

APPROVING BY LEGISLATIVE RESOLUTION THE PETITION AND ARTICLES OF INCORPORATION FOR THE CREATION AND GOVERNANCE OF AN ENERGY SPECIAL IMPROVEMENT DISTRICT UNDER OHIO REVISED CODE CHAPTER 1710, AND APPROVING THE NECESSITY OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF MARION, OHIO IN COOPERATION WITH THE CITY OF MARION ENERGY SPECIAL IMPROVEMENT DISTRICT, AND DECLARING AN EMERGENCY

WHEREAS, as set forth in Ohio Revised Code Chapter 1710, the Ohio General Assembly has authorized property owners to create energy special improvement districts (“ESIDs”) upon a petition to a municipal corporation or township, which ESIDs are voluntary organizations of property owners who undertake special energy improvement projects for their properties and finance such special energy improvement projects by way of voluntary special assessment; and

WHEREAS, pursuant to Ohio Revised Code Section 1710.02, the property owner petitioning for the creation of an ESID is authorized to propose an initial plan setting forth certain special energy improvement projects that the ESID will undertake, which plan may outline the area in which such projects will be provided, the method of special assessment to be used with respect to the projects, the period of time during which any such special assessments are to be levied, the procedures by which additional territory may be added to the ESID, and such other provisions that the ESID shall deem appropriate, and the legislative authority of the municipal corporation to which such plan is submitted is authorized to approve the plan along with the petition; and

WHEREAS, 107 LLC, a property owner, has identified the property consisting of the commonly used mailing address: 107 N. Main Street, Marion, Ohio 43302 (the “Property”) in the City of Marion, Ohio (the “City”), as an appropriate property for a special energy improvement project; and

WHEREAS, on [REDACTED], 2018, pursuant to Ohio Revised Code Section 1710.02, 107 LLC submitted (1) a petition entitled *Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects* (the “Petition”), (2) an initial plan entitled *City of Marion, Ohio, Energy Special Improvement District Plan* (the “Plan”), and (3) *Articles of Incorporation of the City of Marion, Ohio Energy Special Improvement District, Inc.* (the “Articles”) to the Council of the City and to the Mayor of the City, and said Petition, Plan, and Articles are on file with the Clerk of Council; and

WHEREAS, said Petition, Plan, and Articles are for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 20 of Article VIII of the Ohio Constitution, including, without limitation, the special energy improvement project to be located at the Property; and

WHEREAS, in accordance with Ohio Revised Code Section 1710.02, the Petition requests that this Council create the City of Marion, Ohio Energy Special Improvement District (the “District”), which District is to be governed by the City of Marion, Ohio Energy Special Improvement District, Inc., an Ohio for-profit corporation, in accordance with Ohio Revised Code Chapters 1710 and 1702 and in accordance with the Articles; and

WHEREAS, the Petition and Articles set forth that the members of the District will be the property owners who voluntarily include their properties in the District; and

WHEREAS, pursuant to Ohio Revised Code Section 1710.04 and the Petition and Articles, the members of the board of directors of the District will include at least three representatives of one or more property owners who have voluntarily included their properties in the District, one representative appointed by the Council, as the City's legislative authority, and the Mayor, as the City's municipal executive, or a person who the Mayor designates to serve in his stead and who is an employee of the City and involved with the City's planning or economic development functions; and

WHEREAS, the Plan defines the special energy improvement project to be completed at the Property and identifies the amount and length of special assessments for the special energy improvement project, and such special assessments shall require formal authorization from Council pursuant to Ohio Revised Code Chapters 727 and 1710; and

WHEREAS, this Council, as mandated by Ohio Revised Code Section 1710.02(E), must approve or disapprove the Petition, the Plan, and the Articles within 60 days of the submission of the Petition, Plan, and Articles; and

WHEREAS, this Council has determined to approve the Petition, Plan, and Articles and thereby create the District and cause the City of Marion, Ohio Energy Special Improvement District, Inc. to be established; and

WHEREAS, this Council, pursuant to Ohio Revised Code Section 1710.02(G)(4), has determined that the energy special improvement project to be constructed and implemented on the Property is not required to be owned exclusively by the City for its purposes, for uses determined by this Council, as the legislative authority of the City as those that will promote the welfare of the people of the City; to improve the quality of life and the general and economic well-being of the people of City; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MARION, OHIO:

Section 1. Approval of Petition; Creation of District. That this Council approves the Petition, further approves the Plan, and further approves the Articles in substantially the forms now on file with the Clerk of Council.

Section 2. Filing with Secretary of State. That the Clerk of Council is directed to file or cause to be filed a copy of the Articles and a copy of this Resolution with the Ohio Secretary of State.

Section 3. Appointment of Mayor and Council Representatives to Board. That pursuant to Ohio Revised Code Section 1710.04, this Council appoints [ENTER COUNCIL APPOINTEE NAME], [TITLE], and the Mayor designates [ENTER MAYOR APPOINTEE NAME], [TITLE], to serve on the board of directors of the City of Marion, Ohio Energy Special Improvement District, Inc.

Section 4. That the plans, specifications, estimates of costs, and profiles of the proposed 107 LLC special energy improvement projects identified in Exhibit B and C of the District plan on file with the Clerk of Council and open to inspection are hereby approved, and the special energy improvement projects 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 special energy improvement projects are conducive to the public health, convenience and welfare of the City and its inhabitants and (ii) the property of 107 LLC identified in the petition 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 the Petition. 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 107 LLC special energy improvement projects 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 special energy improvement projects shall be assessed against the properties of 107 LLC identified in the Petition in proportion to the benefits resulting from the special energy improvement projects.

Section 8. Transfer of Energy Special Improvement Project. That pursuant to Ohio Revised Code Section 1710.02(G)(4), this Council determines that the energy special improvement project to be constructed and implemented on the Property is not required to be owned exclusively by the City for its purposes, for uses determined by this Council, as the legislative authority of the City, as those that will promote the welfare of the people of such participating political subdivision; to improve the quality of life and the general and economic well-being of the people of the City; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control,

prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources. This Council accordingly authorizes the board of directors of the City of Marion, Ohio Energy Special Improvement District, Inc. to act as its agent to sell, transfer, lease, or convey the special energy improvement project to be constructed and implemented on the Property. The consideration the board of directors of the City of Marion, Ohio Energy Special Improvement District, Inc. must obtain from any sale, transfer, lease, or conveyance of the special energy improvement project on the Property is any consideration greater than or equal to \$1.00.

Section 9. Compliance with Public Meetings Requirements. That this Council finds and determines that all formal actions of this Council concerning and relating to the passage of this legislative resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

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Todd Schneider  
President of Council

Approved:

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Mayor Scott Schertzer

Attest;

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Clerk of Council

**Determining to proceed with certain 107 LLC Special Energy Improvement Projects 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. (“Corporation”), 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, City of Oregon, City of Maumee, Township of Monclova, Township of Springfield, Ohio, Township of Sylvania, Township of Swanton 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.

107 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 Corporation and the Northwest Ohio Advanced Energy Improvement District. A copy of the Energy Project Agreement is attached to the Petition as **Exhibit C**.

Pursuant to the Agreement, the Port Authority, Northwest Ohio Advanced Energy Improvement District, and 107 LLC, 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 Marion Area Chamber Foundation, has determined to proceed with implementation, and to pay by way of special assessments.

