

**RES. \_\_-\_\_**

**Accepting the petition of The Brickyard on Main, LLC for special assessments for various special energy improvement projects in accordance with Chapters 1710 and 727 of the Ohio Revised Code; declaring the necessity of proceeding with the special energy improvement projects and approving the plans and specifications therefor; stating the method for making the special assessments against the benefitted properties and the amount of such special assessments; and declaring an emergency.**

**SUMMARY & BACKGROUND:**

The City of Marion created an Energy Special Improvement District (“District”) under Ohio Revised Code Chapter 1710 and a non-profit corporation, known as the City of Marion, Ohio Energy Special Improvement District, Inc. (“Marion ESID”), to govern the District. Property owners within the District are permitted to make certain “energy efficiency improvements” to their properties, which constitute a “special energy improvement project”, and pay for the cost of the special energy improvement project by way of special assessments in accordance with the process set out in Chapters 727 and 1710 of the Ohio Revised Code. Revised Code Section 1710.01(G) provides that special energy improvement projects (including energy efficiency improvements) constitute public improvements and are therefore subject to special assessments.

The Brickyard on Main, LLC (the “Petitioner”) is the owner of 100% of the property described on Exhibit A attached hereto (the “Properties”). The Petitioner has executed an Energy Project Agreement (the “Agreement”) with the Northwest Ohio Advanced Energy Improvement District (“NW Ohio ESID”) and the Marion ESID. A copy of the Agreement is attached to the Petition as Exhibit C.

Pursuant to the Agreement, and upon Application to the Marion ESID for membership and financing of special energy improvement projects to the Properties, the Marion ESID, the NW Ohio ESID, and the Petitioner have caused an energy audit to the property to be completed.

The energy audit has identified energy conservation measures, all of which qualify as energy efficiency improvements as defined in Revised Code Section 1710.01(K), which the Petitioner has determined to proceed with implementation, and to pay by way of special assessments.

The Petitioner has submitted to this Council a petition (“Petition”) seeking (i) the addition certain of its property to the District and (ii) approval of an amendment to the District’s comprehensive plan for special energy improvement projects to include The Brickyard on Main Special Energy Improvement Project (the “Project”) and requesting that those Projects be undertaken by the District and that the costs thereof be specially assessed against the properties of the Petitioner specially benefited thereby.

A complete list and description of the Project is on file with the Clerk of Marion City Council and is attached as Exhibit B to this Resolution. Exhibit B provides the following information for the Project:

1. Identification of the parcels numbers and name of the property/building to be improved;
2. A description of the nature of the special energy improvement projects for the particular parcels;
3. The estimated amount of the special assessment to be levied against each parcel of property and the number of years the special assessment will be collected (if not paid in cash within 30 days after the passage of the assessing ordinance as provided by law).

The Petitioner expressly waives the right to pay the assessments in cash within 30 days after passage of the assessing resolution.

The total dollar cost of the Project, capitalized interest on the Port Authority's revenue bonds, reserve fund for the Port Authority's bonds, the cost of issuance of the Port Authority's revenue bonds, or the associated costs of issuance of the NW Ohio ESID's bond fund (collectively, the "Project Cost"), is estimated to be One Hundred Eighty-Three Thousand Two Hundred Seventy-Eight Dollars and Seventy-Nine Cents (\$183,278.79). Each semi-annual payment represents the payment of a portion of the principal of and interest on the Port Authority's revenue bonds and the scheduled amounts payable as the Port Authority administrative fee, and the Port authority program administration fee due with respect to each semi-annual payment. The County Fiscal Officer of Marion County, Ohio may impose a special assessment collection fee, which if imposed, will be added by the County Fiscal Officer of Marion County, Ohio to each Semiannual Assessment payment.

The Port Authority, NW Ohio ESID, and the Marion ESID will fund the cost of the Project through either the issuance of bonds or the revolving loan fund. Ultimately, the loan will be repaid over time from the amounts the Petitioner pays as special assessments. The Petitioner, in turn, is expected to be able to pay the special assessments from the energy savings estimated to be achieved as a result of the Project.

The annual special assessments for the Project are to be paid in semi-annual payments over fourteen (14) years. The plans and specifications for the Project are on file with the Clerk of Council. The Petitioner's Petition also waives all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Chapter 727 of the Revised Code, the Marion City Charter and the Marion Municipal Code. The Petitioner consents to the immediate imposition of the special assessments upon the various properties specially benefited by Special Energy Improvement Projects.

This special assessment process is a voluntary process with one hundred percent of the cost of the special energy improvement projects being assigned to the specially benefited properties. This resolution accepts and approves the Petition from the Petitioner, to begin that special assessment process, and is accompanied by an ordinance to proceed with the Petitioner. When the Project is complete and the final costs known, an assessing ordinance directing that the necessary special assessments be made against the benefited properties will be presented to the Council.

NOW, THEREFORE, Be it resolved by the Council of the City of Marion:

SECTION 1. That this Council accepts and approves the Petition of the Petitioner for the Project described herein and in Exhibit B to this Resolution, which is on file with the Clerk of Council. All of the findings and determinations contained in the preceding Summary and Background section are incorporated herein and adopted as substantive findings and determinations of this Council.

SECTION 2. That this Council (i) accepts and confirms the inclusion of the properties listed in Exhibit A in the District, which, pursuant to Chapter 1710 of the Ohio Revised Code, is governed by the Marion ESID, and (ii) declares the necessity of the acquisition, installation and construction of the Project, which shall be constructed on the properties of the Petitioner identified in Exhibit A.

