolution R-58-2016 on December 13, 2016, authorizing the city manager to execute the Second Amended and Restated Joint Operating Agreement; and

**WHEREAS**, from the completion of the Jeanne B. McCoy Center for the Arts, the New Albany Community Foundation played a major role in the funding of the facility's operations; and

**WHEREAS**, prior to the expiration of the initial term of the Second Amended and Restated Operating Agreement on June 30, 2025, the New Albany Community Foundation requested the city assume responsibility for the funding of the facility's operations in order to enable the foundation to focus its financial efforts on grants and programming; and

**WHEREAS**, representatives of the city, Plain Township, and New Albany Plain Local School District (together, the "Owners") met and determined that amendments to the agreement would be necessary in order to accommodate the foundation's request; and



**WHEREAS**, the Owners discussed proposed amendments with representatives of the McCoy Center Board of Trustees and obtained the board's support.

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

**Section 1.** The city manager is hereby authorized and directed to execute a Third Amended and Restated Joint Operating Agreement the same as, or substantially similar to, the document attached hereto and identified as Exhibit A. Said agreement shall replace any and all prior McCoy Center operating agreements.

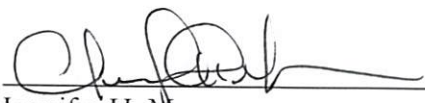
**Section 2.** It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this resolution were adopted in an open meeting and that all deliberations of this council and any of its committees that resulted in such formal action were in meetings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

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


CERTIFIED AS ADOPTED this 7 day of October, 2025

Attest:

  
Sloan T. Spalding  
Mayor

  
Jennifer H. Mason  
Clerk of Council

Approved as to form:

  
Benjamin S. Albrecht  
Law Director

**Legislation dates:**

Prepared: 09/29/2025

Introduced: 10/07/2025

Revised:

Adopted: 10/07/2025

Effective: 10/07/2025

**Exhibit A - R-37-2025**

**THIRD AMENDED AND RESTATED**

**JOINT OPERATING AGREEMENT**

for the

**NEW ALBANY COMMUNITY ARTS CENTER**

between and among

New Albany - Plain Local School District

City of New Albany, Ohio

Plain Township, Ohio

and

Jeanne B. McCoy Community Center for the Arts Corporation

*Effective Date*

*October \_\_\_\_, 2025*

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### **THIRD AMENDED AND RESTATED JOINT OPERATING AGREEMENT**

This THIRD AMENDED AND RESTATED JOINT OPERATING AGREEMENT (the "Agreement"), is entered into as of the \_\_\_\_ day of October, 2025 (the "Effective Date") between and among New Albany - Plain Local School District, Franklin and Licking Counties, Ohio, a political subdivision of the State of Ohio (the "School District"), City of New Albany, Ohio, a municipal corporation and political subdivision organized and existing pursuant to its charter and the laws of the State of Ohio (the "City"), Plain Township, Franklin County, Ohio (the "Township") and Jeanne B. McCoy Community Center for the Arts Corporation, an Ohio non-profit corporation which is tax- exempt as a 501(c)(3) corporation (the "MCA Corporation").

#### **WITNESSETH THAT:**

**WHEREAS**, on November 6, 2001 the electors of the School District approved a bond issue in the amount of \$38,838,000 for the purpose of constructing, improving, furnishing, and equipping a new elementary school with related site improvements thereto; constructing, expanding and improving additions to the high school campus, including building upgrades, furniture, fixtures and equipment; expanding and renovating the high school football stadium and related athletic facilities; acquisition of real estate, technology and fixed and movable equipment for district-wide purposes; and other various district-wide improvements, all to accommodate growth in student population (the "School District Bonds"); and

**WHEREAS**, the Board of Education used \$5,000,000 of the School District Bonds proceeds to partially fund construction of the McCoy Center for the Arts ("MCA") located in the City, on grounds comprised of the below-described donated land which is partially owned by the School District, for the use of the School District pupils and other residents of the City, the Township and the School District; and

**WHEREAS**, The New Albany Company Limited Partnership, a Delaware limited partnership authorized to conduct business in the State of Ohio (the "New Albany Company"), donated approximately 2.98 acres of land adjacent to the School District's main campus upon which the MCA was constructed; and

**WHEREAS**, the City provided \$5,000,000 for the construction of the MCA; and

**WHEREAS**, the Township provided \$3,000,000 for the construction of the MCA; and

**WHEREAS**, the New Albany Community Foundation (the "Community Foundation") provided \$2,300,000 for the construction of the MCA and established an endowment fund with additional funds for the purpose of subsidizing community/school events programming at the MCA; and

**WHEREAS**, the total cost to finance construction of the MCA was approximately \$15,500,000; and

**WHEREAS**, the MCA Corporation was created to support and provide certain services to the MCA; and

**WHEREAS**, the parties to this Agreement desire to share in the use of the MCA and coordinate their efforts so as to maximize the benefit to the pupils of the School District and the other residents of the City, the Township and the School District; and

**WHEREAS**, certain of the parties entered into a School Facilities Agreement with the New Albany Company and the New Albany Community Authority, a new community authority of a new community district and a body corporate and politic all established pursuant to Chapter 349 of the Ohio Revised Code, pursuant to which the New Albany Community Authority caused the MCA to be constructed, furnished and equipped; and

**WHEREAS**, certain of the parties previously entered into a Joint Operating Agreement dated as of December 30, 2004 (the "Original Agreement") for the purpose of establishing a mutually beneficial relationship for the operation and use of the MCA for the benefit of the School District's pupils and the other residents of the City, the Township and the School District and to add the MCA Corporation to the cooperative arrangement; and

