

**Review of Petition to Annex 11.9+/- acres from Plain Township to the city of New Albany by Jackson B. Reynolds, III, Esq. Case #ANX-EXP1-15-13 (Economic Development & Planning)**

**WHEREAS**, the Commissioners of Franklin County, State of Ohio, proceeded to journalize the petition that Jackson B. Reynolds, III, Esq. filed on behalf of the New Albany Company, LLC on May 10, 2013 and solicited to and/or been heard by all persons desiring to be reviewed for or against the granting of the Expedited 1 petition, and having considered all the facts with reference thereto, being fully advised, and

**WHEREAS**, the Commissioners make the following findings based upon the exhibits and testimony presented at the review of this matter:

1. The petition has met all the requirements set forth in, and was filed in the manner provided in, section 709.022 of the Revised Code.
2. The persons who signed the petition are owners of the real estate located in the territory proposed for annexation and constitute all of the owners of real estate in that territory.
3. The territory proposed for annexation has an accurate legal description and map of the area to be annexed.
4. The township and the municipal corporation to which annexation is proposed have agreed to an Annexation Agreement passed by Plain Township, city of Columbus and the city of New Albany on February 26, 2008.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF FRANKLIN COUNTY, OHIO:

That, in accordance with the findings made in the preamble, which are incorporated herein, the prayer of the Petition be *approved*, and the territory sought to be annexed by the petition filed herein *shall* be annexed to the city of New Albany, Ohio, in accordance with the law; that the orders and proceedings of this board relating to the Petition, and map and description attached thereto, and all papers on file relating to this matter be delivered forthwith to the Clerk of Council, city of New Albany, Ohio.

Prepared by: R. Lee Brown

C: Economic Development & Planning Department

SIGNATURE PAGE FOLLOWS

## SIGNATURE SHEET

Resolution No. 0403-13

May 21, 2013

**REVIEW OF PETITION TO ANNEX 11.9+/- ACRES FROM PLAIN TOWNSHIP  
TO THE CITY OF NEW ALBANY BY JACKSON B. REYNOLDS, III, ESQ. CASE  
#ANX-EXP1-15-13**

**(Economic Development and  
Planning)**

Upon the motion of Commissioner Paula Brooks, seconded by Commissioner Marilyn Brown:

**Voting:**

**John O'Grady, President**

**Aye**

**Paula Brooks**

**Aye**

**Marilyn Brown**

**Aye**

Board of County Commissioners  
Franklin County, Ohio

## CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon by the Board of County Commissioners, Franklin County, Ohio on the date noted above.



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Shannon Z Cross, Clerk  
Board of County Commissioners  
Franklin County, Ohio



Commissioner John O'Grady · Commissioner Paula Brooks · Commissioner Marilyn Brown  
President

Economic Development & Planning Department  
James Schimmer, Director

## RESOLUTION SUMMARY

REVIEW OF PETITION TO ANNEX  
11.9 +/- ACRES FROM  
PLAIN TOWNSHIP  
TO THE CITY OF NEW ALBANY  
BY JACKSON B. REYNOLDS, ESQ.

### **Description:**

Attached is a resolution to consider the annexation of 11.9-acres, more or less, from Plain Township to the city of New Albany. The petition case number is ANX-EXP1-15-13.

### **Applicants:**

The New Albany Company, LLC

### **Attorney:**

Jackson B. Reynolds, III, Esq.

### **Site:**

4991 & 4977 Johnstown Road (Parcel #220-000679, #220-000676 and #220-002238)

### **Additional Information:**

The site is contiguous to the city of New Albany on two and one-half sides. The proposal does not include the right-of-way of Johnstown.

### **Analysis:**

The applicant has met all statutory requirements outlined in Section 709.022 of the Ohio Revised Code. The applicant has provided a certified copy of the Annexation Agreement between Plain Township, city of Columbus and the village of New Albany.

### **Recommendation:**

Pending any questions, staff would request your **approval** of this annexation.



Commissioner John O'Grady · Commissioner Paula Brooks · Commissioner Marilyn Brown  
President

Economic Development & Planning Department  
James Schimmer, Director

## MEMO JOURNALIZATION

**TO:** Shannon Zee Cross, County Clerk  
Franklin County Commissioners Office

**FROM:** R. Lee Brown, Planning Administrator  
Franklin County Economic Development & Planning Department

**CC:** James Schimmer, Director  
Franklin County Economic Development & Planning Department

**RE:** Description of Expedited Type 1 annexation case to be  
journalized on the **May 14, 2013** General Session Agenda for a  
hearing on **May 21, 2013**.

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**Case #ANX-EXP1-15-13-** An Expedited Type 1 annexation ANX-EXP1-15-13 was filed in our office on May 10, 2013. The petition is requesting to annex 11.9+/- acres from Plain Township to the city of New Albany. The applicant is Jackson B. Reynolds, III, Esq. **Site: 4991 & 4977 Johnstown Road (Parcel #220-000679, #220-000676 and #220-002238)**



**Commissioners**  
Paula Brooks, President  
Marilyn Brown  
John O'Grady

**Economic Development & Planning Department**  
James Schimmer, Director

Application for  
**Annexation  
Petition**

**Expedited Type 1**  
Consent of all parties

RECEIVED

MAY 10 2013

Franklin County Planning Department  
Franklin County, OH

|   |                               |
|---|-------------------------------|
| <b>Property Information</b>             |                               |
| Site Address 4991 & 4977 Johnstown Road |                               |
| Parcel ID(s)<br>220-679/676/2238        | Total Acreage<br>11.9 ± acres |
| From Township<br>Plain                  | To Municipality<br>New Albany |

|  |                   |
|--|-------------------|
| <b>Property Owner Information</b>                                |                   |
| Name<br>New Albany Company LLC                                   |                   |
| Address<br>8000 Walton Parkway, Ste. 120<br>New Albany, OH 43054 |                   |
| Phone #<br>939-8000  | Fax #<br>939-8001 |
| Email<br>trubey@newalbanycompany.com                             |                   |

|  |                   |
|--|-------------------|
| <b>Attorney/Agent Information</b>                                |                   |
| Name<br>Jackson B. Reynolds, III c/o Smith & Hale LLC            |                   |
| Address<br>37 West BRoad Street, Suite 725<br>Columbus, OH 43215 |                   |
| Phone #<br>221-4255  | Fax #<br>221-4409 |
| Email<br>jreynolds@smithandhale.com                              |                   |

|  |
|--|
| <b>Staff Use Only</b>  |
| Case #<br>AUX-EXP-15-13  |
| Journal date (next regular session):   |
| Date filed: 5/10/13  |
| Fee paid \$350.00  |
| Receipt # 1121   |
| <ul style="list-style-type: none"><li>Notifications not required</li><li>Service Ord. not required</li><li>Public hearing not required</li></ul> |

|   |
|---|
| <b>Document Submission</b>  |
| The following documents must accompany this application on letter-sized 8 1/2" x 11" paper: |
| <input checked="" type="checkbox"/> Legal description of property                           |
| <input checked="" type="checkbox"/> Map/plot of property                                    |
| <input checked="" type="checkbox"/> List of adjacent properties                             |
| <input checked="" type="checkbox"/> Certified copy of CEDA or annexation agreement          |

|   |            |                      |            |
|---|------------|----------------------|------------|
| <b>Waiver of Right to Appeal</b>  |            |                      |            |
| The undersigned hereby request/s the Board of County Commissioners follow O.R.C. §709.022 in consideration of this petition.              |            |                      |            |
| <b>WHOEVER SIGNS THIS PETITION EXPRESSLY WAIVES THEIR RIGHT TO ANY ACTION ON THE PETITION TAKEN BY THE BOARD OF COUNTY COMMISSIONERS.</b> |            |                      |            |
| <b>THERE IS ALSO NO APPEAL FROM THE BOARD'S DECISION IN THIS MATTER IN LAW OR IN EQUITY.</b>  |            |                      |            |
| Property Owner _____  | Date _____ | Property Owner _____ | Date _____ |

EXPEDITED TYPE I PETITION FOR ANNEXATION (SECTION 709.022)  
TO THE CITY OF NEW ALBANY  
OF 11.9± ACRES MORE OR LESS  
IN THE TOWNSHIP OF PLAIN

TO THE BOARD OF COUNTY COMMISSIONERS  
OF FRANKLIN COUNTY, OHIO:

The undersigned, petitioners in the premises, and being ALL OF THE OWNERS OF REAL ESTATE in the territory hereinafter described, consisting of 11.9± acres, more or less, in the Township of Plain which area is contiguous and adjacent to the City of New Albany, do hereby pray that said territory be annexed to the City of New Albany according to the statutes of the State of Ohio.

A full and accurate description and a plat of said territory so prayed to be annexed are attached hereto and made part hereof.

In support of said Petition, your petitioners state that there is/are within the territory so prayed to be annexed one (1) OWNER OF REAL ESTATE.


Jackson B. Reynolds, III, whose address is 37 West Broad Street, Suite 725, Columbus, Ohio 43215, is hereby appointed Agent for the undersigned Petitioner(s), as required by Section 709.02 of the Revised Code of Ohio. Said agent is hereby authorized to make any amendment and/or deletion which in his absolute and complete discretion is necessary or proper under the circumstances then existing, and in particular to make such amendment in order to correct any discrepancy or mistake noted by the Franklin County Engineer in his examination of the Petition and Plat. Said amendment shall be made by the presentation of an amended plat and description to the Board of County Commissioners on, before, or after the date set for hearing on this Petition.

WHOEVER SIGNS THIS PETITION EXPRESSLY WAIVES THEIR RIGHT TO APPEAL ANY ACTION ON THE PETITION TAKEN BY THE BOARD OF COUNTY COMMISSIONERS. THERE ALSO IS NO APPEAL FROM THE BOARD'S DECISION IN THIS MATTER IN LAW OR IN EQUITY.