107 LLC, has submitted to this Council a petition (“Petition”) seeking (i) the creation of the District, (ii) the addition certain of its property to the District and (iii) approval of the District’s initial comprehensive plan for special energy improvement projects, including the 107 LLC Special Energy Improvement Projects and requesting that those Projects be undertaken by the District and that the costs thereof be specially assessed against the properties of the 107 LLC, specially benefited thereby.

A complete list and description of the 107 LLC Special Energy Improvement Projects 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 107 LLC Special Energy Improvement Projects:

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 total dollar cost of the 107 LLC Special Energy Improvement Projects, subject to capitalized interest on the Port Authority's revenue bonds, reserve fund for the Port Authority's bonds, and costs of issuance of the Port Authority's revenue bonds (collectively, the "Project"), is estimated to be Eighty Seven Thousand Four Hundred Thirty Seven Dollars and Four Cents (\$87,437.04). 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, the Port authority program administration fee, the trustee fee and the Marion County, Ohio special assessment collection fee due with respect to each semi-annual payment.

The Port Authority, Northwest Ohio Advanced Energy Improvement District, and the Corporation are funding the cost of the Project through the issuance of bonds. Ultimately, the bonds will be repaid over time from the amounts 107 LLC, pays as special assessments. 107 LLC, 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 six (6) years. The plans and specifications for the 107 LLC Special Energy Improvement Projects are on file with the Clerk of Council. The 107 LLC, 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 107 LLC, 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. When 107 LLC Special Energy Improvement Projects are 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 ordained by the Council of the City of Marion:

SECTION 1. That this Council hereby determines to proceed with the 107 LLC Special Energy Improvement Project as described in the Marion Area Chamber Foundation, Petition 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 Corporation and Petitioner shall cause the 107 LLC Special Energy Improvement Project to be constructed under such contracts as they 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 107 LLC Special Energy Improvement Projects to be assessed in accordance with the Resolution of Necessity shall be assessed on the properties 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, 2018 (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 2018)

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 107 LLC Special Energy Improvement Project.

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY:**

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

**Tract 1:**

Being part of Lot 83 in the Original Town, now City of Marion, Ohio:

Beginning at the Northeast corner of Lot 83 in the Town, now City of Marion, as designated on the Original Plat of said Town;

Thence South along Main Street, 25 feet;

Thence West, parallel to the North line of said Lot 83, 165 feet to the West line thereof;

Thence North along the West line of said Lot 83, 25 feet to the Northwest corner of said Lot 83;

Thence East along the North line of said Lot 83, 165 feet to the Place of Beginning, and being 25 feet in width off the entire North side of said Lot 83.

**Tract 2:**

Situated in the City of Marion, County of Marion, State of Ohio and being 18.07 feet off the entire South side of Lot 84 in the Original Plat of the Town, now City of Marion, Ohio.

**Tract 3:**

Being part of Lot 84 in Original Town Plat in the City of Marion, Ohio and bounded and described as follows:

Beginning at a point in the East line of said Lot 84, 18.07 feet North of the Southeast corner of said Lot 84;

Thence Northward on the East line of said Lot 84, 18.07 feet to the Southeast corner of the Bartram Block;

Thence Westward, parallel with the North line of said Lot 84, 165 feet to the West line of said Lot 84; T

Thence Southward on the West line of said Lot 84, to a point 18.07 feet North of the Southwest corner of said Lot 84;

Thence Eastward on a line parallel to the South line of said Lot 84, 165 feet to the Place of Beginning.

ALSO Grantor's right to use the undivided one-half of the South wall of the Bartram Block, as conveyed to James S. Reed and Daniel Yake by article in writing on the 18th day of July, 1888,



which writing is recorded in Volume 1, Page 42 of Articles of Agreement in Marion County, Ohio.

**Tract 4:**

Situated in the County of Marion, in the State of Ohio, and in the City of Marion:

Forty-one (41) feet off the entire South side of Lot 83 in the Original Town, now City of Marion, Ohio.

Parcel No. 12-201000.1300

Property Address: 107 N. Main Street, Marion, Ohio 43302

**EXHIBIT B**  
**Project Plan for 107 LLC.**

The real property owned by at 107 N. Main Street, Marion, Ohio 43302, serves as a commercial office facility. The legal description of the property is set forth on the attached Exhibit A. The property will be subject to special assessments for energy improvements in accordance with Revised Code Chapter 1710.

The energy efficiency savings for the project are expected to be 20% or more annually and consist of the following energy efficiency elements:

1. Boiler Replacement

Total Project Cost: \$75,000.00

Total cost including financing and other charges: \$76,500.00

Total loan payments to be collected: \$2,191.60

Total assessment payments to be collected: \$87,437.04

Estimated annual special assessment for 6 years: Varies *(See Schedule Below)*

Estimated semi-annual special assessments for 6 years\*: Varies *(See Schedule Below)*

Number of semi-annual installments: 12

First annual installment due: January 31, 2019

*\*Note: Numbers do not reflect additional charges that County Auditor may apply to the annual assessment.*

Year Payments Are Due	Total Annual Assessment Parcel	1st Half (Due 1/31)	2nd Half (Due 7/31)
2018	\$2,191.60		
<b>* 2018 Tax Year Payments due in 2018 will be made directly to NWOAID</b>			
2019	\$14,572.84	\$7,286.42	\$7,286.42
2020	\$14,572.84	\$7,286.42	\$7,286.42
2021	\$14,572.84	\$7,286.42	\$7,286.42
2022	\$14,572.84	\$7,286.42	\$7,286.42
2023	\$14,572.84	\$7,286.42	\$7,286.42
2024	\$14,572.84	\$7,286.42	\$7,286.42
<b>Total Assessment</b>	<b>\$87,437.04</b>	<b>\$87,437.04</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 semi-annual Semiannual Assessment payment.

**EXHIBIT C**

**Energy Project Agreement**

**[Attached]**

**Levying special assessments for the 107 LLC Project; 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 Greater Marion Energy Special Improvement District, Inc. (“Corporation”), 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, City of Oregon, City of Maumee, Township of Monclova, Township of Springfield, Ohio, Township of Swanton, Township of Sylvania 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.

107 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 Corporation and the Northwest Ohio Advanced Energy Improvement District. A copy of the Energy Project Agreement is attached to the Petition as **Exhibit C**.

Pursuant to the Agreement, the Port Authority, Northwest Ohio Advanced Energy Improvement District, and 107 LLC, 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 107 LLC., has determined to proceed with implementation, and to pay by way of special assessments.

The 107 LLC, has submitted to this Council a petition (“Petition”) seeking (i) the creation of the District, (ii) the addition certain of its property to the District and (iii) approval of the District’s initial comprehensive plan for special energy improvement projects, including the 107 LLC Special Energy Improvement Projects and requesting that those Projects be undertaken by the District and that the costs thereof be specially assessed against the properties of the 107 LLC, specially benefited thereby.

A complete list and description of the 107 LLC Special Energy Improvement Projects 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 107 LLC Special Energy Improvement Projects:

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 107 LLC, 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 nine years. The plans and specifications for the 107 LLC Special Energy Improvement Projects are on file with the Clerk of Council. The 107 LLC, 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. 107 LLC, consents to the immediate imposition of the special assessments upon the various properties specially benefited by the 107 LLC 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. Final costs for the 107 LLC Special Energy Improvement Projects 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 of the City of Marion:**

SECTION 1. That the special assessments for the cost of providing the 107 LLC Special Energy Improvement Projects in the District pursuant to Resolution No. [REDACTED] adopted by this Council on [REDACTED], 2018 (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 \$87,437.04 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 of Council, 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 Authority administrative fee, the Authority program administration fee, the Trustee fee, and the Marion County, Ohio special assessment collection fee due with respect to each semi-annual period identified in such payment schedule.