SECTION 3. That this Council hereby confirms its approval of the plan for the District, including (and as supplemented and amended by and to include) the plans for the Project, and the Marion ESID is authorized and directed to cause the Project to be constructed under such contracts as it determines to be appropriate under law and in accordance with the plan for the District, including (and as supplemented and amended by and to include) the plans for the Project.

SECTION 4. That the plans, specifications, estimates of costs, and profiles of the proposed Project identified in Exhibit B on file with the Clerk of Council and open to inspection are hereby approved, and the Project shall be acquired, installed and constructed in accordance with those plans and specifications.

SECTION 5. That this Council hereby finds and determines that (i) the Project is conducive to the public health, convenience and welfare of the City and its inhabitants and (ii) the properties of the Petitioner, identified in Exhibit A are specially benefited by those Projects.

SECTION 6. This Council hereby accepts and approves the waiver of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Chapter 727 of the Revised Code, the Marion City Charter and the Marion Municipal Code, and consents to the immediate imposition of the special assessments upon the properties as identified in Exhibit A. This waiver encompasses but is not limited to waivers of the following rights under the Revised Sections referred to below:

- The right to notice of the adoption of the Resolution of Necessity under Sections 727.13 and 727.14;
- The right to limit the amount of the special assessment under Sections 727.03 and 727.06;
- The right to file an objection to the special assessment under Section 727.15;
- The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Sections 727.16 and 727.17;
- The right to file any claim for damages under Sections 727.18 through 727.22 and Section 727.43;
- The right to notice that bids or quotations for Project may exceed estimates by 15%;

- The right to seek a deferral of payments of special assessments under Section 727.251; and
- The right to notice of the passage of the assessing ordinance under Section 727.26.
- Any and all procedural defects, errors or omissions in the special assessment process.

SECTION 7. That the total cost of the Project shall be assessed against the properties of the Petitioner identified in Exhibit A in proportion to the benefits resulting from the Project.

SECTION 8. That the total cost of the Project shall include any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, survey, testing and inspection costs, the amount of any damages resulting from those Projects and the interest thereon, the costs incurred in connection with the preparation, levy and collection of the special assessments, the cost of purchasing and otherwise acquiring any real estate or interests therein, expenses of legal services, costs of labor and material, trustee fees and other financing costs incurred in connection with the issuance, sale and servicing of securities issued by the Port Authority to provide a loan to the Marion ESID to pay costs of those Projects in anticipation of its receipt of the special assessments, capitalized interest on, and financing reserve funds for, such securities issued by the Port Authority, the administrative fee, together with all other necessary expenditures.

SECTION 9. That the estimated assessments heretofore prepared and now on file with the Clerk of Council and amounting in the aggregate to \$259,193.18 be and are hereby adopted. The special assessments to be levied shall be paid according to the following schedule: in fourteen (14) annual (twenty-eight [28] semi-annual) installments, with interest thereon at the same rate or rates as shall be borne by the securities to be issued by the Port Authority and loaned to the Marion ESID for the Project in anticipation of its receipt of the special assessments. Each semi-annual payment represents the payment of a portion of the principal of and interest on the NW Ohio ESID's Bond Fund, the administrative fee, and the trustee fee due with respect to each semi-annual payment. The County Fiscal Officer of Marion County, Ohio may impose a special assessment collection fee, which if imposed, will be added by the County Fiscal Officer of Marion County, Ohio to each Semiannual Assessment payment.

SECTION 10. That the City does not intend to issue its own securities in anticipation of the levy or collection of the special assessments for the Project, which instead shall be paid for initially from proceeds of the securities issued by the Port Authority for that purpose, and repaid through the special assessment process described herein.

SECTION 11. That this Council finds and determines that all formal actions of this Council and any of its Committees concerning and relating to the adoption of this Resolution were taken, and all deliberations of this Council or any of its Committees that resulted in such formal actions were held in meetings open to the public, in compliance with all legal requirements including those of Section 121.22 of the Revised Code.

SECTION 12. That this Resolution is declared to be an emergency measure and shall take effect and be in force from and after its adoption. The reason for the emergency lies in the fact that this Resolution is necessary for the immediate preservation of the public peace, health, safety and property; and for the further reason that immediate action is necessary in order to conserve energy,

protect the environment of the City, and undertake construction of necessary public improvements, as well as, provide and enable the timely levying, certification and collection of the special assessments for the Project.

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Situated in the City of Marion, County of Marion and State of Ohio, and more particularly described as follows:

Being 37.00 feet off of the North side of Lot Number 79 as marked on the Original Plat of the Town, now City, of Marion, Ohio.

Also, the following described premises, situated in the City of Marion, County of Marion and State of Ohio, and known as being part of Inlot No. 79, Old Plat, Marion, Ohio;

Beginning at a point in the East line of said Lot 79, 29.00 feet North from the Southeast corner of said Lot;

Thence West 40.00 feet, parallel with the South line of said Lot;

Thence South 6 inches, parallel with the East line of said Lot;

Thence East 40.00 feet, parallel with the South line of said lot to the East line of said lot;

Thence North on said East line of said lot 6 inches to the place of beginning.

TOGETHER WITH the wall thereon to be held in common with the premises adjacent thereto on the South.

Also being 16.5 feet off the entire South side of Lot Number 80 as marked on the Original Plat of the Town, now City, of Marion, Ohio.

135 S. Main Street Marion, Ohio

PPN: 123010001800 (part of Lot 79)

**EXHIBIT B**

**Project Plan for The Brickyard on Main, LLC**

The real property owned by The Brickyard on Main, LLC, the legal description of the property is set forth on the attached Exhibit A, will be subject to special assessments for energy improvements in accordance with Revised Code Chapter 1710.