NAME

DATE

ADDRESS

By:  5/16/2013 8000 Walton Parkway Ste. 120  
New Albany Company LLC New Albany, Ohio 43054

|       |       |       |
|-------|-------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

ACTION IN WRITING WITHOUT MEETING  
BY  
THE MANAGING MEMBERS  
OF  
MBJ HOLDINGS, LLC

The undersigned, being all of the Managing Members of MBJ Holdings, LLC, a Delaware limited liability company (the "LLC"), do hereby authorize and take the following action in writing without meeting as of the 26<sup>th</sup> day of May, 2005.

RESOLVED, that the following individuals be, and they hereby are, to serve at the pleasure of the Managing Members in the offices of the LLC set forth opposite of their respective names, effective as of the date hereof (collectively, such individuals are hereinafter referred to as "Officers"):

|                   |   |                          |
|-------------------|---|--------------------------|
| William G. Ebbing | - | President                |
| Brent B. Bradbury | - | Treasurer                |
| Lisa J. Dinger    | - | Vice President/Secretary |

; and further

RESOLVED, that the LLC sell, from time to time, portions of its Property to such buyers and upon such terms and conditions as the Managing Members may approve and determine to be in the best interests of the LLC ("Property Sales"); and further

RESOLVED, that the LLC purchase, from time to time, such additional real property in the general vicinity of the New Albany and its Property from such sellers and upon such terms and conditions as the Managing Members may approve and deem to be in the best interests of the LLC ("Property Acquisitions"); and further

RESOLVED, that to consummate any such Property Sales or Property Acquisitions, the Managing Members and the Officers be, and each of them with full authority to act without the others hereby is, authorized to execute and deliver, in the name and on behalf of the LLC, such agreements, sales or purchase contracts, deeds, instruments of conveyance, certificates and other documents, containing such terms and conditions therein, as may be deemed by the Managing Members or the Officers or any of them to be necessary or appropriate, any Managing Member's or Officer's execution thereof to be conclusive evidence of the exercise by the Managing Member or the Officer of the discretionary authority herein conferred; and further

THE NEW ALBANY COMPANY LLC

By:   
Brent Bradbury, Chief Financial Officer

ANNEXATION  
PLAT & DESCRIPTION  
ACCEPTABLE  
DEAN C. RINGLE, P.E., P.S.  
FRANKLIN COUNTY ENGINEER

By 83 Date 4/23/13

PROPOSED ANNEXATION  
11.9 ACRES

**RECEIVED**

APR 23 2013

Franklin County Engineer  
Dean C. Ringle, P.E., P.S.

FROM: PLAIN TOWNSHIP

TO: CITY OF NEW ALBANY

Situated in the State of Ohio, County of Franklin, Township of Plain, located in Quarter Township 3, Township 2, Range 16, United States Military Lands, being all of that 2.270 acre tract conveyed to New Albany Company LLC by deed of record in Instrument Number 201302190026830, that 3.791 acre tract conveyed to New Albany Company LLC by deed of record in Instrument Number 201302190028635 and that 6.272 acre tract conveyed to New Albany Company LLC by deed of record in Instrument Number 200602150030062 (all references refer to the records of the Recorder's Office, Franklin County, Ohio), and being described as follows:

BEGINNING at the intersection of the westerly right-of-way line of Johnstown Road with the line common to said 2.270 acre tract and that 2.849 acre tract conveyed to Presbytery of Scioto Valley, Inc. by deed of record in Instrument Number 201302190028630, being an angle point in the existing Corporation Line of New Albany established by Ordinance Number 19-89 and of record in Official Record 13965D03;

thence Southwesterly with the westerly right-of-way line of said Johnstown Road, with said Corporation Line, an approximate distance of 523 feet to a point;

thence Westerly, with the southerly line of said 6.272 acre tract, continuing with said Corporation Line, an approximate distance of 707 feet to a southwesterly corner thereof;

thence Northerly, with the westerly line of said 6.272 acre tract, an approximate distance of 104 feet to a point;

thence Northwesterly, continuing with the westerly line of said 6.272 acre tract, an approximate distance of 197 feet to a point;

thence Northwesterly, with the westerly line of said 3.791 acre tract, with the arc of a curve an approximate chord distance of 433 feet to a northwesterly corner of said 3.791 acre tract;

thence Easterly, with the northerly line of said 3.791 and 2.270 acre tracts, an approximate distance of 969 feet to a northeasterly corner of said 2.270 acre tract, being an angle point in said Corporation Line;

thence Southerly, with the easterly line of said 2.270 acre tract, said Corporation Line, an approximate distance of 230 feet to a corner thereof;

thence Easterly, with the northerly line of said 2.270 acre tract, continuing with said Corporation Line, an approximate 422 feet to the POINT OF BEGINNING, and containing approximately 11.9 acres of land.

THIS DESCRIPTION IS FOR ANNEXATION PURPOSES ONLY, AND IS NOT TO BE USED FOR DEED TRANSFER.



EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Heather L. King* 4/23/13  
Heather L. King  
Registered Surveyor No. 8307

HLK:tb  
11\_9 ac. 20130548-VS-ANNX





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MAY 10 2013

## ANNEXATION AGREEMENT

Franklin County Planning Department  
Franklin County, Ohio

### Between Plain Township, the Village of New Albany, and the City of Columbus

26<sup>th</sup> This Annexation Agreement (the "Agreement") is made and entered into on or as of the day of February, 2008 (the "Effective Date") by and between the Board of Trustees of Plain Township, the legislative authority of and for Plain Township, a political subdivision duly organized and validly existing under the laws of the State of Ohio ("the Township"), the Council of the Village of New Albany, the legislative authority of and for the Village of New Albany, a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio and its Charter (the "Village"), and the Council of the City of Columbus, Ohio, the legislative authority of and for the City of Columbus, (the "City" and, collectively with the Township and the Village, the "Parties" and each a "Party"), a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio and its Charter.

WHEREAS, the Township, Village and City are political subdivisions located entirely within the State of Ohio, with the Township, Village and City being contiguous and, to a certain extent, having overlapping jurisdictions within areas located in Franklin County, Ohio (the "County"); and

WHEREAS, the Parties wish to cooperate in numerous matters affecting each Party, and the territory to which this Agreement pertains, including, without limitation, land use planning matters and the extension and subsequent provision of centralized water and sewer utility services within areas encompassed under this Agreement; and

WHEREAS, as part of such cooperation and in order improve and advance the welfare of their respective citizens, the Parties desire to cooperate in the development of the territory to which this Agreement pertains in order to foster and promote development which is compatible with the character of the area; and

WHEREAS, as a further part of such cooperation, the Parties wish to cooperate in creating within the "Park Zone" (as defined below), a potential park area (the "Park") serving northeast Franklin County, Ohio and consisting, as a goal, of not less than 1,200 acres to be acquired, owned, developed, operated and maintained by the Columbus and Franklin County Metropolitan Park District ("Metro Parks"); and

WHEREAS, Metro Parks and the Parties have negotiated a mutually satisfactory agreement (the "Metro Park Development Agreement") which provides, in part, for:

- (a) As a goal, Metro Park's negotiation for the acquisition of at least 1,200 acres of land within the Park Zone (the "Park Land") to be developed as a natural park area designed for passive recreation (the "Park Development"), with the term "passive recreation" to be defined in the Metro Park Development Agreement;

- (b) The limited provision of centralized water and/or sewer utility services to the Park Zone for passive recreational purposes;
- (c) Metro Park's cooperation to achieve annexation to the City of a corridor, if requested by the City;
- (d) Metro Park's funding of an initial commitment of \$3,000,000 in cash (or real property of equivalent value within the Park Zone) for purposes of acquiring and developing the Park;
- (e) Metro Park's creating and maintaining a separately dedicated account into which all of which Metro Park's and the Parties monetary contributions referenced in the Metro Park Development Agreement will be deposited and held for the purposes of acquiring and developing the Park;
- (f) Metro Park's operation and maintenance of the Park without additional funding, commitments or contributions from any Party (except for the Parties' initial contributions referenced elsewhere in this Agreement and such other additional assistance a Party may wish to provide toward the operation and maintenance of the Park); and

WHEREAS, in connection with the creation of the Park, and the development of the Park Zone, the Parties wish to establish coordinated development and annexation objectives, requirements, restrictions, standards and procedures within the territories to which this Agreement pertains; and

WHEREAS, the Village and City are signatories to a contract for water service dated July 17, 2001 and a contract for sewage disposal service dated July 17, 2001 (collectively the "Sewer and Water Agreement") under which growth areas are reserved exclusively to, respectively, the Village and City for purposes of providing sewage disposal and water services, with it being the desire of the Parties to preserve these growth areas exclusively to the Village and City (which growth areas are shown on the map attached hereto and incorporated herein as Attachment A); and

WHEREAS, the Parties each wish to extend full and good faith cooperation to each other in accomplishing the foregoing objectives; and

WHEREAS, this Agreement is authorized under Section 709.192 of the Ohio Revised Code and other applicable laws and has been approved by the Board of Trustees of the Township by Resolution No. 080219D adopted February 19, 2008, by the Village Council of the Village by Resolution No. R-80-2005 adopted December 6, 2005, and by the City Council of the City by Ordinance No. 2262-2006 adopted December 11, 2006;

NOW THEREFORE, the Parties covenant, agree and obligate themselves as follows:

## ARTICLE 1

### DESIGNATION OF TERRITORIES

**Section 1.1 Territories Defined.** This Agreement shall cover and be applicable to all territory (both incorporated and unincorporated) in Franklin County, Ohio which is located within the Township, including all Township areas located within the City, but specifically excluding those incorporated areas of the Township located within the corporate boundaries of the Village as of October 26, 2001 (and as designated in light blue and labeled as "Village of New Albany" on the hereinafter referenced Attachment B). This territory is hereinafter referred to as the "Agreement Territory" and is further described and outlined on the map attached hereto and incorporated herein, as Attachment B.