SECTION 2. That 107 LLC, 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 nine annual installments (eighteen semi-annual installments) in accordance with the schedules attached hereto as Exhibit B. All special assessments shall be certified by the Clerk of Council 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 Energy Project Agreement between the 107 LLC, City of Marion, Energy Special Improvement District, and the Northwest Ohio Advanced Energy Improvement District (“the Corporation”), attached to the petition as Exhibit C and providing that the 107 LLC, grants the Corporation the authority to determine, in its sole discretion, the amount of the special assessments, the Corporation, acting through its Chairman or other authorized representative, may annually, on or before August 15<sup>th</sup>, deliver to the City 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’s assessment officer 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 Corporation’s certificate shall reflect payments made by or on behalf of the 107 LLC, or its successors, directly to the Corporation or to the Corporation’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’s assessment officer and all officials with authority to certify special assessments to the County Auditor shall, without any further action by this Council, rely upon the Corporation’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’s assessment officer does not receive such a certificate in any given year on or before August 15<sup>th</sup>, 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 of Council 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, 2018 (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 2018).

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 Director of Finance 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 107 LLC Special Energy Improvement Projects.

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY:**

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

**Tract 1:**

Being part of Lot 83 in the Original Town, now City of Marion, Ohio:

Beginning at the Northeast corner of Lot 83 in the Town, now City of Marion, as designated on the Original Plat of said Town;

Thence South along Main Street, 25 feet;

Thence West, parallel to the North line of said Lot 83, 165 feet to the West line thereof;

Thence North along the West line of said Lot 83, 25 feet to the Northwest corner of said Lot 83;

Thence East along the North line of said Lot 83, 165 feet to the Place of Beginning, and being 25 feet in width off the entire North side of said Lot 83.

**Tract 2:**

Situated in the City of Marion, County of Marion, State of Ohio and being 18.07 feet off the entire South side of Lot 84 in the Original Plat of the Town, now City of Marion, Ohio.

**Tract 3:**

Being part of Lot 84 in Original Town Plat in the City of Marion, Ohio and bounded and described as follows:

Beginning at a point in the East line of said Lot 84, 18.07 feet North of the Southeast corner of said Lot 84;

Thence Northward on the East line of said Lot 84, 18.07 feet to the Southeast corner of the Bartram Block;

Thence Westward, parallel with the North line of said Lot 84, 165 feet to the West line of said Lot 84; T

Thence Southward on the West line of said Lot 84, to a point 18.07 feet North of the Southwest corner of said Lot 84;

Thence Eastward on a line parallel to the South line of said Lot 84, 165 feet to the Place of Beginning.

ALSO Grantor's right to use the undivided one-half of the South wall of the Bartram Block, as conveyed to James S. Reed and Daniel Yake by article in writing on the 18th day of July, 1888,



which writing is recorded in Volume 1, Page 42 of Articles of Agreement in Marion County, Ohio.

**Tract 4:**

Situated in the County of Marion, in the State of Ohio, and in the City of Marion:

Forty-one (41) feet off the entire South side of Lot 83 in the Original Town, now City of Marion, Ohio.

Parcel No. 12-201000.1300

Property Address: 107 N. Main Street, Marion, Ohio 43302

**EXHIBIT B**

**Project Plan for 107 LLC.**

The real property owned by at 107 N. Main Street, Marion, Ohio 43302, serves as a commercial office facility. The legal description of the property is set forth on the attached Exhibit A. The property will be subject to special assessments for energy improvements in accordance with Revised Code Chapter 1710.

The energy efficiency savings for the project are expected to be 20% or more annually and consist of the following energy efficiency elements:

1. Boiler Replacement

Total Project Cost: \$75,000.00

Total cost including financing and other charges: \$76,500.00

Total loan payments to be collected: \$2,191.60

Total assessment payments to be collected: \$87,437.04

Estimated annual special assessment for 6 years: Varies *(See Schedule Below)*

Estimated semi-annual special assessments for 6 years\*: Varies *(See Schedule Below)*

Number of semi-annual installments: 12

First annual installment due: January 31, 2019

*\*Note: Numbers do not reflect additional charges that County Auditor may apply to the annual assessment.*

<b>Year Payments Are Due</b>	<b>Total Annual Assessment Parcel</b>	<b>1st Half (Due 1/31)</b>	<b>2nd Half (Due 7/31)</b>
2018	\$2,191.60		
<b>* 2018 Tax Year Payments due in 2018 will be made directly to NWOAID</b>			
2019	\$14,572.84	\$7,286.42	\$7,286.42
2020	\$14,572.84	\$7,286.42	\$7,286.42
2021	\$14,572.84	\$7,286.42	\$7,286.42
2022	\$14,572.84	\$7,286.42	\$7,286.42
2023	\$14,572.84	\$7,286.42	\$7,286.42
2024	\$14,572.84	\$7,286.42	\$7,286.42
<b>Total Assessment</b>	<b>\$87,437.04</b>	<b>\$87,437.04</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 semi-annual Semiannual Assessment payment.

**EXHIBIT C**

**Energy Project Agreement**

**[Attached]**

**PETITION FOR CREATION OF ENERGY SPECIAL  
IMPROVEMENT DISTRICT AND FOR SPECIAL ASSESSMENTS  
FOR SPECIAL ENERGY IMPROVEMENT PROJECTS**

**A PETITION TO THE CITY OF MARION, OHIO SEEKING THE CREATION OF THE GREATER MARION ENERGY SPECIAL IMPROVEMENT DISTRICT AND THE LEVYING OF SPECIAL ASSESSMENTS ON PROPERTIES OWNED BY THE PETITIONER TO PAY THE COSTS OF VARIOUS SPECIAL ENERGY IMPROVEMENT PROJECTS FOR THE SPECIAL BENEFIT OF THE ASSESSED PROPERTIES AND A WAIVER OF ALL RIGHTS TO NOTICES, HEARINGS, AND APPEALS RESPECTING THE REQUESTED SPECIAL ASSESSMENTS**

To: The Mayor and Council of the City of Marion, Ohio

107 LLC, an Ohio domestic for-profit corporation (the “Petitioner”) is the owner of 100% of the property described on **Exhibit A**, which is attached to and incorporated into this Petition (the “Properties”). The undersigned represents that he or she is the duly authorized signatory or officer of the Petitioner.

The Petitioner respectfully petitions the City of Marion, Ohio (the “City” or “Participating Political Subdivision”) for the creation of the **City of Marion, Ohio Energy Special Improvement District** (the “District”) pursuant to Ohio Revised Code Chapter 1710 and amendments thereto (the “Act”). The District’s boundaries will be as described and shown in **Exhibit B**, attached to and incorporated into this Petition. In accordance with the Act, the District may be expanded to include additional territory (“Additional Territory”) for the purposes of developing and implementing special energy improvement projects. At least one special energy improvement project will be designated for each parcel of real property within Additional Territory of the District. The Petitioner represents that a special energy improvement project will be developed and implemented on each parcel of real property with respect to the Petitioner as set forth below and as further described in **Exhibit C**.

As authorized by Ohio Revised Code Section 1710.02(F), the Petitioner, as the owner of Properties being 100% of the area proposed to be assessed for the Authorized Improvements, further respectfully petitions the City (a) to approve an initial plan for the District (the “Plan”), attached to this Petition as **Exhibit C**, which Plan includes the description of the special energy improvement projects being constructed or installed or proposed to be constructed or installed on the Properties (the “Authorized Improvements”), (b) for the construction of the Authorized Improvements, and (c) to assess on the Properties, in proportion to the special benefits that will result from the Authorized Improvements, the total cost of those Authorized Improvements, including the costs of planning, designing, and implementing the Authorized Improvements incurred to date by the Petitioner, as authorized under Ohio Revised Code Chapters 727 and 1710 (the “Special Assessments”), to pay the costs of the Authorized Improvements.