The Project is expected to consist of the following energy efficiency elements:

1. Roofing
2. HVAC
3. Hot Water Tank
4. Windows
5. LED Lighting

Total project cost: \$154,000.00

Total cost including financing and other charges: \$183,278.79

Total direct loan payments to be collected: \$4,311.99

Total assessment payments to be collected: \$259,193.18

Estimated Annual assessment payment: \$18,513.80

Estimated semi-annual special assessments for 14 years\*: \$9,256.90

Number of semi-annual installments: 28

First annual installment due: January 31, 2020

*\*Note: Marion County will add 1.5% processing charge to the annual assessment amount.*

<b>County Taxable Year</b>	<b>Total Annual Assessment Parcel 12-301000-1800</b>	<b>Year Payments Are Due</b>	<b>1st Half (Due 1/31)</b>	<b>2nd Half (Due 7/31)</b>
2019	\$18,513.80	2020	\$9,256.90	\$9,256.90
2020	\$18,513.80	2021	\$9,256.90	\$9,256.90
2021	\$18,513.80	2022	\$9,256.90	\$9,256.90
2022	\$18,513.80	2023	\$9,256.90	\$9,256.90
2023	\$18,513.80	2024	\$9,256.90	\$9,256.90
2024	\$18,513.80	2025	\$9,256.90	\$9,256.90
2025	\$18,513.80	2026	\$9,256.90	\$9,256.90
2026	\$18,513.80	2027	\$9,256.90	\$9,256.90
2027	\$18,513.80	2028	\$9,256.90	\$9,256.90
2028	\$18,513.80	2029	\$9,256.90	\$9,256.90
2029	\$18,513.80	2030	\$9,256.90	\$9,256.90
2030	\$18,513.80	2031	\$9,256.90	\$9,256.90
2031	\$18,513.80	2032	\$9,256.90	\$9,256.90
2032	\$18,513.80	2033	\$9,256.90	\$9,256.90
<b>Total Assessment</b>	<b>\$259,193.18</b>			

Pursuant to Ohio Revised Code Chapter 323, the Assessment Payment Dates identified in this Exhibit B to the Plan are subject to adjustment by the Marion County Fiscal Officer under certain conditions. The County Fiscal Officer of Marion County, Ohio may impose a special assessment collection fee with respect to each Semiannual Assessment payment. If imposed, this special assessment collection fee will be added by the County Fiscal Officer of Marion County, Ohio to each Semiannual Assessment payment.

**EXHIBIT C**

**ENERGY PROJECT AGREEMENT**

(See Attached)



ORD. \_\_\_\_\_

**Determining to proceed with certain The Brickyard on Main Special Energy Improvement Project by way of special assessments in accordance with Chapters 1710 and 727 of the Ohio Revised Code; and declaring an emergency.**

**SUMMARY & BACKGROUND:**

The City of Marion created an Energy Special Improvement District (“District”) under Ohio Revised Code Chapter 1710 and a non-profit corporation, known as the City of Marion, Ohio Energy Special Improvement District, Inc. (“Marion ESID”), to govern the District. Property owners may petition the District to expand and are permitted to make certain “energy efficiency improvements” to their property, which constitute a “special energy improvement project”, and pay for the cost of the special energy improvement project by way of special assessments in accordance with the process set out in Chapters 727 and 1710 of the Ohio Revised Code. Revised Code Section 1710.01(G) provides that special energy improvement projects (including energy efficiency improvements) constitute public improvements and are therefore subject to special assessments.

The City of Toledo and the Toledo-Lucas County Port Authority (“Port Authority”) have partnered to create an Energy Special Improvement District under Ohio Revised Code Chapter 1710 and a non-profit corporation, known as the Northwest Ohio Advanced Energy Improvement District, to govern the District. The Northwest Ohio Advanced Energy Improvement District and Port Authority have provided technical and financial assistance to the District for this project.

The Brickyard on Main, LLC (the “Petitioner”) is the owner of 100% of the property described on Exhibit A attached hereto (the “Property”). The Petitioner has executed an Energy Project Agreement (the “Agreement”) with the Marion ESID and the Northwest Ohio Advanced Energy Improvement District. A copy of the Agreement is attached to the Petition as Exhibit C.

Pursuant to the Agreement, and upon Application to the Marion ESID for membership and financing of special energy improvement projects to the Property, the Port Authority, Marion ESID, and the Petitioner, have caused an energy audit to the property to be completed.

The energy audit has identified energy conservation measures, all of which qualify as energy efficiency improvements as defined in Revised Code Section 1710.01(K), which the Petitioner, has determined to proceed with implementation, and to pay by way of special assessments.

The Petitioner, and the Marion ESID have submitted to this Council a petition (“Petition”) seeking (i) the addition certain of its property to the District and (ii) approval of the changes to the District’s initial comprehensive plan for special energy improvement projects to include The Brickyard on Main Special Energy Improvement Project (the “Project”) and requesting that the Project be undertaken by the District and that the costs thereof be specially assessed against the property of the Petitioner, specially benefited thereby.

A complete list and description of the Project is on file with the Clerk of Marion City Council and is attached as Exhibit B to this Ordinance. Exhibit B provides the following information for the Project:

1. Identification of the parcels numbers and name of the property/building to be improved;
2. A description of the nature of the special energy improvement project for the particular parcels;
3. The estimated amount of the special assessment to be levied against each parcel of property and the number of years the special assessment will be collected (if not paid in cash within 30 days after the passage of the assessing ordinance as provided by law).

The Petitioner expressly waives the right to pay the assessments in cash within 30 days after passage of the assessing resolution.