**Section 1.2 Sub-Areas.** For purposes of this Agreement, the Agreement Territory consists of four (4) separate parts as shown on Attachment B, all of which together comprise the entire Agreement Territory. These four (4) sub-areas are designated and hereinafter referred to as follows:

- (a) **Park Zone:** the area, designated in brown on Attachment B, which consists of the entire unincorporated area of the Township as of the Effective Date of this Agreement generally located north of Walnut Street and west of Peter Hoover Road.
- (b) **City Growth Zone West:** the area, designated in yellow on Attachment B, which consists of both newly annexed territory from the Township to the City which has occurred from and after October 26, 2001 and unincorporated areas of the Township generally located south of Walnut Street, primarily west of Harlem Road and north of Warner Road.
- (c) **City Growth Zone East:** the area, designated in green on Attachment B, which consists of the unincorporated areas of the Township, but excluding the Village Growth Zone, the City Growth Zone West and the Park Zone.
- (d) **Village Growth Zone:** the area, designated in dark blue on Attachment B, which consists of those incorporated and unincorporated areas of the Township which are reserved exclusively to the Village as a growth area under the terms of the Sewer and Water Agreement, but excluding the Park Zone.

**Section 1.3 Alteration of Agreement Territory.** Except as provided in Section 1.4, below, the Agreement Territory, or any Sub-Area therein, shall not be reduced, enlarged, modified or otherwise altered in any way whatsoever, except by written consent approved by the legislative authorities of all the Parties by means of appropriate legislation authorizing such alteration.

**Section 1.4 Sewer and Water Agreement.** Nothing contained in this Agreement is intended to alter, negate or otherwise modify the growth areas reserved to the Village and City under the Sewer and Water Agreement as shown on Attachment A for purposes of providing sewerage disposal and water services within the Agreement Territory. The City and the Village retain the ability, upon their mutual agreement, to modify their respective service areas under the Sewer and Water Agreements, provided that any real property that enlarges the City's service area shall be deemed to be in the City Growth Zone East and any real property that enlarges the Village's service area shall be deemed to be in the Village Growth Zone.

**Section 1.5 Deletion of Annexed Property.** Should any unincorporated area of the Township be annexed to a municipal corporation other than the Village or City, then such annexed area shall, upon acceptance by such municipal corporation, be deleted from the Agreement Territory and no longer be subject to the terms of this Agreement. The City and Village agree, upon the request of the Township, to assist the Township in its efforts opposing any such annexation; provided, however, that this provision does not obligate the City or Village to hire either outside legal counsel or independent consultants to assist the Township in opposing such annexation. In addition, neither the City nor Village shall consent to any boundary adjustment or jurisdictional change within the Agreement Territory to or with another political subdivision who is not a Party to this Agreement.

## ARTICLE 2

### ANNEXATION OF CITY GROWTH ZONE EAST, CITY GROWTH ZONE WEST AND PARK ZONE

**Section 2.1 City Growth Zone East, City Growth Zone West and Park Zone Annexation Conditions.** After the Effective Date of this Agreement, all or any part of the City Growth Zone East, City Growth Zone West, or Park Zone may, upon proper petition(s) to and with the final approval of the Franklin County Commissioners, be annexed to and accepted by the City under the conditions hereinafter set forth in this Article 2 and subject to all other limitations and conditions contained in this Agreement.

**Section 2.2 Expedited Procedure No. 1.** All annexations of property within the City Growth Zone East, City Growth Zone West, and Park Zone to the City shall be filed pursuant to and comply with the provisions of "Expedited Procedure No. 1" as contained in Sections 709.021 and 709.022 of the Ohio Revised Code, as such provisions exist on the Effective Date of this Agreement. It is the intention and agreement of the Parties to require any petition seeking to annex property to the City to be filed pursuant to and comply with the provisions of "Expedited Procedure No. 1" as outlined in this Section 2.2, and to prohibit the City from assisting or accepting an annexation petition which fails to comply with this requirement.

**Section 2.3 Annexation of Township or Village Property.** In no case shall any real estate owned, whether in whole or in part, by either the Township or Village be annexed to the City without the written consent of, respectively, the Board of Trustees of the Township or the Council of the Village, as applicable. This shall exclude dedicated road rights-of-way and other real estate where the Township's or Village's interest consists solely of a right-of-way interest.

**Section 2.4 Cooperative Efforts.** If an annexation petition is filed and processed seeking to annex to the City any real estate located within the City Growth Zone East, City Growth Zone West or the Park Zone which does not comply with the provisions of this Article 2 and all other provisions of this Agreement, the City shall refrain from any act which would, directly or indirectly, contribute to the success of such petition. This obligation shall include, without limitation, refusing to furnish any City services to the area proposed to be annexed; signing and providing affidavits and furnishing representatives to provide factual testimony in any proceeding in order to oppose the annexation; vigorously resisting, in both administrative and judicial forums, and with the assistance of the City's legal counsel, any action seeking such an annexation; refusing to accept any such annexation; and otherwise undertaking such actions as may be reasonably requested by the Township or Village which would be detrimental to the success of such annexation. The Township and Village agree not to oppose, directly or indirectly, any annexation petition(s) seeking to annex to the City any real estate located within the City Growth Zone East, City Growth Zone West or the Park Zone which complies with the provisions of this Article 2 and all other provisions of this Agreement. In addition, the Township and Village also agree to reasonably cooperate with the City and Metro Parks to achieve annexation to the City of property within the City Growth Zone East, City Growth Zone West or the Park Zone, provided that such annexation complies with the terms of this Agreement, and further provided that such cooperation shall be at no cost or expense to either the Village or Township and is within the lawful authority of the Township and/or Village.

### ARTICLE 3

#### ANNEXATION OF VILLAGE GROWTH ZONE AND PARK ZONE

**Section 3.1 Village Growth Zone Annexation Conditions.** After the Effective Date of this Agreement, annexations of property within the Village Growth Zone shall not be limited to any specific annexation procedure, but may, upon proper petition(s) to and with the final approval of the Franklin County Commissioners, be annexed to and accepted by the Village pursuant to any annexation procedure permissible under applicable law, provided that such annexation petition(s) complies with all applicable procedural and substantive requirements for such annexation procedure(s). Annexations of property within the Village Growth Zone shall be subject to all other limitations and conditions contained in this Agreement.

**Section 3.2 Park Zone Annexation Conditions.** After the Effective Date of this Agreement, all or any part of the Park Zone which is within the Village's water and sewer service area as shown on Attachment A (as such area may be amended from time to time) may, upon proper petition(s) to and with the final approval of the Franklin County Commissioners, be annexed to and accepted by, the Village under the conditions hereinafter set forth in this Article 3 and subject to all other limitations and conditions contained in this Agreement. All annexations of property within the Park Zone to the Village shall be filed pursuant to and comply with the provisions of "Expedited Procedure No. 1" as contained in Sections 709.021 and 709.022 of the Ohio Revised Code, as such provisions exist on the Effective Date of this Agreement. It is the intention and agreement of the Parties to require any petition seeking to annex property within the Park Zone to the Village to be filed pursuant to and comply with the provisions of "Expedited Procedure No. 1" as outlined in this Section 3.2, and to prohibit the

Village from assisting or accepting an annexation petition which fails to comply with this requirement.

**Section 3.3 Township Boundaries.** Except as specifically otherwise provided in Section 3.4, below, the Village shall not exclude the Township from lands within the Agreement Territory which comprise, have been previously annexed to, or which are subsequently annexed to the Village under the provisions of Ohio Revised Code Section 709.021, 709.022, 709.023 or 709.024 (which are commonly known as, respectively, "Expedited Procedure No. 1," "Expedited Procedure No. 2," and "Expedited Procedure No. 3"), or Ohio Revised Code Section 709.16 (which is commonly known as the "Municipal Procedure") by changing Township boundaries under Chapter 503 of the Ohio Revised Code or any future statute of like tenor or effect. Property which has been or will be annexed to the Village under these Revised Code provisions is hereinafter referred to in this Article 3, singularly and collectively, as "Nonconformed Areas." It is the intention of the Parties that the Plain Township boundary lines shall not be altered in any way so as to exclude the Township from any such Nonconformed Areas. In other words, it is the express intention and agreement of the Parties that there shall exist an overlay of the Village and Township boundaries for all portions of the Village which have been or will be annexed to the Village under the Expedited or Municipal Procedures listed above. If any proceeding or other effort is initiated or made which seeks to initiate a change to the Township boundaries in order to exclude the Township from all or any portion of the Nonconformed Areas, the Village and the Township shall exercise their best efforts in resisting such change, including, without limitation, denying any petition seeking such change; refraining from supporting such change; vigorously resisting, in both administrative and judicial forums, and with the assistance with the Village's and Township's legal counsel, any effort or action seeking such change; and otherwise undertaking such actions as may be reasonably requested by either Party which will be detrimental to the success of any effort seeking such change.

**Section 3.4 Township Consent Requirement to Conformance of Boundaries Within Village Growth Zone and Park Zone.** Notwithstanding anything to the contrary contained in this Article 3 or elsewhere in this Agreement, the Township may, at its option and at the sole and absolute discretion of the Board of Trustees, consent, in writing, to the Village conforming its boundaries under and pursuant Section 503.07 of the Ohio Revised Code in order to exclude the Township from all or any portion of the Nonconformed Areas within the Village Growth Zone or the Park Zone. Any such consent, in order to be effective, must be in writing and authorized and approved by the appropriate legislation passed by the Board of Trustees, which consent shall be subject to such terms and conditions as may, from time to time, be established by the Board of Trustees in its sole and absolute discretion. Any land within the Park Zone so excluded under this Section 3.4 shall continue to remain subject to the terms of Articles 1, 4, 7, 8, 9 and 10 of this Agreement. Any land within the Village Growth Zone so excluded under this Section 3.4 shall no longer be subject to the terms of this Agreement.

**Section 3.5 Annexation of Township or City Property.** In no case shall any real estate owned, whether in whole or in part, by either the Township or City be annexed to the Village without the written consent of, respectively, the Board of Trustees of the Township or the Council of the City, as applicable. This shall exclude dedicated road rights-of-way and other real estate where the Township's or City's interest consists solely of a right-of-way interest.