**WHEREAS**, the parties to the Original Agreement subsequently entered into an Amended and Restated Joint Operating Agreement as of February 13, 2008 (the "Amended Agreement") to add the MCA Corporation thereto and to effect other mutual agreed changes to the manner in which they will cooperate through a mutually beneficial relationship for the operation and use of the MCA for the benefit of the School District's pupils and the other residents of the City, the Township and the School District; and

**WHEREAS**, the parties entered into a Second Amended and Restated Joint Operating Agreement on February 21, 2017 (the "Second Amended Agreement") to, among other things, clarify the commitments of the parties with regard to the operations and maintenance (Article VII) and the costs of Repairs, Alterations and Improvements (Article VIII); and,

**WHEREAS**, the parties are now entering into this Third Amended and Restated Joint Operating Agreement that fully replaces, restates and supersedes the Second Amended Agreement to, among other things, clarify the commitments of the parties with regard to the operations and costs of the MCA.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions herein contained and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties covenant and agree as follows:

### **Article I** **Definitions**

As used in this Agreement, the following terms have the following meanings unless the context clearly indicates otherwise (with terms defined in the singular to have the same meaning when used in the plural and vice versa):

"Activity Calendar" means the detailed program calendar developed by the Board of Directors, the Manager and the School District representative, consistent with the Priority Use Schedule and setting forth all scheduled events and activities to occur during the Contract Year.

"Agreement" is defined in the preamble to this Agreement.

"Approved Five-Year Capital Repairs, Replacements and Improvement Plan" means the plan by that name Five-Year Capital Improvement Plan approved by the Owners as provided in Section 6.5.

"Board of Education" means the Board of Education of the School District, constituted and organized under the laws of the State of Ohio.

“Board of Directors” means the Board of Directors of the MCA Corporation, which is appointed pursuant to Article VI of this Agreement for the purpose of fundraising, programming and/or for other purposes as determined by the Owners.

“Budget” means the budget to be prepared by the Board of Education and delivered to the Board of Directors and Owners annually by May 31 of each year including projected expenses, the budget year costs from the Five-Year Capital Improvement Plan, and the Board of Education Usage Charge.

“Capital Additions” means any capital item added to the facility after substantial completion of the construction.

“Capital Repairs/Replacements” means repair to or replacement of any capital item existing within the facility at the time of substantial completion of the construction or subsequently made a part thereof.

“City” is defined in the preamble to this Agreement.

“City Representative” means the individual designated from time to time by the City as the contact person for the City under the terms of this Agreement and for matters relating to the use and operation of the MCA.

“Community Events” means non-school events and activities scheduled for and held at the MCA.

“Community Foundation” is defined in the preamble to this Agreement.

“Community Foundation Ex-Officio” means the individual designated from time to time by the Community Foundation to serve as the contact person for the Community Foundation for community members who wish to support the MCA through philanthropic gifts to the endowment for that purpose maintained by the Community Foundation.

“Contract Year” means the fiscal year of the Board of Education, which commences July 1 of each year.

“Facility Fund for Repair/Replacements of Technical Equipment” has the meaning described in Section 8.4.

“Five-Year Capital Repairs, Replacements and Improvement Plan” means the next five- year projection of capital expenditures prepared by the Board of Education, with input from the City, the Township and the Manager, as provided in Section 6.5.

“Manager” means an individual or entity to serve as the Manager who will be responsible for management and/or administrative services, operations/community events, rentals, etc. at the MCA. Subject to contingent proper due diligence, the Manager shall be selected and retained by the City pursuant to a contract with the MCA Corporation.

“MCA” means a facility of approximately 35,000 square feet constructed on the Site, which facility is jointly owned by the City, the Township and the Board of Education.

“MCA Corporation” is defined in the preamble to this Agreement.

“MCA Rental Fees” has the meaning set forth in Section 7.4.

“Non-School Event Usage Fees” means operation and maintenance fees to be charged for the use of the MCA or various areas within the MCA for non-school events, including but not limited to, room use fees, ticketing fees, additional service fees and/or labor and custodial fees.

“Operating Expenses” means the Board of Education's routine expenses of operation, including but not limited to the cost of utilities, custodial service, maintenance, repairs, snow and ice removal, landscape maintenance, and insurance, incurred at or about and relating to the MCA, including the cost of labor, materials, supplies and independent contractors relating thereto.

“Operating Fund” means the fund established and maintained by the Board of Education to hold and account for monies (i) used to pay the Operating Expenses and (ii) deposited and maintained as the Reserve for Replacement Account and disbursed for capital expenditures as provided in this Agreement.

“Operation and Maintenance Fees for Non-School Events” means the fees charged for use of the MCA or various areas within the MCA as described in Section 7.2.

“Original Agreement” is defined in the recitals to this Agreement.

“Owners” means the City, the Township and the School District.

“Priority Use” refers to the right of a party to control usage of a specific area within the MCA during a specific time for purposes of scheduling and holding activities. Should a party choose not to schedule an activity during the period when that party is entitled to Priority Use, then the other parties shall have the right to schedule and hold an activity for and in that area at that time.

“Priority Use Schedule” means the schedule developed by the Manager and the School District Representative for each Contract Year setting forth the times and spaces for Priority Use with respect to the Contract Year.

“Programming Expense” means all expenses directly related to a particular program run by a party, including expenses for Supervision, program supplies, personnel organizing the program, advertisement of the program, and maintenance and custodial services above and beyond the ordinary day-to-day use maintenance and custodial services for the MCA.