The total dollar cost of the Project, capitalized interest on the Port Authority's revenue bonds, reserve fund for the Port Authority's bonds, the cost of issuance of the Port Authority's revenue bonds, or the associated costs of issuance of the Northwest Ohio Advanced Energy Improvement District's bond fund (collectively, the "Project Cost"), is estimated to be One Hundred Eighty-Three Thousand Two Hundred Seventy-Eight Dollars and Seventy-Nine Cents (\$183,278.79). Each semi-annual payment represents the payment of a portion of the principal of and interest on the Port Authority's revenue bonds and the scheduled amounts payable as the Port Authority administrative fee, and the Port authority program administration fee due with respect to each semi-annual payment. The County Fiscal Officer of Marion County, Ohio may impose a special assessment collection fee, which if imposed, will be added by the County Fiscal Officer of Marion County, Ohio to each Semiannual Assessment payment

The Port Authority, Northwest Ohio Advanced Energy Improvement District, and the Marion ESID will fund the cost of the Project through either the issuance of bonds or the revolving loan fund. Ultimately, the loan will be repaid over time from the amounts the Petitioner pays as special assessments. The Petitioner, in turn, is expected to be able to pay the special assessments from the energy savings estimated to be achieved as a result of the Project.

The annual special assessments for the Project are to be paid in semi-annual payments over fourteen (14) years. The plans and specifications for the Project are on file with the Clerk of Council. The Petitioner's petition also waives all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Chapter 727 of the Revised Code, the Marion City Charter and the Marion Municipal Code. The Petitioner consents to the immediate imposition of the special assessments upon the various properties specially benefited by Special Energy Improvement Projects.

This special assessment process is a voluntary process with one hundred percent of the cost of the special energy improvement projects being assigned to the specially benefited property. This ordinance accepts and approves the petition from the Petitioner to begin that special assessment process, and is accompanied by an ordinance to proceed with the Project. When the

Project is complete and the final costs known, an assessing ordinance directing that the necessary special assessments be made against the benefited property will be presented to the Council.

NOW, THEREFORE, Be it ordained by the Council of the City of Marion:

SECTION 1. That this Council hereby determines to proceed with the Project as described in the Petition of the Petitioner and in the Resolution of Necessity, including the Exhibit B thereto, and in accordance with the plans, specifications, profiles and estimates of costs previously approved and now on file with the Clerk of Council.

SECTION 2. That the Marion ESID shall cause the Project to be constructed under such contracts as it determines to be appropriate under law and in accordance with the plans and specifications approved by this Council.

SECTION 3. That the total cost of the Project to be assessed in accordance with the Resolution of Necessity shall be assessed on the property in the manner and pursuant to the payment schedule set forth in the Resolution of Necessity, and the estimated special assessments prepared and filed in the Office of the Clerk of Council are adopted.

SECTION 4. That the Clerk of Council is hereby directed to deliver a certified copy of this Ordinance to the County Auditor within fifteen (15) days after its passage, but in no event later than the second Monday in September, 2019 (or by such other date as may be specified in the Ohio Revised Code or acceptable to the County Auditor of Marion County, Ohio for the certification of assessments in connection with the preparation of the general tax list for tax year 2019).

SECTION 5. That this Council finds and determines that all formal actions of this Council and any of its Committees concerning and relating to the passage of this Ordinance were taken, and that all deliberations of this Council or any of its Committees that resulted in such formal action were held in meetings open to the public, in compliance with all legal requirements including those of Section 121.22 of the Ohio Revised Code.

SECTION 6. That this Ordinance is declared to be an emergency measure and shall take effect and be in force from and after its passage. The reason for the emergency lies in the fact that this Ordinance is necessary for the immediate preservation of the public peace, health, safety and property; and for the further reason that immediate action is necessary in order to conserve energy, protect the environment of the City and undertake the construction of necessary public improvements, as well as, enable and provide for the timely levying, certification and collection of special assessments for the Project.

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Situated in the City of Marion, County of Marion and State of Ohio, and more particularly described as follows:

Being 37.00 feet off of the North side of Lot Number 79 as marked on the Original Plat of the Town, now City, of Marion, Ohio.

Also, the following described premises, situated in the City of Marion, County of Marion and State of Ohio, and known as being part of Inlot No. 79, Old Plat, Marion, Ohio;

Beginning at a point in the East line of said Lot 79, 29.00 feet North from the Southeast corner of said Lot;

Thence West 40.00 feet, parallel with the South line of said Lot;

Thence South 6 inches, parallel with the East line of said Lot;

Thence East 40.00 feet, parallel with the South line of said lot to the East line of said lot;

Thence North on said East line of said lot 6 inches to the place of beginning.

TOGETHER WITH the wall thereon to be held in common with the premises adjacent thereto on the South.

Also being 16.5 feet off the entire South side of Lot Number 80 as marked on the Original Plat of the Town, now City, of Marion, Ohio.

135 S. Main Street Marion, Ohio

PPN: 123010001800 (part of Lot 79)

**EXHIBIT B**

**Project Plan for The Brickyard on Main, LLC**

The real property owned by The Brickyard on Main, LLC, the legal description of the property is set forth on the attached Exhibit A, will be subject to special assessments for energy improvements in accordance with Revised Code Chapter 1710.