In connection with this Petition and in furtherance of its purposes, the Petitioner acknowledges that it has reviewed or caused to be reviewed (i) the Plan, (ii) the plans,

specifications, and profiles for the Authorized Improvements, (iii) the estimate of cost for the Authorized Improvements included in **Exhibit D**, and (iv) the schedule of estimated special assessments to be levied for the Authorized Improvements also included in **Exhibit D**. The Petitioner acknowledges that the estimated special assessment for each parcel is in proportion to the benefits that may result from the Authorized Improvements.

**1. Purpose.** The District’s purpose will be to enhance the value of Properties and improve the environment by developing and assisting in developing special energy improvement projects at the Properties. The District will be authorized to provide special energy improvement projects pursuant to the Act that will benefit the Properties. The District further will be authorized to take any other actions pursuant to the Act that may be taken by special energy improvement districts organized for the purpose of developing and implementing plans for special energy improvement projects.

**2. Corporate Entity and Governance.** The operations and fiscal affairs of the District will be managed and administered by the Board of Directors (“Board”) of the City of Marion, Ohio Energy Special Improvement District, Inc., an Ohio for-profit corporation to be formed for the purpose of governing the District, all in accordance with the Act. The articles of incorporation of the City of Marion, Ohio Energy Special Improvement District, Inc. are attached to and incorporated into this Petition as **Exhibit E**. The Board will consist of at least five individuals. The Board will have all powers authorized by the Act. Pursuant to the Act, one board member will be a person appointed by and serving at the pleasure of the Council of the City (the “Council”), and one member will be the Mayor of the City or an appointee of the Mayor serving at the Mayor’s pleasure, provided the Mayor’s appointee is qualified to serve on the Board under the Act. The remaining three board members will be persons elected at the first meeting of the membership of the District.

Petitioner acknowledges and agrees that the Board, in its sole discretion and as authorized by Ohio Revised Code Section 1702.33, may delegate authority to an executive committee. Petitioner further acknowledges and agrees that the Board, in its sole discretion and as authorized by Ohio Revised Code Sections 1702.12, 1702.33, and 1710.11, may contract for the provision of services pursuant to the Board’s prescribed competitive bidding procedures.

Petitioner releases the City and its officers, directors, and employees (the “Indemnified Parties”) from, agrees that the Indemnified Parties shall not be liable for, and indemnifies the Indemnified Parties against, all liabilities, claims, costs, and expenses, including out-of-pocket and incidental expenses and legal fees imposed upon, incurred or asserted against the Indemnified Parties on account of (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, construction, installation, equipment, improvement maintenance, operation and use of the Authorized Improvements, (ii) any act of any of the Indemnified Parties as a member of the Board, and (iii) any claim, action, or proceeding brought with respect to any matter set forth in clauses (i) and (ii) above; provided, however, that Petition shall not indemnify the Indemnified Parties as provided above to the extent that any liability, claim, cost, or expense arises out of or results from the gross negligence or willful misconduct of the Indemnified Parties.

**3. Authority.** The District will be authorized to provide special energy improvement projects pursuant to the Act that will benefit property within the District's boundaries. The City will be authorized to levy a special assessment on each property within the District that lies within the territorial boundaries of the City to pay for special energy improvement projects, based on the benefits conferred by those special energy improvement projects as further provided for in the Plan and this Petition.

**4. Plan.** As authorized in the Act, the Petitioner requests that the City approve the Plan attached to this petition as **Exhibit C**. The petitioner acknowledges that the Authorized Improvements, as that term is defined in the Plan, have an estimated useful life of at least fifteen (15) years.

**5. Boundaries.** **Exhibit A** provides a legal description of the parcels, as identified by parcel number, which this Petition includes in the District. The District's boundaries are described further in **Exhibit B**.

**6. Special Assessments.** In consideration of the City'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 Authorized Improvements, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Authorized Improvements and the interest on such amount; 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 in real estate; expenses of legal services; costs of labor and material; administrative costs of the District, including public officials insurance; and trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities, or obligations issued to provide a loan to the Petitioner or otherwise to pay costs of the Authorized Improvements in anticipation of its receipt of the special assessments, capitalized interest on, and financing reserve funds for, such securities, or other obligations; 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 in this Petition and in **Exhibit D** are in proportion to, and do not exceed, the special benefits to be conferred on the Properties by the Authorized Improvements identified in this Petition. The Petitioner further consents to the levying of the Special Assessments against the Properties by the Council. The Petitioner acknowledges that these Special Assessments are fair, just, and equitable, and that they are being imposed at the specific request of the Petitioner.

The Petitioner further acknowledges that the Special Assessments are subject to reduction as provided in a Energy Project Agreement expected to be entered into among the Petitioner, the District, and such other parties as the City and the District may deem necessary and appropriate (the "Energy Project Agreement") and as described in this Petition. The City will take such actions as may be permitted by law and are necessary so that the semiannual installment of the

Special Assessments to be collected in each semiannual real property tax payment shall equal the Special Assessments stated in **Exhibit D**.

The City will take such actions as may be permitted by law and are necessary to certify the amount of the Special Assessments to the County Auditor not later than 45 days in advance of the deadline for annual certification of Special Assessments.

The Petitioner hereby requests that the Special Assessments be allocated as follows:

<u>PARCEL</u>	<u>ADDRESS</u>	<u>PERCENTAGE</u>
12-201000.1300	107 N. Main Street, Marion, Ohio 43302	100%

**7. Waiver of Notices and Process.** The Petitioner expressly waives notice and publication of all resolutions, legal notices and hearings provided for in the Ohio Revised Code with respect to the Authorized Improvements and the Special Assessments, particularly those in Ohio Revised Code Chapters 727 and 1710, and consents to proceeding with the Authorized Improvements. Without limiting the foregoing, the Petitioner specifically waives any notices and rights under the following Ohio Revised Code Sections:

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

The Petitioner consents to proceed immediately with all actions necessary to acquire, install and construct the Authorized Improvements and impose the Special Assessments.

**8. Agricultural Districts.** 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 Ohio Revised Code Chapter 929, and if any of the Properties is in an agricultural district, the Petitioner, in accordance with Ohio Revised Code Section 929.03, hereby grants permission to collect any Special Assessments levied against such Properties.

**9. No Reliance on Estimates.** The Petitioner acknowledges that the Special Assessments set forth in this Petition and its Exhibits 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, may be more or less than the respective estimated assessments for the Authorized Improvements. In the event that the final assessments exceed the estimated assessments, the Petitioner, without limitation of the other waivers contained in this Petition, also waives any rights it may now or in the future have to object to those assessments, any notice provided for in Ohio Revised Code Chapters 727 and 1710, and any rights of appeal provided for in those 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, regardless of whether or not any of the parts or portions of the Authorized Improvements have been completed.

**10. Obligation to Pay Special Assessments.** The Petitioner further acknowledges that the final assessments for the Authorized Improvements, 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 Fiscal Officer of Allen County, as provided by law, to be placed on the tax list and duplicate as unpaid assessments and collected as other taxes are collected. The Petitioner requests that the unpaid final assessments for the Authorized Improvements be payable in Twelve (12) semi-annual installments, together with interest at the rate of 4.75% per annum; provided, that all or any portion of any unpaid final assessments may be waived or reduced by the City in accordance with the Energy Project Agreement or any agreements of the City, the District, or the Petitioner in connection with any financing for any Authorized Improvements.