“School District” is defined in the preamble to this Agreement.

“School District Bonds” is defined in the recitals to this Agreement.

“School District Representative” means the individual designated from time to time by the School District Superintendent to serve as the representative of the School District under the terms of this Agreement.

“School Year” means each school term during which the School District's schools are in session, as determined by the Board of Education and state law.

“Site” means the parcel of real estate described on EXHIBIT A attached hereto, which is the location for the MCA.

“Student Day” means that portion of the regularly scheduled school day when attendance by the student body is required.



“Supervision” means the obligation to have on-site an adequate number of trained individuals to oversee properly the activities occurring in the MCA

“TIF Agreement” means that certain agreement dated September 4, 2004, implementing tax increment financing and authorizing the creation of a tax increment equivalent fund relating to the MCA, for the benefit of the City.

“TIF Fund” means the fund into which service payments made in lieu of taxes are paid pursuant to the TIF Agreement.

“Township” is defined in the preamble to this Agreement.

“Township Representative” means the individual designated from time to time by the Township as the contact person for the Township under the terms of this Agreement and for matters relating to the use and operation of the MCA.

“Township Trustees” means the Board of Township Trustees of the Township.

## **Article II**

### **Descriptions of the Parties and MCA Facilities**

#### **2.1 Parties.**

The parties to this Agreement are all of the parties recited in the preamble to this Agreement, namely the School District, the City and the Township.

#### **2.2 Facilities.**

The facilities consist of the MCA containing an auditorium, offices, storage, rehearsal and meeting rooms and all other support areas.

#### **2.3 Site.**

The MCA is located on the Site. The Site includes access drives, walkways, parking lots and other common areas over which patrons of the MCA have the non-exclusive right to travel in connection with normal usage thereof. The parties shall continue to utilize the Site solely for purposes related to the MCA. Because the Site is incorporated in part on the School District's campus, the Board of Education shall have the right to impose reasonable restrictions, consistent with the codes of the City, upon the exercise of that right of access.

## **Article III**

### **Principles of Use**

#### **3.1 Public Funding; Compliance with Law.**

The parties acknowledge that the MCA is made possible due to public funding from residents of the City, the Township and the School District. The parties mutually covenant that the MCA shall be operated and maintained in such a way as to comply fully with the terms, conditions, covenants and restrictions relating to the School District Bonds and any other tax- exempt bonds (including bonds of the City and the Township) which may be issued to finance any part of the MCA and with all laws, ordinances, rules and policies imposed by or applicable to the City, the Township or the School District.

### **3.2 Joint Ownership by Board of Education, City and Township.**

The Board of Education (38.5%), the City (38.5%) and the Township (23%), as the Owners, jointly own the Site and the MCA constructed on the Site, as tenants-in-common, in proportion to their financial contribution to the aggregate \$13,000,000 paid by the Owners for the construction thereof.

### **3.3 Commitment of Parties Regarding Maintenance and Operation.**

The parties agree to cause the MCA to be operated and maintained in a manner consistent with the interests of the entire community for the benefit of all residents of the City, the Township and the School District and as set forth in this Agreement. However, nothing herein shall divest the School District of the authority to manage and control its schools and facilities or restrict the City or the Township in the provision of their respective services. Nothing in this Agreement shall be construed as conveying to the MCA Corporation or the Board of Directors the power to control matters or properties under the legal purview of the City, the Township or the School District.

### **3.4 Role of Community Foundation.**

The Community Foundation will play a continuing role in the programming of the MCA, by helping to fund educational and artistic programming. Additionally, the Community Foundation will serve as a liaison to those members of the community who may wish to support the performing arts through philanthropic gifts to the endowment fund maintained by the Community Foundation for that purpose. The School District, the City, the Township and the Board of Directors will cooperate with the Community Foundation to promote programs and activities in furtherance of their mutual goals. The Community Foundation Ex-Officio shall serve as the point of contact for members of the community who wish to support the MCA through philanthropic gifts. Notwithstanding anything to the contrary herein, the Community Foundation shall be responsible for distributing the endowment monies in an appropriate manner befitting its fiduciary role and responsibilities to its donors as approved by the Board of Trustees of the Community Foundation.

With the full agreement of the Owners, to facilitate greater opportunities for the Community Foundation to coordinate programming in the MCA with the Board of Directors, the Community Foundation Board of Trustees and the City of New Albany have separately agreed to transition the management fees for the MCA Corporation from the Community Foundation to the City of New Albany effective no later than July 1, 2026. It is fully understood and agreed that with this financial commitment by the City that the City shall be responsible for the selection of and contracting with any provider associated with the Manager fees required for the daily operations of the MCA.

### **3.5 Naming Rights.**

The parties agree that naming rights relating to the MCA and various rooms, areas, features and other components thereof may be granted to individuals and organizations in recognition of appropriate donations benefiting the MCA. It shall be the responsibility of the Owners to evaluate and make recommendations regarding the awarding of naming rights. Revenues generated in connection with the awarding of naming rights may be deposited into the endowment fund in support of the MCA maintained by the Community Foundation and/or used to fund designated improvements to the MCA facility as approved or otherwise directed by the Owners.

## **Article IV**

### **Priority of Use**

#### **4.1 Priority Use Rights.**

Each party shall be entitled to have Priority Use during certain times of the year, with respect to certain areas of the MCA, for program scheduling purposes, as set forth in the Priority Use Schedule. It is expected that the School District will require more time and space for programs and activities at the MCA than the Board of Directors will require for Community Events, at a ratio currently estimated to reflect a usage rate of 60% for School District-related activities and 40% for Community Events.