The Project is expected to consist of the following energy efficiency elements:

1. Roofing
2. HVAC
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5. LED Lighting

Total project cost: \$154,000.00

Total cost including financing and other charges: \$183,278.79

Total direct loan payments to be collected: \$4,311.99

Total assessment payments to be collected: \$259,193.18

Estimated Annual assessment payment: \$18,513.80

Estimated semi-annual special assessments for 14 years\*: \$9,256.90

Number of semi-annual installments: 28

First annual installment due: January 31, 2020

*\*Note: Marion County will add 1.5% processing charge to the annual assessment amount.*

<b>County Taxable Year</b>	<b>Total Annual Assessment Parcel 12-301000-1800</b>	<b>Year Payments Are Due</b>	<b>1st Half (Due 1/31)</b>	<b>2nd Half (Due 7/31)</b>
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2032	\$18,513.80	2033	\$9,256.90	\$9,256.90
<b>Total Assessment</b>	<b>\$259,193.18</b>			

Pursuant to Ohio Revised Code Chapter 323, the Assessment Payment Dates identified in this Exhibit B to the Plan are subject to adjustment by the Marion County Fiscal Officer under certain conditions. The County Fiscal Officer of Marion County, Ohio may impose a special assessment collection fee with respect to each Semiannual Assessment payment. If imposed, this special assessment collection fee will be added by the County Fiscal Officer of Marion County, Ohio to each Semiannual Assessment payment.

**EXHIBIT C**

**ENERGY PROJECT AGREEMENT**

(See Attached)

**ORD. \_\_-\_\_**

**Levying special assessments for The Brickyard on Main Special Energy Improvement Projects; and declaring an emergency.**

**SUMMARY & BACKGROUND:**

The City of Marion created an Energy Special Improvement District (“District”) under Ohio Revised Code Chapter 1710 and a non-profit corporation, known as the City of Marion, Ohio Energy Special Improvement District, Inc. (“Marion ESID”), to govern the District. Property owners within the District are permitted to make certain “energy efficiency improvements” to their properties, which constitute a “special energy improvement project”, and pay for the cost of the special energy improvement project by way of special assessments in accordance with the process set out in Chapters 727 and 1710 of the Ohio Revised Code. Revised Code Section 1710.01(G) provides that special energy improvement projects (including energy efficiency improvements) constitute public improvements and are therefore subject to special assessments.

The City of Toledo and the Toledo-Lucas County Port Authority (“Port Authority”) have partnered to create an Energy Special Improvement District under Ohio Revised Code Chapter 1710 and a non-profit corporation, known as the Northwest Ohio Advanced Energy Improvement District (“NW Ohio ESID”), to govern the District. The NW Ohio ESID and Port Authority have provided technical and financial assistance to the District for this project.

The Brickyard on Main, LLC, (the “Petitioner”) is the owner of 100% of the property described on Exhibit A attached hereto (the “Properties”). The Petitioner has executed an Energy Project Agreement (the “Agreement”) with the Marion ESID and the NW Ohio ESID. A copy of the Agreement is attached to the Petition as Exhibit C.

Pursuant to the Agreement, and upon Application to the Marion ESID for membership and financing of special energy improvement projects to the Properties; the Port Authority, the Marion ESID, and the Petitioner, have caused an energy audit to the property to be completed.

The energy audit has identified energy conservation measures, all of which qualify as energy efficiency improvements as defined in Revised Code Section 1710.01(K), which the Petitioner, has determined to proceed with implementation, and to pay by way of special assessments.

The Petitioner and the Marion ESID have submitted to this Board a joint petition (“Petition”) seeking (i) the addition certain of its property to the District and (ii) approval of the changes to the District’s initial comprehensive plan for special energy improvement projects to include The Brickyard on Main Special Energy Improvement Project (the “Project”) and requesting that those Projects be undertaken by the District and that the costs thereof be specially assessed against the properties of the Petitioner, specially benefited thereby.

A complete list and description of the Project is on file with the Clerk of Council and is attached as Exhibit B to this Ordinance. Exhibit B provides the following information for the Project:

1. Identification of the parcel numbers and name of the property/building to be improved;
2. A description of the nature of the special energy improvement project for the particular parcel;
3. The estimated amount of the special assessment to be levied against each parcel of property and the number of years the special assessment will be collected (if not paid in cash within 30 days after the passage of the assessing ordinance as provided by law).

The Petitioner expressly waives the right to pay the assessments in cash within 30 days after passage of the assessing ordinance.

The annual special assessments for the Project are to be paid in semi-annual payments over fourteen (14) years. The plans and specifications for the Project are on file with the Clerk of Council. The Petitioner's petition also waives all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, and Chapter 727 of the Revised Code. The Petitioner consents to the immediate imposition of the special assessments upon the various properties specially benefited by the Project. This special assessment process is a voluntary process with one hundred percent of the cost of the special energy improvement projects being assigned to the specially benefited properties. Final costs for the Project are now known and this assessing ordinance completes the assessing process, which included the adoption of a Resolution of Necessity (Resolution No. \_\_\_\_\_) and an Ordinance to Proceed (Ordinance No. \_\_\_\_\_) by levying the assessments against the benefitted properties.

NOW, THEREFORE, Be it ordained by the Council:

SECTION 1. That the special assessments for the cost of providing the Project in the District pursuant to Resolution No. \_\_\_\_\_ adopted by this Council on \_\_\_\_\_, 2019 (the Resolution of Necessity), which were filed and are on file in the office of the Clerk of Council are adopted and confirmed; provided that the cost of providing such Projects are reduced to the aggregate amount of Two Hundred Fifty-Nine Thousand One Hundred Ninety-Three Dollars and Eighteen Cents (\$259,193.18), which reduction is adopted and confirmed. Those special assessments are levied and assessed upon the properties in the respective amounts set forth in the schedule attached as Exhibits A and on file with the Clerk, which special assessments have been calculated in a manner provided for in the Resolution of Necessity and are not in excess of the special benefits or any statutory limitation. The special assessments are levied and assessed in accordance with the payment schedule attached hereto as Exhibit B in the amounts sufficient to pay the principal of and interest and the scheduled amounts payable as the Port Authority administrative fee, the Port Authority program administration fee, and the Trustee fee due with respect to each semi-annual period identified in such payment schedule. The County Fiscal Officer of Marion County, Ohio may impose a special assessment collection fee, which if imposed, will be added by the County Fiscal Officer of Marion County, Ohio to each Semiannual Assessment payment.