**Section 3.6 Cooperative Efforts.** If an annexation petition is filed and processed seeking to annex to the Village any real estate located within the Village Growth Zone or Park Zone which does not comply with the provisions of this Article 3 and all other provisions of this Agreement, the Village shall refrain from any act which would, directly or indirectly, contribute to the success of such petition. This obligation shall include, without limitation, refusing to furnish any Village services to the area proposed to be annexed; signing and providing affidavits and furnishing representatives to provide factual testimony in any proceeding in order to oppose the annexation; vigorously resisting, in both administrative and judicial forums, and with the assistance of the Village's legal counsel, any action seeking such an annexation; refusing to accept any such annexation; and otherwise undertaking such actions as may be reasonably requested by the Township or City which would be detrimental to the success of such annexation. The Township and City agree not to oppose, directly or indirectly, any annexation petition(s) seeking to annex to the Village any real estate located within the Village Growth Zone or Park Zone which complies with the provisions of this Article 3 and all other provisions of this Agreement.

## **ARTICLE 4**

### **WATER AND SEWER UTILITY SERVICES**

**Section 4.1 Provision of Utility Services in the Park Zone.** Utility services will only be provided in the Park Zone (as shown on Attachment B) to support development that is consistent with the adopted land use plan in the Rocky Fork Blacklick Accord, which is attached hereto and incorporated herein in map and text form as Attachment D and dated December 2003. The City will not permit any taps to the sanitary sewer line(s) and/or water lines extended into the Park Zone for a period of five years commencing from the commencement of construction of the first sanitary sewer line relative to sewer service and/or the first water line relative to water service that enters the Park Zone or until 1,000 acres have been acquired by Metro Parks for the Park Development, whichever occurs first. The Parties to this Agreement, specifically the Township and the Village do hereby affirm their support for the extension of any and all sanitary sewer trunk lines and/or water lines into and through the Park Zone, provided such extension and use is in accordance with the terms of this Agreement. At the request of Metro Parks, the City may extend water and sewer utility services into the Park Zone to serve the Park Development. Metro Parks shall be responsible to pay its share of the cost for any such extension. Water and sewer utility services may also be extended into the Park Zone by the City or Village to provide single-family residential utility services to the Taylor Estates Subdivision or the Albany View Subdivision (which Subdivisions are shown on the map attached hereto and incorporated herein as Attachment C), with any such utility service(s) to be upon such terms and conditions as the City or Village may require. The Parties understand and acknowledge that the extension of utility services within the Park Zone will be subject to all applicable laws, rules and regulations governing utility extensions in general, including, without limitation, those contained in any adopted Section 208 facilities plan applicable to the Park Zone.



## ARTICLE 5

### TAXES

**Section 5.1 Effect of Tax Abatement on Township.** If, during the term of this Agreement, the City, with respect to any property located within the Park Zone or the City Growth Zone East, or the Village, with respect to any property located within the Park Zone or the Village Growth Zone, grants any exemption, deferral, or abatement of any residential, commercial or industrial, real, personal or public utility real and personal property taxes pursuant to Sections 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, or 5709.88 of the Revised Code (or any future or similar statute(s) of like tenor or effect) with respect to any property located within the Agreement Territory, then, beginning on January 1 of the year following such action and continuing on each January 1 thereafter, the City or Village, as the case may be, shall pay to the Township, a sum equal to the difference between the tax revenue received by the Township during the previous calendar year with respect to the property on which such exemption, deferral or abatement was granted and the tax revenue that the Township would have received during such previous year with respect to such property had such exemption, deferral or abatement not been granted by the City or Village, as the case may be. Notwithstanding the foregoing, this provision shall not apply to those areas within the Agreement Territory in which the boundaries have been conformed pursuant to Sections 3.4, 6.4 and/or 6.5. Furthermore, the Township may, from time to time and at its option and in its sole and absolute discretion, enter into separate agreements, in writing, with either or both the City and/or Village for purposes of modifying the effect of the provisions of Section 5.1 and any payments otherwise required thereunder. Any agreement(s) modifying the provisions of this Section 5.1 shall be subject to such terms and conditions as the Township and the other contracting Party may mutually establish; provided, however, that no such modification agreement(s) shall have any effect upon a Party (or such Party's obligations under this Section 5.1) unless the Party is a signatory to such modification agreement(s).

## ARTICLE 6

### NONCONFORMANCE OF BOUNDARIES

**Section 6.1 Township Boundaries.** Except as specifically otherwise provided in Sections 6.4 and 6.5, below, during the term of this Agreement and any renewal thereof, the City shall not exclude the Township from lands within the Agreement Territory which comprise, have been previously annexed to, or which are subsequently annexed to the City under this Agreement by changing Township boundaries under Chapter 503 of the Ohio Revised Code or any future statute of like tenor or effect. It is the intention of the Parties that the Plain Township boundary lines shall not be altered in any way so as to exclude the Township from any existing or future City areas within the Agreement Territory. In other words, it is the express intention and agreement of the Parties that there shall exist an overlay of the City and Township boundaries for all portions of the City which are currently part of the Township and for all future unincorporated areas of the Township which may be annexed into the City.

**Section 6.2 Cooperative Efforts.** If any proceeding or other effort is initiated or made which seeks to initiate a change to the Township boundaries in order to exclude the Township from the City, the City and the Township shall exercise their best efforts in resisting such change, including, without limitation, denying any petition seeking such change; refraining from supporting such change; vigorously resisting, in both administrative and judicial forums, and with the assistance with the City's and Township's legal counsel, any effort or action seeking such change; and otherwise undertaking such actions as may be reasonably requested by either Party which will be detrimental to the success of any effort seeking such change.

**Section 6.3 Annexation Payments.** Subject to the provisions of Sections 6.4 and 6.5, below, if, during the Term of this Agreement or any renewal thereof, the boundaries of the Township are conformed by the City in any area within the Agreement Territory in such way so as to exclude the Township from any such area of the City, then the City shall, pursuant to Ohio Revised Code Section 709.191 and for all areas annexed to the City on or after the Effective Date of this Agreement, make the following annual payments to the Township with respect to commercial and industrial real, personal and public utility real and personal property taxes, using the property valuation for the year that the payment is due:

- (a) The annual payment shall be 150% of the "Township Taxes" (as hereinafter defined) in the excluded territory that would have been due to the Township each year if no annexation had occurred. This annual payment shall be made on a calendar year basis and shall begin on the first calendar year in which such exclusion becomes effective and shall continue to be made each year thereafter during the Term of this Agreement. For purposes of this Paragraph (a), the term "year" (or "years") means full calendar years. If Township territory is excluded from the City during a calendar year in such a manner that the Township would not collect all of its taxes from the excluded area for the full calendar year in which the exclusion initially occurs, then the City shall pay the Township the additional sum of \$500,000. The initial \$500,000 payment shall be due and payable to the Township within 60 days after the date the Township territory is first excluded. If, however, the Township would continue to collect all of its taxes in the excluded area during and for the entire calendar year of the first year in which the exclusion occurs, then the initial \$500,000 payment for the first calendar year is not applicable.
- (b) If there has been an exemption or abatement by the City of commercial and industrial real, personal, or public utility property taxes pursuant to Section 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, or 5709.88 of the Revised Code (or any future or similar statute of like tenor or effect), there shall be no reduction in the payments owed to the Township due to that exemption or abatement. The payments to be made by the City to the Township under this Section 6.3 shall be calculated as if the exemption or abatement had not occurred. In addition, the annual amounts due the Township under this Section shall include the sums that would have been due the Township as a result of any Township levies passed or imposed after the exclusion of Township territory has occurred. There shall also be added to each annual payment a sum equivalent to that amount

of revenue deriving from estate tax collections which would have been owed to the Township if no annexation had occurred.

- (c) The annual payments required under this Section 6.3 shall be made to the Township within 60 days after the end of each calendar year. (For example, the annual payment due for calendar year 2007 would be due and payable on or before March 1, 2008.) If the City fails to make an annual payment to the Township as required by this Section 6.3, the Township may utilize the remedy provided for in Ohio Revised Code Section 709.191, in addition to any other remedies available to the Township. The City agrees that the annual payments provided for in this Section 6.3 are lawful and reasonable, and the City further agrees and covenants not to contest or in any way challenge the validity of this Section 6.3 or any payment required to be made thereunder.
- (d) As used in this Article 6, Section 6.3, the term 'Township Taxes' shall be defined and liberally construed to mean and include the revenue which would otherwise have been derived and owed to the Township from those voted and unvoted taxes, levy proceeds, and bond levy proceeds which would be lost to the Township as a result of the conforming of City boundaries so as to exclude the Township from any area within the Annexation Territory which is annexed to the City on or after the Effective Date of this Agreement. Such taxes, levies or bonds are taxed and calculated at millage rates and the total amount of such indebtedness or millage shall be calculated each year at their full rate using the property valuation for the year that the payment is due and without consideration of any reductions or rollbacks, and without consideration of any other reductions which might otherwise result from any exemptions or abatements which might be, or might have been, granted by the City with respect to commercial and industrial real, personal or public utility real and personal property taxes pursuant to Sections 725.02, 1728.10, 3735.67, 5709.40, 5709.41, 5709.62, or 5709.88 of the Ohio Revised Code or any future or similar statute of like tenor or effect. Although Township Taxes are intended to be understood and construed to include all revenue which, if the exclusion of Township territory had not occurred, would have been otherwise derived and owed to the Township with respect to commercial and industrial real, personal and public utility real and personal property taxes, and any other voted or unvoted bond or tax levy, the Parties agree that when calculating the sum of Township Taxes, the Parties hereto shall not include any sums which the Township would continue to collect, if any, within the corporate limits of the City as a result of any apportionment pursuant to Ohio Revised Code Sections 503.10, 709.05(B), 133.04, or other statutes of like tenor and effect. Township Taxes shall also include any increases in voted levies or any additional levies (whether tax, bond or otherwise) which generate revenue from within the unincorporated territory of the Township after the Effective Date of this Agreement. In addition, Township Taxes shall include an amount which is the equivalent of the entire minimum levy allocated to the City under Section 5705.31 of the Ohio Revised Code, without reduction or rollback, on all such property. There shall also be added to each annual payment a sum equivalent to

that amount of revenue deriving from estate tax collections which would have been owed to the Township if no annexation had occurred.