#### **4.2 Priority Use Schedule.**

No later than the January 1 immediately prior to the commencement of each Contract Year, the Manager and the School District Representative shall meet, agree upon, and share the Priority Use Schedule for such Contract Year. The Priority Use Schedule shall be reviewed annually and revised as needed. During any Contract Year where the Priority Use Schedule is not agreed to by the established deadline, the prior year's Priority Use Schedule shall continue to apply.

#### **4.3 Activity Calendar.**

Annually prior to each Contract Year, the Manager and the School District Representative will develop the Activity Calendar, which shall be consistent with the Priority Use Schedule and shall set forth all events and activities scheduled to occur during the Contract Year. The Activity Calendar shall be modified and amended promptly as scheduling changes occur for the Contract Year. The MCA Activity Calendar will be readily accessible electronically to the Manager, the Board of Directors and the Owners. In the event any one party allows another party to schedule programs during the first party's time and space as set forth in the Priority Use Schedule, such an accommodation will not affect the ongoing Priority Use Schedule unless the Board of Directors and the Board of Education otherwise determine.

#### **4.4 Unscheduled Use.**

It is understood that times and spaces not specifically scheduled by any one party will be made reasonably available for unscheduled use by residents of the City, the Township and the School District under Supervision by the Board of Directors. It is likewise understood that there will be times when programming will require shared usage of areas within the MCA.

#### **4.5 Responsible Persons for MCA Activities.**

The Board of Education shall not be obligated to provide Supervision for and shall not have any liability for Community Events occurring at the MCA. Likewise, the MCA Corporation shall not be obligated to provide Supervision for and shall not have any liability for

school events and other activities of the School District occurring at the MCA. The sponsoring entity for any proposed activity at the MCA shall be required to complete a facilities use form provided by the Board of Education or the Manager prior to engaging in the proposed activity. The sponsoring entity for any activity at the MCA shall be solely responsible for all costs, expenses, damages, injuries and liabilities resulting from that activity.

## **Article V**

### **General Rules of Use**

#### **5.1 General Limitation.**

The parties acknowledge that the funds contributed by the Board of Education to pay its share of the cost of construction of the MCA derive from proceeds of the School District Bonds, and that the operation and use of the MCA shall be consistent with the purposes for which the School District Bonds were issued. The parties further agree to take no action that will affect the taxability of interest paid on the School District Bonds.

#### **5.2 Staffing.**

For all purposes (including but not limited to employee compensation and benefits), any member of the City, the Township or the Board of Directors staff or volunteers assisting with programming conducted within the MCA shall be and remain employees of the City, the Township or the MCA Corporation, respectively and shall not be considered employees of the Board of Education. A criminal background check complying with Board of Education policy must be completed for all such staff or volunteers working or otherwise interacting with students or juveniles in the building during the student day. A successful background check shall be required for employment or to volunteer. Results of the background check shall be sent to the Board of Education.

#### **5.3 Prohibited Uses.**

Use of the MCA in a manner inconsistent with the policies established by the Board of Education governing permissible conduct on school grounds shall be strictly forbidden during programming subject to the Supervision of the Board of Education. The Board of Directors shall establish and set forth in the User Manual catering, concession and alcoholic beverage policies consistent with the mores of the community and subject to the generally applicable laws of the City and the Township, to govern programming subject to Supervision of the Board of Directors. The Board of Directors shall establish and include in the User Manual such additional use restrictions as it deems necessary and appropriate for the MCA.

#### **5.4 Scheduling of Events.**

In order to have a single point of contact for scheduling community activities, programming and usage of the MCA, all questions and concerns relating to Community Events scheduling will be directed to the Manager.

## **Article VI**

### **Board of Directors**

#### **6.1 Composition.**

Until hereafter changed by mutual agreement of the parties, the MCA Corporation shall have as its Board of Directors a board membership consisting of twelve (12) members to oversee the Community Events programming of the MCA. Each member of the Board of Directors shall possess one vote. The members of the Board of Directors shall be appointed as follows:

- (a) The Board of Education shall appoint four (4) members;
- (b) The City shall appoint four (4) members;

- (c) The Township shall appoint three (3) members;
- (d) The Community Foundation shall appoint an Ex-Officio Member.

(NOTE: Any Board of Directors member currently appointed as of the execution of this Agreement shall have the right to continue their current appointment term through completion. As any such terms expire, the composition of the Board of Directors shall align to the terms outlined herein.)

## **6.2 Quorum.**

A quorum for conducting business of the Board of Directors shall consist of a majority of the members of the Board of Directors then serving.

## **6.3 Terms of Board of Directors Members.**

Members of the Board of Directors shall serve for terms of three (3) years commencing on the January 1 next following the date of their respective appointment, except that, in order to provide for staggered terms, one of the members initially appointed by each of the Board of Education, the City and the Township shall be designated by the appointing party to serve and shall serve an initial term of one (1) year, and another one of the members initially appointed by each of the Board of Education, the City and the Township shall be designated by the appointing party to serve and shall serve an initial term of two (2) years. Members of the Board of Directors may serve no more than three (3) consecutive full three (3) year terms. In the event of a vacancy on the Board of Directors, a successor member shall be appointed by the party that made the original appointment to serve the remainder of the term of the vacating member.

## **6.4 Function of Board of Directors.**

In furtherance of the mission of the MCA Corporation, the Board of Directors shall serve as a governance board for the Community Events programming. The responsibilities of the Board of Directors shall include fundraising, community programming and overseeing the Community Events of the MCA. The Board of Directors shall not be responsible for the operations of the MCA. The Board of Directors shall reach its decisions by majority vote of the full membership of the Board of Directors.