**11. Waivers.** The Petitioner further waives any and all questions as to the constitutionality of the laws under which Authorized Improvements shall be acquired, installed, or constructed, the proceedings relating to the acquisition, installation, or construction of the Authorized Improvements shall occur, and the jurisdiction of the City is granted. The Petitioner further waives any and all irregularities, errors, and defects, procedural or otherwise, if any, in the levying of the assessments or the undertaking of the Authorized Improvements. The Petitioner 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, Ohio Revised Code Chapters 727 and 1710, as well as all such similar rights under the Constitution of the State of Ohio and the Charter of the City of Marion, Ohio. The Petitioner represents that it will not contest, in a judicial or administrative proceeding, the undertaking of the Authorized Improvements, the estimated assessments, the final assessments, and any Special Assessments levied against the Properties for the Authorized Improvements, or any other related matters.



**12. Irrevocability.** The Petitioner acknowledges and understands that the City will be relying upon this Petition in taking actions and expending resources. This Petition therefore shall be irrevocable and shall be binding upon the Petitioner, its successors and assigns, the Properties, and any grantees, mortgagees, lessees, or transferees of the Properties.

**13. Knowledge of Waivers.** 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 in this Petition.

**14. Miscellaneous.** The Petitioner acknowledges that the District is being created using a single petition option under the Act and that no further authorization by the Petitioner may be required prior to the implementation of the Plan and the levying of assessments.

**The Council of the City of Marion, Ohio is hereby respectfully requested to approve, by resolution, this Petition, and to levy special assessments against the property subject to this Petition.**

[Balance of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the Petitioner has caused this petition to be executed by Lois J. Fisher, its Member.

**PETITIONERS:**  
**107 LLC**  
**Authorized Signatory**

\_\_\_\_\_  
Lois J. Fisher  
Member

Address for notices to Petitioner: 107 N. Main Street, Marion, Ohio 43302

STATE OF OHIO            )  
  )     SS:  
COUNTY OF ERIE        )

On the \_\_\_ day of \_\_\_\_\_ 2018, personally appeared before me, a notary public in and for the State of Ohio, Lois J. Fisher, Member, who acknowledged that she did execute the foregoing Petition on behalf of 107 LLC and that the same was the free act and deed of such officer.

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

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

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

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

**Tract 1:**

Being part of Lot 83 in the Original Town, now City of Marion, Ohio:

Beginning at the Northeast corner of Lot 83 in the Town, now City of Marion, as designated on the Original Plat of said Town;

Thence South along Main Street, 25 feet;

Thence West, parallel to the North line of said Lot 83, 165 feet to the West line thereof;

Thence North along the West line of said Lot 83, 25 feet to the Northwest corner of said Lot 83;

Thence East along the North line of said Lot 83, 165 feet to the Place of Beginning, and being 25 feet in width off the entire North side of said Lot 83.

**Tract 2:**

Situated in the City of Marion, County of Marion, State of Ohio and being 18.07 feet off the entire South side of Lot 84 in the Original Plat of the Town, now City of Marion, Ohio.

**Tract 3:**

Being part of Lot 84 in Original Town Plat in the City of Marion, Ohio and bounded and described as follows:

Beginning at a point in the East line of said Lot 84, 18.07 feet North of the Southeast corner of said Lot 84;

Thence Northward on the East line of said Lot 84, 18.07 feet to the Southeast corner of the Bartram Block;

Thence Westward, parallel with the North line of said Lot 84, 165 feet to the West line of said Lot 84; T

Thence Southward on the West line of said Lot 84, to a point 18.07 feet North of the Southwest corner of said Lot 84;

Thence Eastward on a line parallel to the South line of said Lot 84, 165 feet to the Place of Beginning.

ALSO Grantor's right to use the undivided one-half of the South wall of the Bartram Block, as conveyed to James S. Reed and Daniel Yake by article in writing on the 18th day of July, 1888, which writing is recorded in Volume 1, Page 42 of Articles of Agreement in Marion County, Ohio.

**Tract 4:**

Situated in the County of Marion, in the State of Ohio, and in the City of Marion:

Forty-one (41) feet off the entire South side of Lot 83 in the Original Town, now City of Marion, Ohio.

Parcel No. 12-201000.1300

Property Address: 107 N. Main Street, Marion, Ohio 43302

**EXHIBIT B**

**DISTRICT BOUNDARIES**

This **Exhibit B** defining the boundaries of the City of Marion, Energy Special Improvement District (the “District”) consists of one parcel designated by Marion County Auditor parcel number as follows:

Parcel ID: 12-201000.1300

## EXHIBIT C

### **PLAN FOR THE CITY OF MARION, OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT**

The City of Marion, Energy Special Improvement District (the “District”) will administer a property assessed clean energy (“PACE”) financing within the District. 107 LLC (“Owner”), the owner of the real property to be included within the District authorizes and consents to this Plan.

The District is established pursuant to the special energy improvement district provisions of Ohio Revised Code Chapter 1710. This Plan refers to Chapter 1710 and any and all future amendments to the special energy improvement district provisions of Chapter 1710 as the “Act.” Any specific statutory reference contained in this Plan shall also refer to any succeeding or amending statutory provision.

The District’s governing documents include its Articles of Incorporation, Code of Regulations, resolutions duly adopted by the board of directors of the District, and the applicable resolutions and ordinances of the participating political subdivision where the real property is located (collectively, the “Governing Documents”). This Plan refers to the Governing Documents, this Plan, the Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects (“Petition”) submitted to the City of Marion, Ohio (the “City”) by Owner, and the assessment schedule collectively as the “District Documents.”

**By agreeing to and executing the District Documents, Owner consents to the terms and conditions of all District Documents.**

#### **I. Purpose of the Plan**

This Plan’s purpose is to enhance the value of properties within the District and improve the environment by developing and assisting in developing special energy improvement projects within the District. The District is authorized to provide special energy improvement projects pursuant to the Act that will benefit the District. The District further is authorized to take any other actions pursuant to the Act that may be taken by energy special improvement districts organized for the purpose of developing and implementing plans for special energy improvement projects.

The Plan will provide financing secured by special assessments on real property for special energy improvement projects.

Through a Petition submitted in connection with this Plan, Owner has requested and consented to certain special assessments by the District with respect to certain real property owned by the Owner and located at 107 N. Main Street, Marion, Ohio 43302 (the “Property”). A full legal description of the Property is attached to and incorporated into this Plan as **Attachment A**, and a

schedule for special assessments to be assessed against the Property to pay the costs of the Authorized Improvements, as that term is defined in this Plan, is attached to and incorporated into this Plan as **Attachment B**.

The energy special improvement projects applicable to the Property will include (1) costs already incurred by the Owner for the planning, designing, and implementing of the public improvements, including, without limitation, architectural, engineering, legal, appraisal, insurance, consulting, energy, auditing, and planning fees and expenses, as authorized by Ohio Revised Code Section 1710.07(B) and the costs of preparing plans, specifications, profiles, and estimates, as authorized by Ohio Revised Code Section 727.08(C); (2) implementation of energy efficiency measures including Boiler replacements.

The special assessments levied against the Property to pay the costs of the Authorized Improvements will be used to repay and provide security for obligations issued to finance the costs of the Authorized Improvements.