SECTION 2. That the Petitioner, waives the right to pay the special assessments in cash within thirty days after the passage of this ordinance, and shall pay the assessments in fourteen annual installments (twenty-eight semi-annual installments) in accordance with the schedules attached hereto as Exhibit B. All special assessments shall be certified by the Clerk to the County Auditor as provided by law to be placed on the tax duplicate and collected as taxes are collected. All payments shall be made to the County Treasurer of Marion County, Ohio and shall be subject to the same delinquency procedures, penalties, and interest as the payment of real property taxes in accordance with Ohio Revised Code Chapter 323.

Notwithstanding the foregoing, pursuant to the Agreement to Impose Assessment between the Petitioner, Marion ESID, and the NW Ohio ESID, attached to the petition as Exhibit C and providing that the Petitioner, grants the NW Ohio ESID the authority to determine, in its sole discretion, the amount of the special assessments, the NW Ohio ESID, acting through its Chairman or other authorized representative, may annually, on or before August 15th, deliver to the municipal assessment officer or other appropriate official, a certificate signed by the Chairman reflecting a reduction, in whole or in part, in the amount of the special assessment to be certified by the City to the County Auditor in that year for placement onto the tax duplicate the following year and collected as other taxes and assessments are collected. The NW Ohio ESID's certificate shall reflect payments made by or on behalf of the Petitioner, or its successors, directly to the NW Ohio ESID or to the NW Ohio ESID's designee for some or all of the cost of the special energy improvement project thereby resulting in a reduction in the required annual special assessment. The City and all officials with authority to certify special assessments to the County Auditor shall, without any further action by this Council, rely upon the NW Ohio ESID's certificate and take all actions necessary to implement the annual reduction of the special assessment, if any, evidenced by the certificate. In the event the City does not receive such a certificate in any given year on or before August 15th, the assessment officer shall certify the full amount of the annual special assessment as provided herein to the County Auditor.

SECTION 3. The Council finds and determines that it has previously waived notice of the passage of this assessing Ordinance and therefore no notice need be published in a newspaper of general circulation in the City.

SECTION 4. That the Clerk shall deliver a certified copy of this Ordinance to the County Auditor within twenty days after its passage, but in no event later than the second Monday in September, 2019 (or by such other date as may be specified in the Ohio Revised Code or acceptable to the County Auditor of Marion County, Ohio for the certification of assessments in connection with the preparation of the general tax list for tax year 2019).

SECTION 5. That the proceeds of the special assessments levied by this Ordinance that are received by the City shall be applied as provided in Section 1710.12 of the Revised Code and are hereby appropriated for that purpose. This Council covenants and agrees that it will give effect to the appropriation in the ordinances it hereafter adopts appropriating money for expenditure or encumbrance. The City Administrator is authorized and directed to make appropriate accounting entries and adjustments to reflect the City's receipt and disbursement of those proceeds.

SECTION 6. That this Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken, and that all deliberations of this Council and any of its committees that resulted in those formal actions were held, in meetings open to the public in compliance with the law.

SECTION 7. That this Ordinance is declared to be an emergency measure and shall take effect and be enforced from and after its passage. The reason for the emergency lies in the fact that this Ordinance is necessary for the immediate preservation of the public peace, health, safety and property and for the further reason that the immediate action is necessary in order to conserve energy and protect the environment of the City, as well as, undertake the construction of the public improvements and enable and provide for the timely levying, certification and collection of the special assessments for the Project.

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Situated in the City of Marion, County of Marion and State of Ohio, and more particularly described as follows:

Being 37.00 feet off of the North side of Lot Number 79 as marked on the Original Plat of the Town, now City, of Marion, Ohio.

Also, the following described premises, situated in the City of Marion, County of Marion and State of Ohio, and known as being part of Inlot No. 79, Old Plat, Marion, Ohio;

Beginning at a point in the East line of said Lot 79, 29.00 feet North from the Southeast corner of said Lot;

Thence West 40.00 feet, parallel with the South line of said Lot;

Thence South 6 inches, parallel with the East line of said Lot;

Thence East 40.00 feet, parallel with the South line of said lot to the East line of said lot;

Thence North on said East line of said lot 6 inches to the place of beginning.

TOGETHER WITH the wall thereon to be held in common with the premises adjacent thereto on the South.

Also being 16.5 feet off the entire South side of Lot Number 80 as marked on the Original Plat of the Town, now City, of Marion, Ohio.

135 S. Main Street Marion, Ohio

**PPN: 123010001800 (part of Lot 79)**

**EXHIBIT B**

**Project Plan for The Brickyard on Main, LLC**

The real property owned by The Brickyard on Main, LLC, the legal description of the property is set forth on the attached Exhibit A, will be subject to special assessments for energy improvements in accordance with Revised Code Chapter 1710.

The Project is expected to consist of the following energy efficiency elements:

1. Roofing
2. HVAC
3. Hot Water Tank
4. Windows
5. LED Lighting

Total project cost: \$154,000.00

Total cost including financing and other charges: \$183,278.79

Total direct loan payments to be collected: \$4,311.99

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Estimated Annual assessment payment: \$18,513.80

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Number of semi-annual installments: 28

First annual installment due: January 31, 2020

*\*Note: Marion County will add 1.5% processing charge to the annual assessment amount.*

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<b>Total Assessment</b>	<b>\$259,193.18</b>			

Pursuant to Ohio Revised Code Chapter 323, the Assessment Payment Dates identified in this Exhibit B to the Plan are subject to adjustment by the Marion County Fiscal Officer under certain conditions. The County Fiscal Officer of Marion County, Ohio may impose a special assessment collection fee with respect to each Semiannual Assessment payment. If imposed, this special assessment collection fee will be added by the County Fiscal Officer of Marion County, Ohio to each Semiannual Assessment payment.