## **6.5 Budget; Five-Year Capital Repairs/Replacements and Improvement Plan; Fiscal Report.**

Certain financial matters shall be handled as follows:

(a) On or before May 31 of each year, the Board of Education shall cause to be prepared and delivered to the Board of Directors the Budget. The Board of Directors shall review the Budget and make suggestions regarding potential changes for consideration by the Board of Education.

(b) The Board of Education shall, in cooperation and consultation with the City, the Township and the Manager cause to be prepared a Five-Year Capital Repairs, Replacements, and Improvement Plan, which shall be updated annually and shared with the Board of Directors on or before August 31 of each year. The Five- Year Capital Repairs, Replacements and Improvement Plan will include, by category, budgeting for Capital Repairs/Replacements and for Capital Additions or Improvements. The Owners shall review and either approve each Five-Year Capital Repairs, Replacements, and Improvement Plan as presented or make such revisions or changes as the Owners deem necessary or appropriate to preserve, maintain and improve the MCA. Expenditures for Capital Repairs and Replacements will require approval by a majority of the Owners to be included in the Approved Five-Year Capital Repairs, Replacements and Improvement Plan, and each Owner shall be bound by the vote of the majority of the Owners. Capital

Additions or Improvements will require unanimous approval of the Owners to be included in the Approved Five-Year Capital Repairs, Replacements and Improvement Plan. Any party proposing to make a capital improvement not identified in the Approved Five-Year Capital Improvement Plan may do so as provided in Section 8.2.

(c) Annually, the Board of Education shall cause to be prepared and delivered to the Owners a financial report setting forth a comparative statement of revenues and expenditures relating to the MCA operations.

#### **6.6 Resolution of Disputes.**

In the event a dispute arises regarding the use and operation of the MCA, the Manager and the School District Representative shall meet to attempt to resolve the dispute. Should they be unable to reach resolution, they shall refer the dispute to the Township Administrator or his or her designee, the City Manager or his or her designee, and the School District Superintendent or his or her designee. Should they be unable to resolve the dispute, they shall refer it on to the City Council, the Township Trustees, the Community Foundation Board of Trustees and the Board of Education, who shall convene a joint meeting to discuss and attempt to resolve the dispute. In all such informal dispute resolutions, the parties shall be governed by the terms and conditions of this Agreement and by the best interests of the community. Should they be unable to resolve the dispute, the dispute will then be resolved as provided in Section 1.3(c).

### **Article VII**

#### **Costs of Operation and Maintenance**

#### **7.1 Operating Expenses.**

The parties agree that the Board of Education will be liable for payment of all Operating Expenses related to the facility.

#### **7.2 Non-School Event Usage Fees.**

The Board of Education, with input from the other Owners and/or other professionals, shall develop a schedule for Non-School Event Usage Fees. The Non-School Event Usage Fees shall be based upon the actual costs of operation of the MCA and/or the various areas within it. All Non-School Event Usage Fees charged and paid by the non-school event user shall be deposited into the Operating Fund and shall be used to pay costs of operation for non-school events. The Non-School Event Usage Fees will also include a maintenance charge to provide for ongoing repairs. The projected Non-School Event Usage Fees for each Contract Year (commencing July 1) and the actual Non-School Event Usage Fees for the prior Contract Year shall accompany the proposed Budget for that Contract Year and be submitted to the other Owners and/or other professionals for review pursuant to Section 6.5. The Non-School Event Usage Fees may be revised from time to time based upon actual costs and shall be subject to review by the Owners.

#### **7.3 Programming Expenses.**

The MCA Corporation and the Board of Education shall each be responsible for Programming Expenses related to their respective sponsored activities, including the cost of Supervision of their sponsored activities at the MCA. Approval of the Activity Calendar for a Contract Year shall signify each party's agreement to be responsible for the funding obligations associated with activities and events of that party as shown on the Activity Calendar, whether or not the MCA is used by the scheduling party for those scheduled events and activities.

The Board of Education may contract with the MCA Corporation to provide, for a separate fee, Supervision services for the Board of Education at certain functions or scheduled times. Further, the MCA Corporation may contract with the Board of Education to obtain, for a separate fee, extra maintenance or custodial services beyond the normal level for which the Board of Education is responsible.

#### **7.4 MCA Rental Fees.**

Rental fees for the use of the MCA shall be collected from persons using the MCA by the Manager as directed by the City. Revenues derived from the MCA Rental Fees shall be remitted as directed by the City and shall be used as determined by the Owners in their sole discretion.

#### **7.5 Food and Beverage Service.**

Food and beverage service within the MCA shall be the responsibility of the party sponsoring the programmed event and shall be provided in a manner consistent with Board of Education policies for the School District-sponsored events and the User Manual for the Community Events.

### **Article VIII** **Repairs, Alterations and Improvements**

#### **8.1 Maintenance and Repairs.**

Routine maintenance shall consist of the regular upkeep of the MCA building and equipment to include recurring, preventive and on-going maintenance necessary to delay or prevent the failure of critical and non-critical systems. Examples of typical routine maintenance are the changing of filters, minor repairs to the structure including the roof and theatre seating, and other activities planned at regular intervals normally established by best practices in the industry. Routine maintenance typically will not exceed \$1,000 per item.