- (e) Notwithstanding anything to the contrary contained herein, the payment provisions contained in this Section 6.3 shall apply only in those instances whereby the Township boundaries are conformed as a result of an action(s) taken by or on behalf of the City.
- (f) The remedy provided in this Section 6.3 is in addition to any other remedy which may be available to the Township.

**Section 6.4. Conformance of Boundaries Within City Growth Zone West.**

Notwithstanding anything to the contrary contained in this Article 6 or elsewhere in this Agreement, the City shall conform its boundaries under and pursuant to Section 503.07 of the Ohio Revised Code in order to exclude the Township from any land or lands which have previously been or may be annexed to the City within the City Growth Zone West. For any land within the City Growth Zone West which has been previously annexed to the City, the City shall use its best efforts to cause the conformity of the boundaries of annexed lands within twelve (12) months following the Effective Date of the Agreement. In all other cases, the City shall conform the boundaries of such land within twelve (12) months following the City's acceptance of the annexation period. Any land so excluded under this Section 6.4 shall no longer be subject to the terms of this Agreement.

**Section 6.5 Township Consent Directive to Conform Boundaries Within Park Zone and City Growth Zone East.**

Notwithstanding anything to the contrary contained in this Article 6 or elsewhere in this Agreement, the Township may, at its option and at the sole and absolute discretion of the Board of Trustees, direct, in writing, the City to conform its boundaries under and pursuant Section 503.07 of the Ohio Revised Code in order to exclude the Township from the land or lands specified in the directive which have been or may be annexed to the City within the Park Zone or the City Growth Zone East. Any such directive, in order to be effective, must be in writing and authorized and approved by the appropriate legislation passed by the Board of Trustees. If the Township issues such a directive, the City shall use its best efforts to cause the conformity of the boundaries of annexed land(s) referenced in the directive within twelve (12) months following the City's receipt of the directive. Any land within the City Growth Zone East so excluded under this Section 6.5 shall no longer be subject to the terms of this Agreement. Any land within the Park Zone so excluded under this Section 6.5 shall continue to remain subject to the terms of Articles 1, 4, 7, 8, 9 and 10 of this Agreement, but the City may attach such land to Montgomery Township. Whenever conformity of the boundaries of annexed lands shall be required by the terms of this Agreement, or the Board of Trustees of the Township shall otherwise, in writing, agree to and authorize such conformity, the City shall not be obligated to make any annexation and/or tax payments to the Township under either this Article or any other provision of this Agreement.

## ARTICLE 7

### LAND USE PLANNING

**Section 7.1 Rocky Fork – Blacklick Accord Amendment.** Within ninety (90) days after the Effective Date of this Agreement, the Village and City shall amend the Rocky Fork – Blacklick Accord (the “Accord”, with the voting membership under the Accord being referred to as the “Accord Panel”), as adopted by the City and Village in 1995 (and as subsequently amended), to include the Township as an equal Party to the Accord. As part of such amendment, the Parties agree that the Accord Panel will be reconstituted as a nine (9) member Panel selected as follows: two (2) representatives for and chosen by each Party, and three (3) representatives mutually selected by all Parties. By execution of this Agreement, the Township hereby adopts the Accord in the form adopted by the City and Village in 1995 (and as subsequently amended) upon the effective date of the amendment to the Accord by the City and Village as contemplated in this Section 7.1, and by its adoption, the Township affirms that it is its intent that the Accord will be used as a principal reference document by the Accord Panel in its deliberations, and that recommendations of the Accord Panel will be considered as set forth in Section 7.2, below.

**Section 7.2 Accord Panel Recommendations.** All rezoning requests seeking a legislative change in the zoning classification of real property that is located both (a) within the boundaries of the City, Village or Township and (b) within the boundaries of the Accord shall be submitted to the Accord Panel, as it is proposed to be reconstituted for its review. (By way of explanation, a request to the legislative authority to change a property’s current zoning classification from one zoning district to another should be submitted to the Accord Panel for review and recommendation. However, variances, land plans, permits and the like are not required to be submitted to the Accord Panel.) The Accord Panel shall timely prepare a nonbinding recommendation concerning the proposed change and its compliance with the Accord, and such recommendation, if timely presented, shall be considered by the Party of jurisdiction prior to approving any such change. While under no obligation to do so, nothing herein prohibits a Party from submitting other land use related requests or initiatives to the Accord Panel for review and recommendation.

## ARTICLE 8

### PARK DEVELOPMENT

**Section 8.1 Metro Park Development Agreement.** The Parties and Metro Parks have negotiated the terms of a Metro Park Development Agreement which is intended to outline and guide the efforts of the Parties and Metro Parks toward the establishment of a Park Development within the Park Zone.

**Section 8.2 Metro Park Development Agreement Goals.** It shall be the goal of the Parties and Metro Parks that the Metro Park Development Agreement provides for the terms under which land within the Park Zone is acquired and developed by Metro Parks for a Park Development. The terms of the Metro Park Development Agreement address and include, without limitation, the following:

- (a) The Parties and Metro Park having, as their goal, the acquisition, creation and establishment of a natural park area designed for passive recreation uses consisting of at least 1,200 acres within the Park Zone;
- (b) The designation of areas within the Park Zone which are not appropriate for Park Land acquisition purposes;
- (c) The terms under which limited centralized water and/or sewer utility services may be extended by the City to the Park Zone for the sole purpose of serving park uses;
- (d) The terms under which Metro Parks will cooperate in any annexation of property owned by Metro Parks, if requested by the City, with it being the understanding of the Parties that applicable law may not require Metro Parks to sign an annexation petition; and,
- (e) The terms of the Parties' and Metro Parks' funding commitments (which are outlined in Section 8.3, below) and the method and manner of valuing any real property contributions.

**Section 8.3 Funding Commitments.** The Metro Park Development Agreement provides for and specifies the respective funding commitments of the Parties and Metro Parks as it relates to the acquisition and development of the Park within the Park Zone. The terms of the funding commitments of the Parties and Metro Parks address and include, without limitation, the following:

- (a) Upon such date as is established in the Metro Park Development Agreement, the Parties have obligated themselves to an initial funding commitment to Metro Parks in an amount totaling \$10,000,000 which is to be held by Metro Parks in a separately dedicated account into which all of Metro Park's and the Parties' monetary contributions will be deposited and held, which funds are to be used solely for the purposes set forth in the Metro Park Development Agreement. Provision is made for the return to the Parties of any such funds which are not used for acquiring and developing the Park Land.
- (b) The Parties initial funding commitment of \$10,000,000 is divided and to be made as follows:
  - (i) The City is to make an initial funding commitment of \$5,000,000 consisting of cash and/or real property within the Park Zone; and
  - (ii) The City is also to make, on behalf of the Township, an additional initial funding commitment of \$2,500,000 consisting of cash and/or real property within the Park Zone; and

- (iii) The Village is to make an initial funding commitment of \$2,500,000 consisting of cash and/or real property within the Park Zone.
- (c) Metro Parks is to make an initial funding commitment of \$3,000,000.
- (d) Metro Parks is to acquire, operate and maintain all portions and aspects of the Park without any further or additional funding commitments or contributions from any Party unless a Party wishes to provide further assistance.
- (e) Park Land acquired by Metro Parks is to be devoted solely to Park Development uses and is not to be changed in use, transferred or otherwise disposed of without the consent of all Parties.

## ARTICLE 9

### ADDITIONAL SERVICES/ANNUAL MEETINGS

**Section 9.1** **Safety Services.** Upon the annexation of any property to the City located within any portion of the Agreement Territory, the City shall be the primary provider of police, fire and emergency medical services to such annexed territory. The Township, may, however provide fire and emergency medical services to such areas upon a mutual aid basis as may, from time to time, be agreed upon between the Township and City.

**Section 9.2** **Annual Meetings.** At least annually upon the request of a Party, representatives of the Parties shall meet in order to assess the effects of this Agreement, to discuss subjects of mutual concern and to explore methods of cooperation.

## ARTICLE 10

### GENERAL PROVISIONS

**Section 10.1** **Cessation of Party Obligations.** Notwithstanding any other provision hereunder, each Party's respective obligations under this Agreement shall cease simultaneously with the expiration of the Term (as defined in Section 10.2).

**Section 10.2** **Term.** The initial term of this Agreement (the "Initial Term") shall be for a period of fifteen (15) years, commencing on the Effective Date and shall, upon timely prior written notice, terminate at midnight, February 25, 2023. Unless all legislative authorities of the Parties affirmatively act to terminate this Agreement within one (1) year prior to the expiration of the Initial Term or any subsequent five year term provided for in this Section, this Agreement shall automatically be renewed for an additional period of five (5) years, and this Agreement shall continue to be automatically renewed thereafter for similar five (5) year periods at the end of each renewal period with no limit upon the number of such renewals. The provision herein for automatic extension of this Agreement recognizes that the accrual of benefits to the Parties from this Agreement may take decades and that the construction of water and sanitary sewer service facilities along with other possible capital improvements provided for

herein is of permanent usefulness and duration. The "Term" of this Agreement shall include the Initial Term and any extensions thereof pursuant to this Section.

**Section 10.3 Support of Agreement by Parties.** In the event that this Agreement, or any of its terms, conditions or provisions, is challenged by any third party in a court of law, the Parties agree to cooperate with one another and to use their best efforts in defending this Agreement with the object of upholding this Agreement. Each Party shall bear its own costs in any such proceeding challenging this Agreement or any term or provisions thereof.

**Section 10.4 Signing Other Documents.** The Parties agree to cooperate with one another and to use their best efforts in the implementation of this Agreement and to sign or cause to be signed, in a timely fashion, all other necessary instruments, legislation, petitions and similar documents, and to take such other actions as are necessary to effectuate the purposes of this Agreement.

**Section 10.5 Cooperation in Pursuing Grants.** The Parties agree to cooperate with each other in contributing to the success of applications to obtain grants of funding to perform projects in the Park Zone that would be to the mutual benefit of the Parties. This Section is not intended to obligate any Party hereto to contribute matching funds or to apply any other form of such Party's economic resources in contributing to the success of applications to obtain grants of funding to perform projects in the Park Zone.