The Owner hereby acknowledges that the Authorized Improvements have an estimated useful life of at least fifteen (15) years.

## **II. Energy Efficiency and Renewable Energy Regulations and Requirements**

Energy Efficiency Reporting Requirements. Ohio Revised Code Section 1710.061 requires the Board to submit a quarterly report to each electric distribution utility (“EDU”) with a District Authorized Improvement within the EDU’s certified territory. The quarterly report submitted to the EDU must include the total number and a description of each new and ongoing District Authorized Improvement that produces energy efficiency savings or reduction in demand and other additional information that the EDU needs to obtain credit under Ohio Revised Code Section 4928.66 for energy efficiency savings or reduction in demand from such projects. The Board is hereby authorized to submit quarterly reports due required under Ohio Revised Code Section 1710.061. Property owners shall comply with Board requirements for information gathering and reporting to ensure Board compliance with Ohio Revised Code Section 1710.061.

Energy Efficiency Credits. The Board is hereby authorized to adopt rules governing energy efficiency credits associated with Authorized Improvements financed pursuant to this Plan. Property owners shall comply with Board requirements in furtherance of energy efficiency credit programs.

Renewable Energy Credits. The Board is hereby authorized to adopt rules governing renewable energy credits associated with Authorized Improvements financed pursuant to this Plan. Property owners shall comply with Board requirements in furtherance of renewable energy credit programs.

Monetizing Other Energy Efficiency or Renewable Energy Attributes. The Board is hereby authorized to adopt rules governing the monetization of any energy efficiency or renewable energy attributes of any Authorized Improvements financed pursuant to this Plan. Property

owners shall comply with Board requirements in furtherance of the monetization of such attributes.

### **III. Statutory Requirements**

As provided in the District Documents:

- (A) The District Documents may be amended or supplemented in accordance with their terms.
- (B) The public improvements to be provided by the District are the Authorized Improvements identified in this Plan. The area where the Authorized Improvements will be undertaken is the Property. The method of assessment shall be in proportion to the special benefits received by each property owner within the District as a result of Authorized Improvements.
- (C) For the purpose of levying an assessment, the Board may combine levies for Authorized Improvements and public services into one special assessment to be levied against each specially benefited property in the District.

### **IV. Owner Project Qualified Installers; Maximum Funding**

Board Waiver of Competitive Bidding. Due to the circumstances under which the Project shall be financed and constructed, the Board shall adopt written rules that do not require competitive bidding with respect to the Owner Project in accordance with Section 1710.11 of the Ohio Revised Code.

Owner Project. Obligations issued to finance this Plan and the Project may be used only to finance the costs of Authorized Improvements, including the District's administrative costs. Owner is responsible for the Project installed on the Property. Owner will need to address performance and other system-related issues directly with the installer according to the terms of Owner's contract with the installer. **The District is a financing program only. Neither the District nor the City is responsible for the Project or its performance, and neither the District nor the City will participate in the resolution of any dispute between Owner and the installer of the Project.**

### **V. Compliance with Existing Mortgages**

The filing of the Petition and the adoption by the participating political subdivision of an ordinance to proceed under Ohio Revised Code Section 727.25 will establish a lien on the Owner's property as security for Owner's obligation to pay special assessments in accordance with the Petition and the District Documents. The lien securing the obligation to pay special assessments will be senior to all private liens, including Owner's purchase or construction mortgage, if any. Many loan documents limit the ability of a property owner to place senior liens upon property without the consent of the lender, or authorize the lender to obligate a borrower to prepay the senior obligation. **Owner must confirm with its lender(s), and provide written**



**consent from its lenders, that the financing of the Project in accordance with this Plan will not adversely impact Owner's rights with respect to any existing loan documents, or obligate the Owner to prepay special assessments assessed under the District Documents.**

#### **VI. Transfer or Resale of the Subject Property**

If Owner sells the Property prior to the end of the special assessment period for the Project, the new owner will assume the obligation to pay special assessments. Ownership of the Project will transfer to the new owner at the close of the real estate sale.

#### **VII. Changes in State and Federal Law**

The ability to issue or use obligations to finance Authorized Improvements is subject to a variety of state and federal laws. If these laws change after property owners have applied to the District for financing, the District may be unable to fulfill its obligations under this Plan. **The District shall not be obligated to implement any provision of this Plan which is contrary to state or federal law. The District shall not be liable for any inability to finance Authorized Improvements as a result of state and federal law or any changes in state and federal law which reduce or eliminate the effectiveness of financing Authorized Improvements through the District's Program.**

#### **VIII. Releases and Indemnification**

The District has been created with the approval of the City of Marion, Ohio, as a participating political subdivision, for the purposes of implementing this Plan. The District and any participating political subdivision shall be neither responsible nor liable for the installation, operation, financing, refinancing, or maintenance of Authorized Improvements. The Owner will be solely responsible for the installation, operation, financing, refinancing, and maintenance of the Authorized Improvements. This Plan does not in any way obligate the District or any participating political subdivision to ensure the viability of Authorized Improvements. Owners of assessed real property must pay the special assessments regardless of whether the Authorized Improvements are properly installed or operate as expected.

**By agreeing to and executing this Plan, the Owner agrees to release, defend, indemnify, and hold harmless the District and the participating political subdivisions, including their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with participation in the Plan.**

#### **IX. Changes in the Plan Terms; Severability**

Participation in the Program is subject to the District Document terms and conditions in effect from time to time during participation. The District reserves the right to change this Plan and the terms and conditions of the District Documents at any time without notice. No such change will affect the Owner's obligation to pay special assessments as set forth in the District Documents.

If any provision of the District Documents is determined to be unlawful, void, or for any reason unenforceable, that provision shall be severed from these District Documents and shall not affect the validity and enforceability of any remaining provisions.

#### **X. Disclosure of Owner Information**

The District and any participating political subdivision may disclose information of the District to any agent of the District or to third parties when such disclosure is essential either to the conduct of the District's business or to provide services to property owners, including but not limited to where such disclosure is necessary to (i) comply with the law, (ii) enable the District and participating political subdivisions and their agents to provide services or otherwise perform their duties, and (iii) obtain and provide credit reporting information. In order to receive funding for the Plan and to enable communication regarding the State of Ohio's energy programs, the Owner's name and contact information may be disclosed to its current electric utilities. The District shall not disclose personal information to third parties for telemarketing, e-mail, or direct mail solicitation unless required to by law or court order.

**BY EXECUTING THIS PLAN, THE PROPERTY OWNER IDENTIFIED BELOW AUTHORIZES AND CONSENTS TO THIS PLAN AND ALL DISTRICT DOCUMENTS AND AGREES TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNER CONTAINED IN THIS PLAN.**

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

**Owner:  
107 LLC**

**Authorized Signatory**

\_\_\_\_\_  
Lois J. Fisher  
Member

Address for notices to Owner: 107 N. Main Street, Marion, Ohio 43302

**PLAN—ATTACHMENT A**

**DESCRIPTION OF REAL PROPERTY SUBJECT TO THIS PLAN:**

The real property subject to this Petition is located at the commonly used mailing address: 107 N. Main Street, Marion, Ohio 43302. The Marion County Auditor Parcel ID for the real property subject to this Petition is: 12-201000.1300. The following is the legal description for the real property subject to this Petition:

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

**Tract 1:**

Being part of Lot 83 in the Original Town, now City of Marion, Ohio:

Beginning at the Northeast corner of Lot 83 in the Town, now City of Marion, as designated on the Original Plat of said Town;

Thence South along Main Street, 25 feet;

Thence West, parallel to the North line of said Lot 83, 165 feet to the West line thereof;

Thence North along the West line of said Lot 83, 25 feet to the Northwest corner of said Lot 83;

Thence East along the North line of said Lot 83, 165 feet to the Place of Beginning, and being 25 feet in width off the entire North side of said Lot 83.