**EXHIBIT C**

**ENERGY PROJECT AGREEMENT**

(See Attached)

**PETITION FOR SPECIAL ASSESSMENTS FOR  
SPECIAL ENERGY IMPROVEMENT PROJECTS**

**A PETITION TO THE COUNCIL OF THE CITY OF MARION SEEKING THE IMPOSITION OF SPECIAL ASSESSMENTS TO PAY THE COSTS OF VARIOUS SPECIAL ENERGY IMPROVEMENT PROJECTS AGAINST PROPERTIES OWNED BY THE PETITIONER AND SPECIALLY BENEFITED THEREBY, INCLUDING A WAIVER OF ALL RIGHTS TO NOTICES, HEARINGS AND APPEALS RESPECTING THE REQUESTED SPECIAL ASSESSMENTS**

To the Council of the City of Marion, Marion County, Ohio:

The Brickyard on Main, LLC, an Ohio limited liability company (known herein "Petitioner") are the owners of 100% of the property described on **Exhibit A** attached hereto (the "Properties"). The Petitioner has executed an Energy Projects Agreement with the Northwest Ohio Advanced Energy Improvement District ("the NW Ohio ESID"), and the City of Marion, Ohio Energy Special Improvement District, Inc. (the "Marion ESID"), Ohio nonprofit corporation formed to govern the City of Marion, Ohio Energy Special Improvement District (the "District") created within the boundaries of the City of Marion for the purpose of developing and implementing special energy improvement projects as defined in Section 1710.01(I) of the Revised Code. Through the Energy Projects Agreement, the Petitioner has appointed the Chairperson of the NW Ohio ESID as the attorney-in-fact and agent for the Petitioner with the authority to act on behalf of the Petitioner in the special assessment process. A copy of the Energy Projects Agreement is attached to this Petition as **Exhibit C**.

The Board of Directors of the Marion ESID has approved initial and amended plans for special energy improvement projects in the District (the "Current Comprehensive Plan"), pursuant to which the Marion ESID has caused special energy improvement projects to be provided from time to time. In accordance with Chapter 1710 of the Revised Code and the Current Comprehensive Plan, the Current Comprehensive Plan may be amended from time to time to provide for additional special energy improvement projects, and the District may be enlarged from time to time to include additional property so long as at least one special energy improvement project is designated for each parcel of real property within the additional territory added to the District.

The Board of Directors of the Marion ESID has reviewed the plans for the special energy improvement projects described on **Exhibit B** attached hereto as The Brickyard on Main Special Improvement Project (the "Project") proposed to be constructed or installed on the Properties and related and supporting materials and, subject to an approval by the City Council of an expansion of the District to include the Properties, has approved an amendment of the Current Comprehensive Plan to include provision for the Project.

As required by Section 1710.06 of the Revised Code, the Petitioner, as the owner of Properties, being 100% of the area proposed to be added to the District and 100% of the area proposed to be assessed for the Project, hereby (a) petitions the City Council to (i) approve the addition of the Properties to the District and (ii) approve an amendment to the Current Comprehensive Plan to include the Project and (b) requests that (i) the Project be undertaken by the District and (ii) the total cost of the Project be assessed on the Property in proportion to the special benefits that will result from the Project.

In connection with this Petition and in furtherance of the purposes hereof, the Petitioner acknowledges that it has reviewed or caused to be reviewed (i) the Current Comprehensive Plan, (ii) the plans, specifications and profiles for the Project, (iii) the estimate of cost for the Project included in **Exhibit B** and (iii) the schedule of estimated special assessments to be levied for the Project also included in **Exhibit B**. The Petitioner acknowledges that the estimated special assessment for each parcel is in proportion to the benefits that may result from the Project.

Accordingly, the Petitioner hereby petitions for the construction of the Project identified in this Petition and the attached **Exhibit B**, as authorized under Revised Code Chapter 1710, and for the imposition of the special assessments identified herein and authorized under Revised Code Chapters 727 and 1710 (“the Special Assessments”) to pay the costs thereof.

In consideration of the Council’s acceptance of this Petition and the imposition of the requested Special Assessments, the Petitioner consents and agrees that the Properties as identified in **Exhibit A** shall be assessed for all of the costs of the Project, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, survey, testing and inspection costs, the amount of any damages resulting from the Projects and the interest thereon, the costs incurred in connection with the preparation, levy and collection of the special assessments, the cost of purchasing and otherwise acquiring any real estate or interests therein, expenses of legal services, costs of labor and material, trustee fees and other financing costs incurred in connection with the issuance, sale and servicing of securities issued by the Toledo-Lucas County Port Authority (the “Port Authority”) or NW Ohio ESID to provide a loan to the Marion ESID to pay costs of the Projects in anticipation of its receipt of the special assessments, capitalized interest on, and financing reserve funds for, such securities issued by the Port Authority and the Port Authority program administration fee, together with all other necessary expenditures. The Petitioner agrees to pay the Special Assessments in a timely manner whether or not the Petitioner receives annual and timely notices of the Special Assessments.

The Petitioner further acknowledges and confirms that the Special Assessments set forth herein and in **Exhibit B** are in proportion to, and do not exceed, the special benefits to be conferred on the Properties by the Project identified herein. The Petitioner further consents to the levying of the assessments therefore against the Properties by the Council. The Petitioner acknowledges that these Special Assessments are fair, just and equitable and being imposed at the specific request of the Petitioner.