The Board of Education shall (a) perform or cause to be performed and pay for all routine maintenance and repair work at the MCA and (b) shall include the cost of performing that work as a factor in determining the Non-School Event Usage Fees. If and to the extent there are sufficient funds available pursuant to the funding procedures spelled out elsewhere in this Agreement to do so, the Board of Education shall keep all components of the MCA in good order and repair, damage by accidental fire or other casualty excepted. All warranties regarding the components and equipment comprising the MCA shall insure to the benefit of the Board of Education as the owner thereof. The Board of Education shall use its best efforts to fully utilize all available warranties to lessen Operating Expenses.

#### **8.2 Unbudgeted Alterations and Improvements.**

Any one or more of the City, the Township and the Board of Education, separately or jointly, may request approval to make at its or their expense (unless otherwise agreed to) alterations or improvements to the MCA in addition to those set forth in the Budget and the Approved Five-Year Capital Repairs/Replacements and Improvement Plan, which approval must be given by all of the non-requesting parties but shall not be unreasonably withheld.

#### **8.3 Capital Repairs/Replacements and Cost Sharing.**

Capital Repair and Replacement Costs shall consist of replacement or renovation of building systems, structure, and components that exceed the useful life of the MCA and do not meet the definition of Routine Maintenance and Repairs as defined in Section 8.1. Such costs will typically exceed \$1,000 per

item. Examples of Capital Repair and Replacement include HVAC component replacement or upgrades, theater seat replacement, roof replacement, flooring replacement, concrete replacement, roof replacement, flooring replacement and a reasonable allocation of parking lot asphalt replacement, etc.

Costs for Capital Repairs/Replacements which are covered by the Approved Five-Year Capital Improvement Plan will be shared by the Owners in the same proportion as their ownership provided for in Section 3.2. The Capital Repairs/Replacements funding from each owner will be deposited into a separate Capital Repair and Replacement Account maintained and managed by the Community Foundation and shall be deposited by July 1st of each calendar year of this Agreement.

Effective no later than September 1, annually, the Owners shall agree upon a total dollar amount required for annual deposit to the MCA Capital Repair and Replacement Account. Thereafter, each Owner shall annually deposit in the same proportion as their ownership the dollar amount necessary to fund the Capital Repair and Replacement Fund. The total annual dollar amount shall be deposited annually on or before July 1st of each calendar year of this Agreement. The total annual amount shall remain subject to change from time-to-time to meet the projected capital repairs/replacement obligations.

Capital Repair/Replacement funds may only be used for capital costs that are included the approved Five-Year Capital Improvement Plan, except that the Owners may by majority vote approve or deny additional items to be funded by the Capital Repair/Replacement Account.

#### **8.4 Facility Fund for Repair/Replacements of Technical Equipment.**

Annually, the Owners shall request input from the Manager and the Owners shall establish no later than January 1 of each year, a Facility Fee to be collected by the Board of Directors beginning July 1 of the year following the Owners' establishment of that Facility Fee. The Facility Fee shall be charged on a per-ticket basis for all ticketed events and as a flat-rate fee for all non- ticketed events. The Facility Fee shall be used to repair and/or replace technical and stage equipment for the MCA. Facility Fees collected will be held by the City or the Board of Education and quarterly income and expense statements will be provided to the Owners. If the Owners do not take action to change the Facility Fee by January 1 the prior year's Facility Fee will continue unchanged for the succeeding year.

The Manager and school district representative will present annually a five-year schedule of repair/replacement of technical equipment to the Owners for approval (the "Facility Fund Technical Budget"). The Facility Fund Technical Budget will include both projected revenues from the ticket surcharge as well as projected cost items over the next five years. In the event the Facility Fund Technical Budget projects an excess of revenues over anticipated costs, such excess Facility Funds may be transferred to the Capital Account with majority approval of the Owners.

### **Article IX** **Insurance**

#### **9.1 Building Hazard Insurance.**

The Board of Education shall maintain and keep in full force and effect during the term of this Agreement fire and extended coverage insurance on the MCA in an amount equal to the full replacement cost thereof. In the event that there is partial damage or destruction of the MCA constituting less than a total loss, the Board of Education shall use the proceeds of such insurance toward restoring the MCA to its pre-damaged condition. In the event the insurance company determines that there has been damage or destruction of the MCA constituting a total loss, the Board of Education shall apply the proceeds of such



insurance toward the repair or replacement of the MCA to its original or better condition, so as to permit the MCA to perform the functions occurring prior to such damage or destruction, unless the City, the Township and the Board of Education mutually agree otherwise.

#### **9.2 Liability Insurance.**

The City, the Township, the MCA Corporation and the Board of Education shall each maintain and keep in full force and effect liability insurance in limits of not less than \$5,000,000 (including but not limited to personal injury liability, blanket contractual liability and products liability). The City, the Township, the MCA Corporation and the Board of Education shall cause each other to be named as additional insureds on their respective liability insurance policies. Within thirty (30) days after the effective date of this Agreement, the City, the Township, the MCA Corporation and the Board of Education shall each deliver to the other parties its respective certificate for such insurance, which certificate shall contain a provision that such insurance coverage shall not be canceled unless the other parties receive written notice thereof from the insurer not less than thirty (30) days prior to the proposed date of cancellation. Each party mutually covenants and agrees to waive its rights, as well as the rights of its subrogees, of recovery for loss or damage to any party's property whatsoever (including but not limited to any building and related improvements, fixtures or equipment) because of fire, explosion or other cause.

#### **9.3 Equipment Insurance.**

Each party will be responsible for insuring its own equipment located in the MCA.