**Tract 2:**

Situated in the City of Marion, County of Marion, State of Ohio and being 18.07 feet off the entire South side of Lot 84 in the Original Plat of the Town, now City of Marion, Ohio.

**Tract 3:**

Being part of Lot 84 in Original Town Plat in the City of Marion, Ohio and bounded and described as follows:

Beginning at a point in the East line of said Lot 84, 18.07 feet North of the Southeast corner of said Lot 84;

Thence Northward on the East line of said Lot 84, 18.07 feet to the Southeast corner of the Bartram Block;

Thence Westward, parallel with the North line of said Lot 84, 165 feet to the West line of said Lot 84; T

Thence Southward on the West line of said Lot 84, to a point 18.07 feet North of the Southwest corner of said Lot 84;

Thence Eastward on a line parallel to the South line of said Lot 84, 165 feet to the Place of Beginning.

ALSO Grantor's right to use the undivided one-half of the South wall of the Bartram Block, as conveyed to James S. Reed and Daniel Yake by article in writing on the 18th day of July, 1888, which writing is recorded in Volume 1, Page 42 of Articles of Agreement in Marion County, Ohio.

**Tract 4:**

Situated in the County of Marion, in the State of Ohio, and in the City of Marion:

Forty-one (41) feet off the entire South side of Lot 83 in the Original Town, now City of Marion, Ohio.

Parcel No. 12-201000.1300

Property Address: 107 N. Main Street, Marion, Ohio 43302

**PLAN—ATTACHMENT B**

**SCHEDULE OF SPECIAL ASSESSMENTS  
Project Plan for 107 LLC.**

The real property owned by at 107 N. Main Street, Marion, Ohio 43302, serves as a commercial office facility. The legal description of the property is set forth on the attached Exhibit A. The property will be subject to special assessments for energy improvements in accordance with Revised Code Chapter 1710.

The energy efficiency savings for the project are expected to be 20% or more annually and consist of the following energy efficiency elements:

1. Boiler Replacement

Total Project Cost: \$75,000.00

Total cost including financing and other charges: \$76,500.00

Total loan payments to be collected: \$2,191.60

Total assessment payments to be collected: \$87,437.04

Estimated annual special assessment for 6 years: *Varies (See Schedule Below)*

Estimated semi-annual special assessments for 6 years\*: *Varies (See Schedule Below)*

Number of semi-annual installments: 12

First annual installment due: January 31, 2019

*\*Note: Numbers do not reflect additional charges that County Auditor may apply to the annual assessment.*

<b>Year Payments Are Due</b>	<b>Total Annual Assessment Parcel</b>	<b>1st Half (Due 1/31)</b>	<b>2nd Half (Due 7/31)</b>
2018	\$2,191.60		
<b>* 2018 Tax Year Payments due in 2018 will be made directly to NWOAED</b>			
2019	\$14,572.84	\$7,286.42	\$7,286.42
2020	\$14,572.84	\$7,286.42	\$7,286.42
2021	\$14,572.84	\$7,286.42	\$7,286.42
2022	\$14,572.84	\$7,286.42	\$7,286.42
2023	\$14,572.84	\$7,286.42	\$7,286.42
2024	\$14,572.84	\$7,286.42	\$7,286.42
<b>Total Assessment</b>	<b>\$87,437.04</b>	<b>\$87,437.04</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 semi-annual Semiannual Assessment payment.

**EXHIBIT D**

**SCHEDULE OF SPECIAL ASSESSMENTS  
Project Plan for 107 LLC.**

The real property owned by at 107 N. Main Street, Marion, Ohio 43302, serves as a commercial office facility. The legal description of the property is set forth on the attached Exhibit A. The property will be subject to special assessments for energy improvements in accordance with Revised Code Chapter 1710.

The energy efficiency savings for the project are expected to be 20% or more annually and consist of the following energy efficiency elements:

1. Boiler Replacement

Total Project Cost: \$75,000.00

Total cost including financing and other charges: \$76,500.00

Total loan payments to be collected: \$2,191.60

Total assessment payments to be collected: \$87,437.04

Estimated annual special assessment for 6 years: *Varies (See Schedule Below)*

Estimated semi-annual special assessments for 6 years\*: *Varies (See Schedule Below)*

Number of semi-annual installments: 12

First annual installment due: January 31, 2019

*\*Note: Numbers do not reflect additional charges that County Auditor may apply to the annual assessment.*

<b>Year Payments Are Due</b>	<b>Total Annual Assessment Parcel</b>	<b>1st Half (Due 1/31)</b>	<b>2nd Half (Due 7/31)</b>
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<b>Total Assessment</b>	<b>\$87,437.04</b>	<b>\$87,437.04</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.

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**EXHIBIT E**

**ARTICLES OF INCORPORATION  
OF THE CITY OF MARION, OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT,  
INC.**

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**ENERGY PROJECT AGREEMENT**

between

NORTHWEST OHIO ADVANCED ENERGY IMPROVEMENT  
DISTRICT;

CITY OF MARION, OHIO ENERGY SPECIAL  
IMPROVEMENT DISTRICT, INC.;

and

107 LLC

**Dated**  
**as of**

\_\_\_\_\_, 2018

This Energy Project Agreement (the “Agreement”) is made and entered into as of \_\_\_\_\_, 2018. between the Northwest Ohio Advanced Energy Improvement District, a for-profit corporation and special improvement district under the laws of the State of Ohio (“NWOAEID”), the City of Marion, Ohio Energy Special Improvement District, Inc., a non-profit corporation and special improvement district under the laws of the State of Ohio (“Marion ESID”), and 107 LLC, a limited liability company under the laws of the State of Ohio with offices at 115 N. Prospect Street, Suite 3A, Marion, Ohio 43302 (the “107 LLC”):

**WHEREAS**, the 107 LLC, has made application to the NWOAEID for funding a certain special energy improvement project (“Energy Project”), more particularly described in 107 LLC’s application (“Application”); and

**WHEREAS**, the 107 LLC petitioned the City of Marion for the establishment of the City of Marion, Ohio Energy Special Improvement District (the “Petition”); and

**WHEREAS**, on \_\_\_\_\_ the City Council of Marion passed Resolution No. \_\_\_\_\_, which approved the Petition, the initial plan for the district, and authorized the formation of the City of Marion, Ohio Energy Special Improvement District; and

**WHEREAS**, the Energy Project has an overall estimated cost of Seventy Five Thousand Dollars and Zero Cents (\$75,000.00) (excluding interest and other transactional and carrying costs, all of which shall be included in the Special Assessments described below) as shown in **Exhibit B**, which the NWOAEID has agreed to fund; and

**WHEREAS**, the 107 LLC requests that the Energy Project be funded through special assessments (“Special Assessments”) upon the real property upon which the Energy Project will be constructed and exist (“the Property”) as allowed under Ohio Revised Code Chapters 1710 and 727; and

**WHEREAS**, the Marion ESID and NWOAEID agree to undertake the funding of the Energy Project through Special Assessments upon the condition that the 107 LLC agrees to impose the Special Assessments upon the Property and provide full cooperation with and assistance to the NWOAEID, Marion ESID, City of Marion, Ohio (the “City”) and other entities and institutions involved in the process of approving and imposing the Special Assessments; and

**WHEREAS**, in order to induce the Marion ESID and NWOAEID to provide the funds for the Energy Project, the 107 LLC agrees to execute and comply with the terms of the Loan Agreement, attached as Exhibit C, and to provide all such cooperation and assistance necessary for the imposition of the Special Assessments upon the Property.