The Petitioner hereby waives notice and publication of all resolutions, legal notices and hearings provided for in the Ohio Revised Code with respect to the Project and the Special Assessments, particularly those in Chapter 727 and 1710 of the Revised Code and consents to

proceeding with the Project. Without limiting the foregoing, the Petitioner specifically waives any notices and rights under the following Revised Code Sections:

- The right to notice of the adoption of the Resolution of Necessity under Sections 727.13 and .14;
- The right to limit the amount of the Special Assessment und Sections 727.03 and 727.06;
- The right to file an objection to the Special Assessment under Section 727.15;
- The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Sections 727.16 and .17;
- The right to file any claim for damages under Sections 727.18 through 727.22 and Section 727.43;
- The right to notice that bids or quotations for the Special Energy Improvements may exceed estimates by 15%;
- The right to seek a deferral of payments of Special Assessments under Section 727.251; and
- The right to notice of the passage of the Assessing Ordinance under Section 727.26.

The Petitioner consents to immediately proceeding with all actions necessary to acquire, install and construct the Project and impose the Special Assessments.

The Petitioner further agrees not to take any actions, or cause to be taken any actions, to place any of the Properties in an agricultural district as provided for in Chapter 929 of the Revised Code, and if any of the Properties is in an agricultural district, the Petitioner, in accordance with Section 929.03 of the Revised Code, hereby grants permission to collect any assessments levied against such Properties.

The Petitioner acknowledges that the Special Assessments set forth herein and in the Exhibits hereto are based upon an estimate of costs, and that the final Special Assessments shall be calculated in the same manner, which, regardless of any statutory limitation thereon, may be more or less than the respective estimated assessments for the Project. In the event the final assessments exceed the estimated assessments, the Petitioner, without limitation of the other waivers contained herein, also waives any rights it may now or in the future have to object to those assessments, any notice provided for in Chapters 727 and 1710 of the Revised Code, and any rights of appeal provided for in such Chapters or otherwise. The Petitioner further acknowledges and represents that the respective final assessments may be levied at such time as determined by the City and regardless of whether or not any of the parts or portions of the Project have been completed.

The Petitioner further acknowledges that the final assessments for the Project, when levied against the Properties, will be payable in cash within thirty (30) days from the date of passage of the ordinance confirming and levying the final assessments and that if any of such assessments are not paid in cash they will be certified to the Auditor of the County, as provided by law, to be placed on the tax list and duplicate and collected as other taxes are collected, or collected by the City Treasurer as the City may elect. The Petitioner requests that the unpaid final assessments for the Project be payable in twenty-eight (28) semi-annual installments, together with interest at the same



rate as shall be borne by any bonds or other securities which may be issued in anticipation of the collection of all or a portion of any such final assessments.

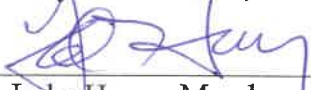
The Petitioner further waives any and all questions as to the constitutionality of the laws under which the Project shall be acquired, installed or constructed or the proceedings relating thereto, the jurisdiction of the City acting in connection therewith, all irregularities, errors and defects, if any, procedural or otherwise, in the levying of the assessments or the undertaking of the Special Energy Improvements, and specifically waives any and all rights of appeal, including any right of appeal as provided in Ohio Revised Code, Title 7, and specifically but without limitation, Chapters 727 and 1710 of the Revised Code, as well as all such similar rights under the Constitution of the State of Ohio, the Charter of the City of Marion and the Marion Municipal Code. The Petitioner represents that it will not contest, in a judicial or administrative proceeding, the undertaking of the Special Energy Improvements, the estimated assessments, the final assessments and any Special Assessments levied against the Properties for the Special Energy Improvements, or any other matters related to the foregoing.

The Petitioner acknowledges and understands that the City, the Marion ESID, NW Ohio ESID, and the Toledo-Lucas County Port Authority all will be relying upon this petition in taking actions pursuant thereto and expending resources. Therefore this petition shall be irrevocable and shall be binding upon the Petitioner, any successors or assigns thereof, the Properties, and any grantees, mortgagees, lessees, or transferees thereof. The Petitioner acknowledges that it has had an opportunity to be represented by legal counsel in this undertaking and has knowingly waived the rights identified herein.

**[THE BALANCE OF THIS PAGE IS INTENTIONALLY BLANK]**

**IN WITNESS WHEREOF**, The Brickyard on Main, LLC, has caused this petition to be executed by Luke Henry, in his official capacity as Member, on May 22, 2019.

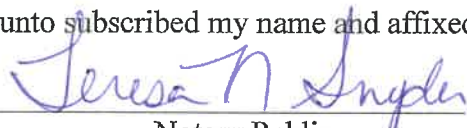
**The Brickyard on Main, LLC**

By:   
Name: Luke Henry, Member  
The Brickyard on Main, LLC

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF MARION            )

On the 22 day of May, 2019, before me, a Notary Public, in and for said County and State, personally appeared, Luke Henry, for The Brickyard on Main, LLC, who affirmed that pursuant to due authorization he executed the within and foregoing instrument for and on behalf of The Brickyard on Main, LLC, in his official capacity, and that the same is the free act and deed of The Brickyard on Main, LLC.

**IN WITNESS WHEREOF**, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

  
Notary Public



Teresa N Snyder  
Notary Public - Ohio  
Lucas County  
My Commission Expires 08/17/2021

**EXHIBIT A**

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**EXHIBIT C**

**ENERGY PROJECTS AGREEMENT**

(See Attached)