**Section 10.6 Mediation.** In the event the Parties have a dispute as to any of the terms or applicability of this Agreement, the Parties agree to use their best efforts to resolve the dispute through a mutually acceptable mediation process prior to any Party filing a lawsuit in connection with such dispute. Each Party participating in mediation shall pay its own costs of mediation, including its proportionate share of the compensation and administrative expenses required by the mediator and by the mediation services provider selected by the Parties. If a mediator has not been selected by the Parties within sixty (60) days after one of the Parties has requested that a dispute arising under this Agreement be mediated, then any of the Parties may commence a lawsuit or commence such other method of pursuing such remedies as may be available to any of the Parties.

**Section 10.7 Default.** A failure to comply with the terms of this Agreement shall constitute a default hereunder. A Party in default shall have ninety (90) days after receiving written notice from another Party of the event of default to cure the default. If the default is not cured within such time period, the defaulting Party is in breach of this Agreement and a non-defaulting Party may sue the defaulting Party for specific performance or injunctive relief under this Agreement or for damages or both and may pursue such other remedies as may be available at law or in equity, all as provided in Section 709.192 of the Ohio Revised Code. In addition, upon default by the City which involves a breach of Article 6, hereof the Township may, at its option and upon written notice to the City and following the provision of notice and the passage of the ninety (90) days allowed for cure as specified in this Section 10.7, require the City to make the annual payments referenced in Article 6, Section 6.3, hereof, to the Township, beginning in the calendar year following such notice, with such payments to be made in the manner and in the amount specified in Article 6, Section 6.3.



**Section 10.8 Amendments.** This Agreement may be amended only by a writing approved by the legislative authorities of all of the Parties by means of appropriate legislation authorizing such amendment. Any amendment, in order to be effective, must be authorized by appropriate legislation passed by each of the Parties.

**Section 10.9 Immunities Preserved.** By entering into this Agreement, none of the Parties intend to relinquish or waive any of the immunities they now have or may hereafter be accorded under state and/or federal laws, including, without the limitation of any such immunities, all those immunities accorded to governmental entities and their officers and employees under O.R.C. Chapter 2744.

**Section 10.10 No Personal Liability.** All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of any Party in other than their official capacity, and no official or member of a legislative authority executing this Agreement on behalf of any Party or any present or future member, officer, agent or employee of any Party shall be liable personally by reason of the covenants, obligations or agreements of the Parties contained in this Agreement.

**Section 10.11 Powers Preserved.** This Agreement is not intended to be in derogation of the powers granted to municipal corporations by Article XVIII, Ohio Constitution, or any other provisions of the Ohio Constitution or of the City's or the Village's respective municipal charters or of the Ohio Revised Code; nor is it intended to be in derogation of the powers granted to townships under any provisions of the Ohio Constitution or of the Ohio Revised Code. The Parties hereby acknowledge their belief as to the lawfulness of this Agreement and agree not to challenge or contest it, or any provision contained herein.

**Section 10.12 Beneficiaries.** This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors; subject, however, to the specific provisions hereof. This Agreement shall not inure to the benefit of anyone other than as provided in the immediately preceding sentence. This Agreement is not intended to and does not create rights or benefits of any kind for any persons or entities that are not a party to this Agreement.

**Section 10.13 Severability.** In the event that any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason:

- (a) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein;

- (b) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof;
- (c) each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law; and,
- (d) in the event of invalidation of any portion of this Agreement, the Parties shall, upon the written request of any Party, meet within thirty (30) days after receipt of such request, and modify the invalidated provision(s) in such a manner so as to accomplish the purpose and intent of this Agreement, with time being of the essence.

**Section 10.14 Character of Payments.** Nothing in this Agreement is to be interpreted as the sharing of the proceeds of any tax levy by and between any Parties. Any language within this Agreement which employs an amount of any tax to be collected as part of a calculation for determining a sum to be paid by one Party to another of the Parties is intended, and therefore to be interpreted, as a reasonable, practical and convenient mechanism which the Parties have agreed to use to compute, in a less controversial manner, the payments to be made by one Party to another for services and other items of value to be received by the paying Party. No payments to be made under this Agreement are intended to be a sharing of proceeds of any tax levy proscribed by Section 709.192(D) of the Ohio Revised Code. The Parties do not consider estate taxes to be a tax levy.

**Section 10.15 Merger.** This Agreement, which includes the recitals hereto, constitutes the entire understanding of the Parties and shall not be altered, changed, modified, or amended, except by similar instruments in writing, executed by the Parties as provided in this Agreement. It is not intended that the Metro Park Development Agreement be merged with this Agreement.

**Section 10.16 Liberal Construction.** The Parties agree that just as Section 709.192 of the Ohio Revised Code is to be liberally construed to allow the Parties to enter into Annexation Agreements, the Parties further agree that this Agreement shall be liberally construed in order to facilitate the desires of each of the Parties to carry out this Agreement. Each provision of this Agreement shall be construed and interpreted so as to permit maximum advantage to the Parties allowed by Section 709.192 of the Ohio Revised Code.

**Section 10.17 Notices.** Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, notices shall be addressed to:

(a) The Township at:

Plain Township Board of Trustees  
45 Second Street, Suite A  
P. O. Box 273  
New Albany, Ohio 43054  
Attention: Plain Township Administrator

With a copy simultaneously sent or delivered to:

Donald F. Brosius  
Loveland & Brosius, LLC  
50 West Broad Street, Suite 3300  
Columbus, Ohio 43215

(b) The Village at:

The Village of New Albany, Ohio  
99 West Main Street  
New Albany, Ohio 43054  
Attention: Village Administrator

With a copy simultaneously sent or delivered to:

Mitchell H. Banchefsky  
Schottenstein, Zox & Dunn, LPA  
250 West Street  
Columbus, Ohio 43215

(c) The City at:

The City of Columbus, Ohio  
Department of Development  
50 W. Gay Street  
Columbus, OH 43215  
Attention: Director of Development

With a copy simultaneously sent or delivered to:

Daniel W. Drake, Chief Counsel  
Columbus City Attorney  
90 West Broad Street  
Columbus, Ohio 43215

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, consents, certificates, requests or other communications shall be sent.

**Section 10.18 Captions and Headings.** The captions and headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections hereof.

**Section 10.19 Counterparts.** This Agreement may be executed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

**Section 10.20 Governing Law and Choice of Forum.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between the Parties or their respective agents and employees arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the County.

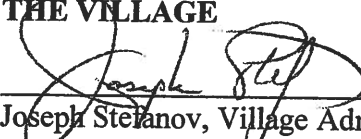
**Section 10.21 Financial Obligations.** The financial obligations of the City, the Township and the Village, as applicable, under this Agreement are expressly subject to future ordinances or resolutions of the City Council, the Township Trustees or the Village Council, respectively, appropriating and authorizing the expenditure of such funds as are necessary to meet their respective financial obligations. Those obligations, as applicable, of the City are also subject to the certification of the City Auditor under Section 159 of the City Charter, or the Township Fiscal Officer under Section 5705.41 of the Revised Code, or the Village Finance Director under Section 9.04(F) of the Village Charter.

IN TESTIMONY WHEREOF, the Township by its designated Trustee, the Village by its Administrator and the City by its Director of Development have each hereunto set their signatures as of the Effective Date.

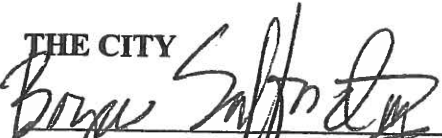
**THE TOWNSHIP**

  
Donald R. Shoemaker, Township Trustee

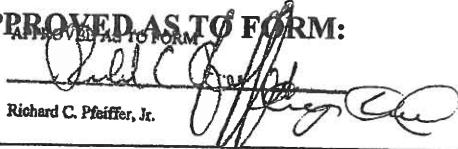
**THE VILLAGE**

  
Joseph Stefanov, Village Administrator

**THE CITY**

  
Boyce Safford, III, Director of Development

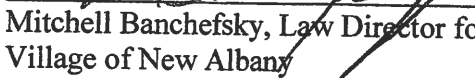
APPROVED AS TO FORM:

  
Richard C. Pfeiffer, Jr.

City Attorney, City of Columbus

Date:

2/27/08

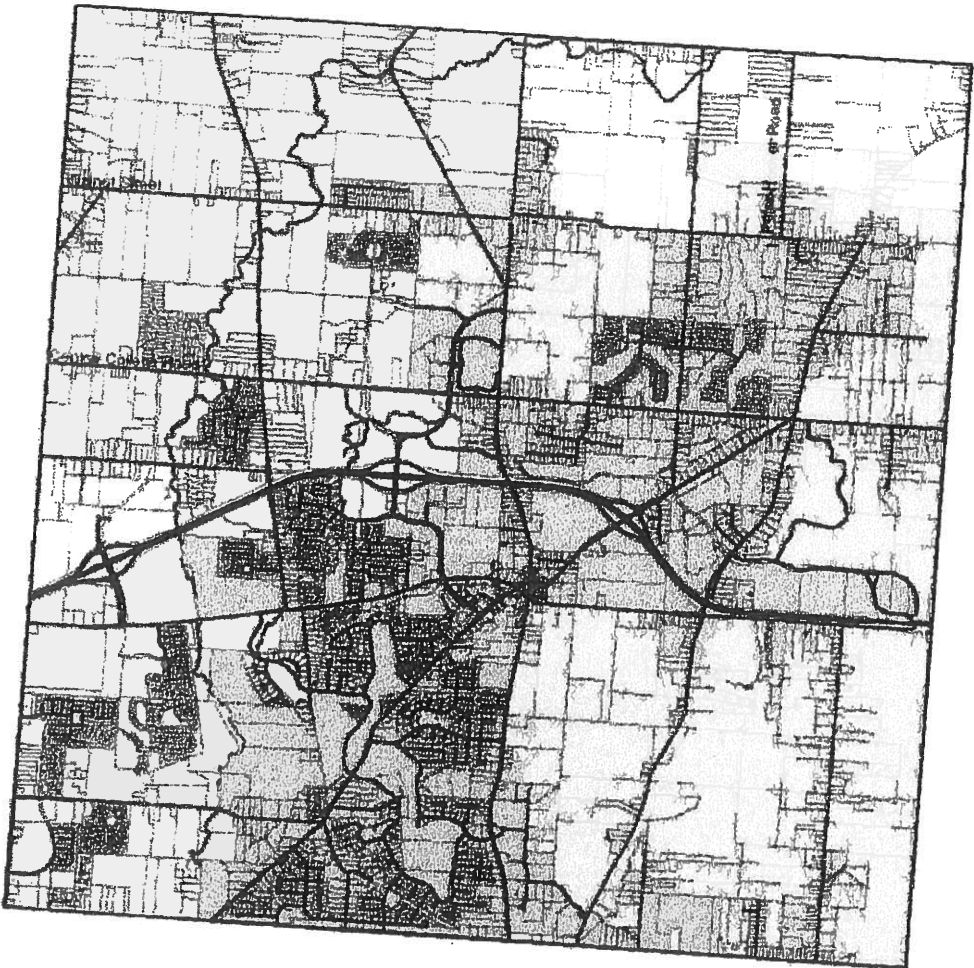
  
Mitchell Banchefsky, Law Director for the  
Village of New Albany



Date:

2-26-08

ATTACHMENT A – Map of the Agreement Territory – Sewer and Water Services Areas  
ATTACHMENT B – Map of the Agreement Territory  
ATTACHMENT C – Map of Village Exception Areas  
ATTACHMENT D – Rocky Fork Blacklick Accord Land Use Plan

ATTACHMENT A – Map of the Agreement Territory

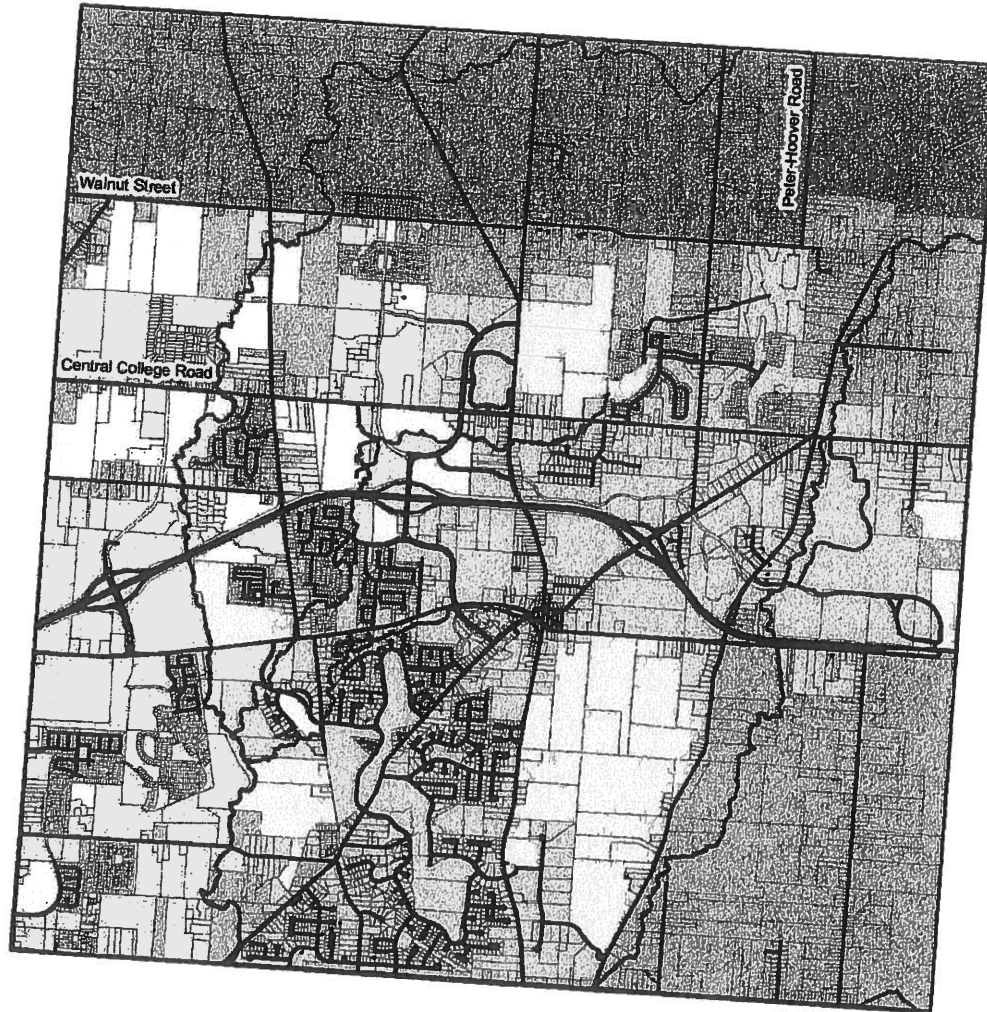








-  City of Columbus Water and Sewer Service Area
-  Village of New Albany Water and Sewer Service Area



ATTACHMENT B – Map of the Agreement Territory

Attachment B: Agreement Territory

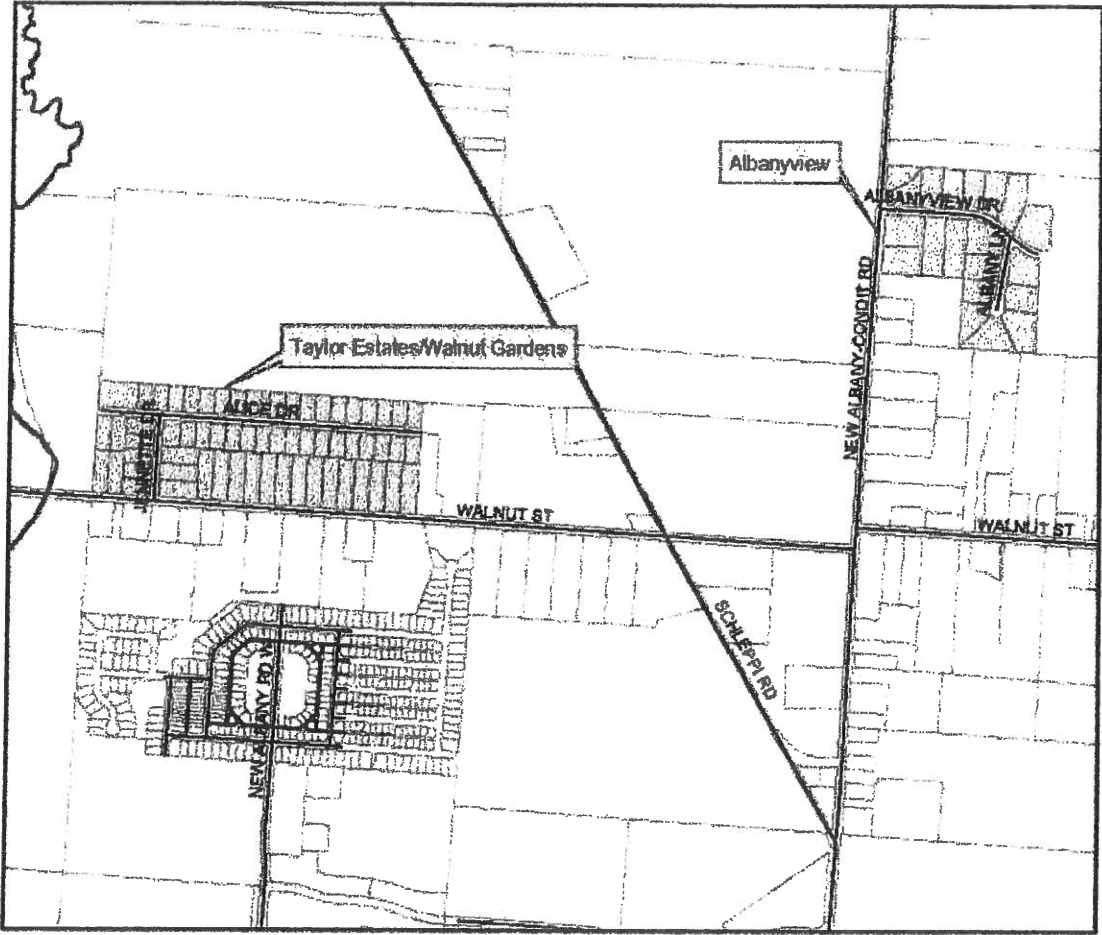


-  Park Zone
-  City of Columbus
-  City Growth Zone: West
-  City Growth Zone: East
-  Village of New Albany
-  Village Growth Zone