#### **9.4 Waiver of Subrogation.**

The City, the Township, the MCA Corporation and the Board of Education hereby release each other and their respective principals, employees, representatives, directors, trustees, officers and agents from any claims for damage to any person or to the MCA and its facilities caused by, or that result from, risks insured against under any insurance policies carried by the parties and in force at the time of any such damage. The City, the Township, the MCA Corporation and the Board of Education shall cause each insurance policy obtained by them to provide that the insurance company waives all right of recovery by way of subrogation against the other in connection with any damage covered by any policy. None of the City, the Township, the MCA Corporation or the Board of Education shall be liable to any of the others for any damage caused by fire or any of the risks insured against under any insurance policies required by this Article IX.

### **Article X** **Joint Obligations, Representations, and Warranties**

#### **10.1 Mutual Assistance.**

The parties shall at all times act in good faith hereunder, and shall at their own cost and expense reasonably cooperate with and assist each other to aid one another in fulfilling their obligations under and the purposes of this Agreement.

#### **10.2 Authority.**

Each party represents and warrants to the other parties that it has taken all required action required by it to approve and adopt this Agreement, that this Agreement is thus duly authorized, and that this Agreement is a valid and binding agreement enforceable against it in accordance with its terms. Further,

each party represents and warrants that the person signing this Agreement on its behalf has the requisite authority to do so.

### **10.3 Absence of Conflicts.**

Each party represents and warrants that the execution and delivery of this Agreement by it:

(a) Does not and will not violate or conflict with any statute, regulation, judgment, order, writ, decree, or injunction applicable to it;

(b) Will not violate or conflict with any of its charter provisions or regulations or by- laws, or any existing mortgage, indenture, contract, licensing agreement or other agreement binding on it.

### **10.4 Absence of Required Consents or Contractual Restrictions.**

Each party represents and warrants that no consent or approval that has not been obtained is required to be obtained in connection with the execution and delivery by it of this Agreement or the performance by it under this Agreement. Each party additionally represents and warrants that no contract or agreement by which it is bound will restrict its ability to fulfill its obligations and responsibilities under this Agreement or any related agreement or to carry out the activities contemplated herein.

### **10.5 Non-performance.**

In the event that any party is not satisfactorily performing any obligation required of it under this Agreement, due to unforeseen situations, then any other party has the ability to contract out for the performance of that obligation. No individual shall be personally liable for any financial obligation of any party affiliated with the MCA unless there is evidence of reckless or willful wrongdoing.

## **Article XI**

### **Term and Termination**

#### **11.1 Term of Agreement.**

The initial term of this Agreement shall commence on the Effective Date and shall end on June 30, 2029. Subject to the termination provisions below, this Agreement shall automatically renew thereafter for an indefinite number of additional renewal terms of four (4) years each commencing July 1 of the renewal year.

The foregoing renewal provisions notwithstanding, at least one (1) year prior to the end of the initial term or any subsequent renewal term, any party may terminate this Agreement by giving a written notice of termination to the other parties, in which event this Agreement shall terminate as to the notifying party at the expiration of the term or renewal term then in effect. Parties that remain subject to this Agreement following such termination may reallocate the rights and responsibilities of the terminating party on a pro rata basis. Provided however, that, if there is then less than one (1) year remaining of the initial term or any renewal term, any of the remaining parties may terminate this Agreement upon sixty (60) days' notice given to the others if the parties are unable to come to a consensus on reallocating the rights and responsibilities under this Agreement.

## **11.2 Termination by Mutual Consent.**

This Agreement may be terminated prior to the expiration of its term by the mutual written consent of all of the parties.

## **11.3 Default.**

(a) In the event of a material default by any party in the performance of this Agreement, the non-defaulting parties may by unanimous agreement declare a default and deliver to the other parties written notice setting forth the nature of the default. The defaulting party shall then have thirty (30) days to cure the default if the default involves a direct payment of money and ninety (90) days to cure the default if the default does not involve a direct payment of money, provided that, in the event of any such non-monetary default where the defaulting party is diligently pursuing a cure, the cure period shall be extended for such additional period of time as shall be necessary for the defaulting party, using its best efforts and with due diligence, to cure the default promptly.

(b) If the default is not cured within such time limits, the defaulting party shall and any other party may provide written notice of the nature of the default to the Owners, jointly, and they shall then have ninety (90) days thereafter to resolve the default to the satisfaction of all parties. If the default shall not be resolved to the satisfaction of all parties within such ninety (90) day period or within any extension agreed to by all parties, then any party may request in writing that the dispute be determined by court sanctioned mediation and/or arbitration as provided below.

(c) Any claim or controversy between the parties regarding their respective rights, duties or obligations hereunder shall be settled by means of alternative dispute resolution conducted in accordance with the then existing rules of the Franklin County Common Pleas Court. Should arbitration be required, such arbitration shall be before three disinterested arbitrators, one named by each of the School District, the City and the Township. The arbitrators may not order termination of this Agreement unless a serious, material default occurs and there appears no viable remedy short of termination. The arbitrators shall have no power to depart from or change any of the provisions of this Agreement. The parties shall bear equally the expense of arbitration proceedings conducted hereunder, unless the arbitrators unanimously determine otherwise. Judgment upon the arbitrators' award rendered may be entered in the Franklin County Common Pleas Court pursuant to Rev. Code Chapter 2711.

(d) In the event of such a termination, the defaulting party shall have no further rights or obligations under this Agreement after the date of termination; however, the defaulting party shall not be relieved of its obligations under this Agreement that accrued prior to the date of termination. Notwithstanding anything to the contrary in this Agreement, under no circumstances shall the City, the Township or the Board of Education be deprived of the use of the MCA to the extent such use is essential to the Owners.

## **Article XII** **Miscellaneous**

### **12.1 Further Assurances.**

The parties hereto, and each of them, agree to execute any and all documents reasonably requested by the other parties to carry out the intent of this Agreement.

**12.2 Captions.**

The captions of this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any other provisions hereof.

**12.3 Binding Effect.**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

**12.4 No Partnership.**

Nothing contained in this Agreement or any of the documents to be executed pursuant hereto shall be interpreted to be a partnership or joint venture or any other arrangement whereby one of the parties is authorized to act as an agent for another.

**12.5 Third-Party Beneficiaries.**

This Agreement is made and entered into for the sole protection and benefit of the parties hereto, and no other person or persons, or entity or entities, shall have any right of action hereon, right to claim any right or benefit from the terms contained herein, or otherwise be deemed to be a third-party beneficiary hereunder.

**12.6 Governing Law.**

The governing law of the validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Ohio.

**12.7 No Assignment.**

No party to this Agreement may assign, transfer or otherwise convey any or all of its rights or obligations hereunder without the prior written consent of the other parties.

**12.8 Entire Agreement; Amendment.**

This Agreement amends, restates and supersedes the Second Amended Agreement and sets forth the entire understanding between the parties relating to the subject matter contained herein with a merger of all prior discussions between and among them. No amendment to this Agreement shall be effective unless it is in writing and executed by all of the parties hereto.

**12.9 Severability.**

If any one or more of the provisions contained in this Agreement or in any document executed in connection herewith (other than provisions constituting a material consideration to a party's entering into this Agreement or such other document) shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired; provided, however, that in such case the parties shall use their commercially reasonable efforts to achieve the purpose of the invalid provision.

**12.10 Notices.**

All notices, certificates, requests, demands and other communications hereunder shall be in writing and shall be personally served or sent by certified mail. All such notices, certificates, requests, demands and other communications shall be delivered to the party to receive same at its address indicated below (or at such other address as such party may specify in a written notice):

To the School District:

Superintendent, New Albany-Plain Local Schools  
New Albany - Plain Local School District  
55 North High Street  
New Albany, OH 43054  
614.413.7102 telephone  
614.855.2043 fax

To the City:

City Manager  
City of New Albany  
99 West Main Street  
New Albany, OH 43054  
614.866.3913 telephone  
614.855.8583 fax

To the Township:

Township Administrator Plain Township  
P.O. Box 273  
New Albany, OH 43054  
614.855.7770 telephone  
614.855.7761 fax

To the MCA Corporation:

President, Board of Directors  
Jeanne B. McCoy Community Center for the Arts Corporation  
P.O. Box 508  
New Albany, OH 43054-0508  
614.939.2245 telephone  
614.855.8583

**12.11 Waiver.**

No failure on the part of a party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy by a party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

**12.12 No Construction Against Any Particular Party.**

This Agreement has been drafted and negotiated by all parties and shall be interpreted to give it fair meaning, and any ambiguity shall not be construed for or against any one party.

**12.13 Multiple Originals.**

The parties may sign multiple copies of this Agreement, each of which shall be considered an original without presentation of the other.

**12.14 Appropriation and Deposit of Funds.**

The obligations of the Board of Education, the City and the Township hereunder for capital repairs, replacements, additions, or improvements and to pay money in future fiscal periods are subject to appropriation of sufficient funds for such purposes by the Board of Education, the City and the Township, respectively. Nothing in this Agreement is intended to bind future legislative bodies of any party to pay money in future fiscal periods.

The parties reasonably expect that their respective future legislative bodies will budget sufficient funds in each fiscal period to cover such obligations and take the necessary action to lawfully appropriate such funds. In the event the legislative body of an Owner should fail to timely appropriate and deposit sufficient funds to cover such obligations in a future fiscal period, then there may be a default declared pursuant to section 11.3 by the other Owners.

**12.15 Voluntary Withdrawal.**

Separate from any instance of default caused by not timely appropriating and depositing sufficient funds, any Owner may voluntarily withdraw from this agreement, by providing Notice no later than December 31 of the current calendar year, to the remaining Owners as described in section 12.10, and shall:

- (a) forfeit without compensation the entirety of its ownership interest in the MCA;
- (b) have no right to recover any investment in or contributions that Owner has made to or for the MCA pursuant to this Agreement or otherwise;
- (c) have no right of financial recourse for its loss of ownership or to recover any prior investment or contribution made to or for the MCA; and
- (d) have no further rights or obligations under this Agreement except those that accrued prior to the date of withdrawal.

[Signatures on Following Page]

IN WITNESS WHEREOF, this Agreement is executed as of the date first written above.

Signed in the presence of:

NEW ALBANY-PLAIN LOCAL SCHOOL  
DISTRICT BY ITS BOARD OF EDUCATION

\_\_\_\_\_

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

\_\_\_\_\_

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

CITY OF NEW ALBANY, OHIO

\_\_\_\_\_

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

\_\_\_\_\_

By: \_\_\_\_\_  
City Manager

PLAIN TOWNSHIP, OHIO

\_\_\_\_\_

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

\_\_\_\_\_

By: \_\_\_\_\_  
Township Administrator

JEANNE B. MCCOY COMMUNITY CENTER  
FOR THE ARTS CORPORATION

\_\_\_\_\_

By: \_\_\_\_\_  
Chair, Board of Trustees

\_\_\_\_\_

By: \_\_\_\_\_  
Vice Chair, Board of Trustees