Aug, 06

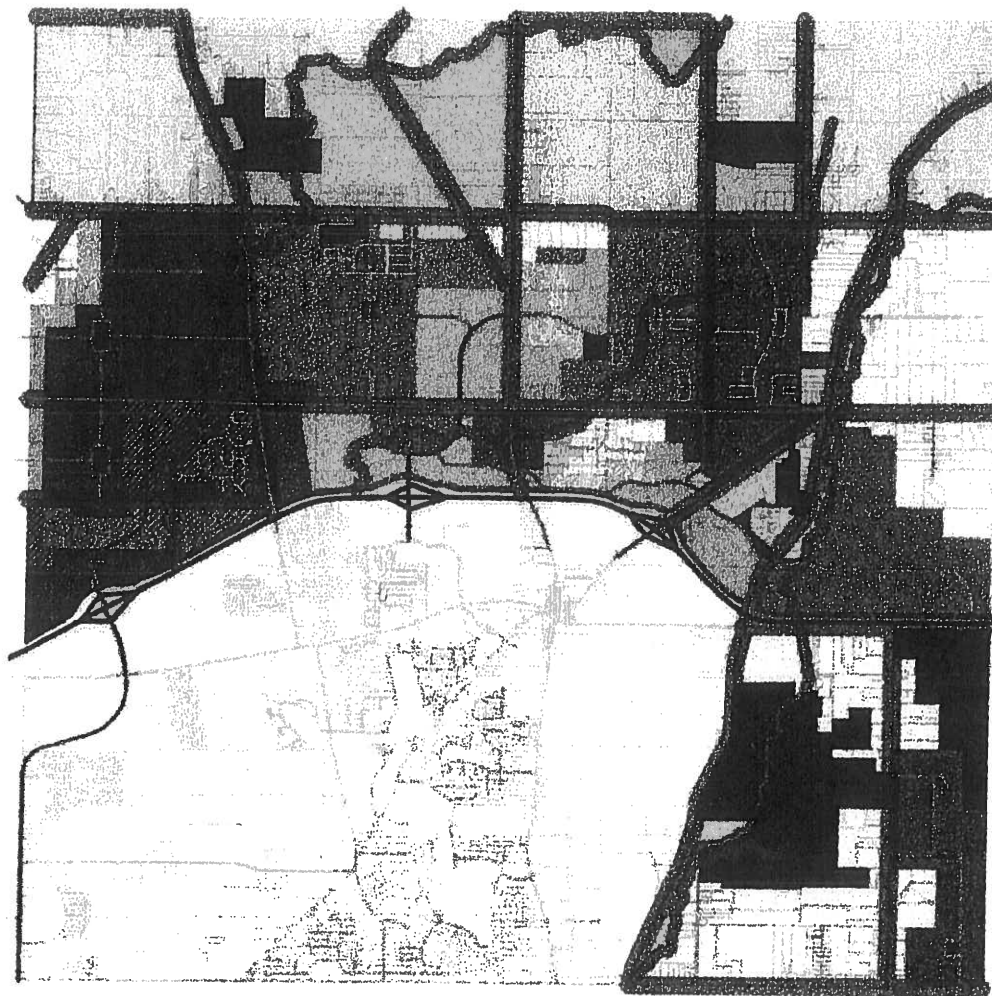
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ATTACHMENT C – Map of Village Exception Areas





ATTACHMENT D – Rocky Fork Blacklick Accord Land Use Plan Update  
 The Rocky Fork-Blacklick Accord Implementation Panel approved the update on November 6, 2003 and it was endorsed by Columbus City Council on December 15, 2003. The Village of New Albany adopted the update on January 20, 2004.



### Legend

|                  |                     |                                |
|------------------|---------------------|--------------------------------|
| Office           | Park/Open Space     | Edge                           |
| Office/Warehouse | Village Mixed Use   | Neighborhood                   |
| Town Mixed Use   | Town Residential    | Neighborhood Center            |
| Commercial       | Village Residential | Neighborhood Center Commercial |
| Multi-Family     | Rural Residential   | Park Zone                      |
| Civic/Schools    |                     |                                |

Preexisting zoning represented by hatching

2003 Land Use Map

DRAFT  
 12-2-03

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## **Land Use**

The planning area is divided into four land use districts: Office, Town, Village, and Rural Residential. Additionally, the northern sector is designated as a Park Zone. It is assumed that each jurisdiction will incorporate these districts and related guidelines into their regulatory framework as necessary and appropriate.

### **Office District**

This district responds to the values created by direct access to and from the New Albany Expressway. It provides locations for development with excellent visibility and locations for tax revenue producing uses.

### **Town District**

This district is made up of two primary land use areas: mixed use and town residential. Because it is central to the new growth north of New Albany Expressway, and will be served by the arterial roadway connected directly to two interchanges on SR 161, it has the widest variety of permitted uses and the highest densities. The mixed use portion of the town is created as a location for a town center with a green surrounded by combinations of retail, residential (including multi-family), and office uses. It is framed by the roadways and is incorporated into the open space system. Surrounding the mixed use area of the Town District is the residential area. This area is made up of single family homes. It is framed by and interspersed with natural and rural road open space, and should have at its center (within walking distance of as many homes as possible), a school site with abutting recreational open space.

### **Village District**

The land use plan locates three village districts. The villages are directly served by the existing roadway structure either by arterial roadway or collector streets. Each village incorporates significant open space into its land area, and is intended to be surrounded by open space. Additionally, each village should have a center that includes a village green or civic open space. Where village or surrounding area population justify, the village centers should be the location for schools and recreational open space. The village centers, with the related schools and recreation space, should be located to maximize the convenience of walking to these civic amenities.

### **West Village**

This portion of the planning area will encompass a broad range of private and civic uses. It is comprised of the Edge, Neighborhood, and Center districts, each with a distinct land use and density pattern. The West Village focuses residential density and a commercial uses around its center node. The West Village's boundaries are formed by a lower density edge on the west, a Park Zone on the north, the Rocky

Fork corridor on the east and existing development and the SR 161 corridor on the south. The location of the West Village takes advantage of existing and anticipated infrastructure. This includes the northern extension of Hamilton Road and the establishment of a new east/west connector from the village east to the New Albany Road West. These new roadways will serve as the primary access for the West Village to the SR 161 Expressway and the broader community.

Establishment of a green corridor along Rocky Fork Creek will protect critical natural resources and accommodate a multi-use trail system. A school site and public parks are also included to serve the community. The potential School Site is intended to complement a potential park along the Rocky Fork Creek. If not located in this particular area, some school location will be needed to serve the West Village. Preservation and enhancement of the Rocky Fork Creek corridor will continue to be a fundamental element of the Accord. In recognition of increased densities in the West Village, the recommended total width of the corridor will be increased to 500 feet.

#### **Rural Residential District**

All land not designated as office, town, or village, is within the Rural Residential District. This land is framed by rural roads and interspersed with publicly accessible stream corridor open space. Permitted uses are limited to open space, agriculture, or residential. Open space is created by the clustering of units.

#### **Park Zone**

The area north of Walnut Street has been designated as the Park Zone. Creation of a Metro Park is the primary goal within this area. Extensive discussions have occurred as part of this update process to make the park a reality. Cooperation between Metro Parks officials, the City of Columbus, the Village of New Albany and Plain Township has been instrumental in the progress made on this noteworthy effort. The Metro Park will be established within a significant portion of this 2800-acre Park Zone, with a current goal of 1200 acres for the eventual park size.

The majority of this Park Zone was Rural Residential under the previous Accord land use plan and also included the 350-acre North Village. The standards place this entire area, other than current parkland, into the Rural Residential development standards for purposes of any future development. The Metro Park will not utilize all the land in the Park Zone and will be located only where willing sellers come to terms with the Metro Parks, so the exact location of the park cannot currently be determined. Due to this, the Rural Residential standards of development including a limit of 1 unit to the acre will be left in place underlying this entire Park Zone.

### **Town Residential**

The second component of the Town District is a residential area adjacent to the mixed-use town center. This area is comprised of single-family and attached residential housing in close proximity to school sites and recreational open space.

#### *Permitted Land Use*

Single-Family Residential

Permitted Density

#### *New Albany:*

Base Density: 1 unit per acre

Density Bonus: Strict adherence to the development standards of this section may permit an increase in the base density up to 1.5 units per acre.

#### *Columbus:*

Base Density: 1 unit per acre

Density Bonus: Strict adherence to the development standards of this section may permit an increase in the base density up to 5.0 units per acre.

### **West Village - Edge**

The Edge district is the least dense, most purely residential part of the West Village. It consists principally of single-family, detached houses with accessory outbuildings. Buildings are situated on larger lots than elsewhere in this district.

#### *Permitted Land Use*

Single-Family Residential

Permitted Density

#### *Columbus:*

Base Density: 1 unit per acre

Bonus Density: Strict adherence to the development standards of this section may permit an increase in the base density up to 3.0 units per acre.

Development Standards: The development pattern within this district should adhere to those standards applicable to the Neighborhood Edge District of the Traditional Neighborhood Development Article of the City of Columbus Zoning Code – Chapter 3320 of Columbus City Codes. If these standards are not

used, the Rural Residential District standards should be used to evaluate applications at the base density for this district.

### **West Village - Neighborhood**

The largest portion of the West Village is designated as Neighborhood. The Neighborhood district is a primarily residential part of the West Village. It consists of single-family, both attached and detached, houses with one outbuilding permitted on each lot. Buildings are situated on smaller lots with shorter setbacks to the front and side yards.

#### *Permitted Land Use*

Single-Family

Multi-Family Residential

Permitted Density

#### *Columbus:*

Base Density: 2 units per acre

Bonus Density: Strict adherence to the development standards of this section may permit an increase in the base density up to 5.0 units per acre.

Development Standards: The development pattern within this district should adhere to those standards applicable to the Neighborhood General District of the Traditional Neighborhood Development Article of the City of Columbus Zoning Code – Chapter 3320 of Columbus City Codes. If these standards are not used, the Village Residential District standards should be used to evaluate applications at the base density for this district.

### **West Village - Neighborhood Center**

The core of the West Village is the Neighborhood Center. It will build on existing commercial and multi-family zonings at the Central College and Hamilton intersection by organizing community-scale retail, office and higher-density residential uses at the neighborhood's core. It consists primarily of attached buildings and apartment houses without outbuildings.

#### *Permitted Land Use*

Multi-Family Residential

Neighborhood Commercial

Permitted Density

*Columbus:*

Base Density: 5 units per acre

Bonus Density: Strict adherence to the development standards of this section may permit an increase in the base density up to 8.0 units per acre.

Development Standards: The development pattern within this district should adhere to those standards applicable to the Neighborhood Center District of the Traditional Neighborhood Development Article of the City of Columbus Zoning Code – Chapter 3320 of Columbus City Codes.

If these standards are not used, the Town Residential District standards should be used to evaluate applications at the base density for this district.

**Park Zone**

The Park Zone has been designated as the location for the proposed Metro Park. The Metro Park is intended to incorporate a significant portion of this 2800-acre Park Zone, with a current goal of 1200 acres for the eventual park size.

*Permitted Land Use*

Parkland

Single-Family Residential

*Permitted Density*

Park Density: 0 units per acre

Development Density: 1 unit per acre

Development Standards: Portions of this district developed as a residential use should meet the Rural Residential District standards.