**NOW THEREFORE**, in consideration of the mutual promises set forth herein, effective the \_\_\_ day of \_\_\_\_\_, 2018, the 107 LLC, the Marion ESID, and the NWOAEID do hereby enter into this Energy Project Agreement (“Agreement”) as follows:

**1. Consent to Special Assessments.** The 107 LLC consents to the imposition of Special Assessments upon the Property, which is commonly referred to as 107 N. Main Street, Marion, Ohio 43302, and which consists of the following permanent parcel numbers in the records of the Fiscal Officer of Marion County, Ohio (the “Fiscal Officer”): Parcel Number/PPN: **12-201000.1300**. A legal description of the Property is attached to this Agreement as **Exhibit A** and incorporated into this Agreement by this reference. In the event there are additional or other parcels of property that are not listed but which are benefitted by the Energy Project, the 107 LLC consents to the imposition of the Special Assessments with respect to those parcels as well. The 107 LLC acknowledges that the Special Assessments in the event of non-payment and default will constitute a lien upon the Property and may be enforced and collected in accordance with law, including the provisions of Chapter 727 of the Ohio Revised Code.

The cost of the Energy Project shall include, but not be limited to, the cost of: labor, materials, equipment, engineering, design, and audits (“Energy Project Amount”) and is estimated to be Seventy Five Thousand Dollars (\$75,000.00). The Special Assessments shall be in an amount sufficient to fund the Energy Project Amount, as determined by and in the sole discretion of the NWOAID, and shall include an amount sufficient to fund the necessary and reasonable additional costs related to the financing of the Energy Project Amount including but not limited to: interests, bond fees, carrying costs, taxes, filing fees, recording charges and all other costs incident to the financing of the Energy Project Amount.

The 107 LLC acknowledges that the Energy Project Amount is an estimated cost of the Energy Project and that the actual cost of the Energy Project may be more or less than the estimate and that such estimate does not limit the amount of the Special Assessments; provided, however, that the sum total of all Special Assessments, including the costs related to financing the Energy Project Amount, will not exceed the Total Assessment Amount to be Collected amount listed on **Exhibit B** attached to this Agreement and incorporated into this Agreement by this reference. The 107 LLC agrees that one hundred percent (100%) of the Special Assessments shall be imposed upon the Property and that the Property is being specially benefitted to the full extent of the Special Assessments. The Special Assessments may continue for such period of time as allowed by law and shall continue for the full period of time required to pay the Marion ESID and NWOAID for all costs, including financing costs, for the Energy Project.

**2. Agreement to Cooperate.** The 107 LLC agrees to provide full and timely cooperation to the Marion ESID and the NWOAID and the agencies, entities and institutions involved in the special assessment process, including but not limited to: the City, the Toledo-Lucas County Port Authority, Fiscal Officer, and the Treasurer of Marion County, Ohio (the “Treasurer”), so that the Special Assessments are imposed upon the Property and enforceable against the Property. The 107 LLC agrees that pursuant to a Petition, it has submitted its Energy Project for admission as a special energy improvement project to be undertaken by the Marion ESID. The 107 LLC therefore shall be a member of the Marion ESID. The 107 LLC further agrees that it shall cause a representative to appear at any necessary hearings or legal proceedings involving the Special Assessments and cooperate in such hearings or legal proceedings so that the Special Assessments are approved and become binding upon the Property. The 107 LLC agrees to provide on-going cooperation with the Marion ESID, NWOAID, and all other agencies, entities and institutions involved in the special assessment process during the entire period of time any of the financing for the Energy Project remains outstanding.

The Marion ESID and NWOAEID agree to provide full and timely cooperation with each other for the financing of the Energy Project and the provision of the Energy Project pursuant to this Agreement, and the Petition.

**3. Execution of Documents; Appointment of Agent.** Upon the request of the NWOAEID, the 107 LLC shall execute or cause to be executed by appropriate 107 LLC officials, all applications, petitions for special assessments, waivers, acknowledgements, and other instruments, documents and papers (“Documents”) necessary or helpful to impose the Special Assessments upon the Property and to acknowledge the validity and binding nature of such Special Assessments. To facilitate that process, the 107 LLC hereby irrevocably appoints the NWOAEID’s Chairperson, or such other individual as the NWOAEID may name from time to time, as the 107 LLC’s attorney-in-fact and agent with full and complete authority to execute all such Documents, including but not limited to the Petition, on behalf of the 107 LLC and to bind the 107 LLC and the Property to the Special Assessments, including making all waivers of hearings and notices concerning the Special Assessments.

Without limiting the generality of the foregoing grant of authority, the 107 LLC grants the NWOAEID full irrevocable power and authority in the place of 107 LLC and in the name of 107 LLC or in NWOAEID’s own name, for the purpose of carrying out the terms of this Agreement, to perform, at any time and from time to time, each agreement contained in this Agreement that is on the 107 LLC's part to be complied with, and to take any and all actions and to execute and deliver any and all Documents which may be necessary or desirable to give the NWOAEID the full benefit of this Agreement, in each case as the NWOAEID may from time to time deem advisable, the 107 LLC hereby agreeing that the NWOAEID shall owe no duty whatever to the 107 LLC to perform any such agreement, to take any such action, or to execute or deliver any such Document or, having done so any one or more times, to thereafter continue doing so. Without limiting the generality of the foregoing, the 107 LLC hereby irrevocably authorizes the NWOAEID, at any time and from time to time, to (a) fill in any blank space contained in this Agreement or another Document, (b) correct patent errors, to complete and correct the description of the Property, and to complete the date herein or therein, (c) file and sign, on the 107 LLC's behalf, at the 107 LLC's expense and without the 107 LLC's signature, such petitions for special assessments, waivers, affidavits, assignments, financing statements, endorsements of specific items of collateral, mortgages, powers of attorney, security agreements, or other Documents as the NWOAEID may from time to time deem advisable for the better evidencing, perfection, protection, or validation of, or realization of the benefits of this Agreement, and (d) to the extent the NWOAEID filed any such petitions for special assessments, waivers, affidavits, assignments, financing statements, endorsements of specific items of collateral, mortgages, powers of attorney, security agreements, or other Documents prior to the date of this Agreement, all such actions and Documents are hereby ratified by the 107 LLC.

**4. Waiver of Certain Rights.** The 107 LLC acknowledges that the process for the imposition of special assessments provides the owner of property subject to such special assessments with certain rights, including rights to: receive notices of proceedings; object to the imposition of the special assessments; claim damages; participate in hearings; take appeals from proceedings imposing special assessments; participate in and prosecute court proceedings, as well as other rights under law, including but not limited to those provided for or specified in the

United States Constitution, the Ohio Constitution, Chapter 727 of the Ohio Revised Code, the Charter of the City of Marion, Ohio and the Codified Ordinances of Marion, Ohio (collectively, "Assessment Rights"). The 107 LLC hereby irrevocably waives all Assessment Rights and consents to the imposition of the Special Assessments immediately or at such time as the NWOAEID or Marion ESID determine to be appropriate, and the 107 LLC expressly requests the entities involved with the special assessment process to promptly proceed with the imposition of the Special Assessment upon the Property. The 107 LLC further waives: any and all questions as to the constitutionality of the law under which the Energy Project will be constructed and the Special Assessments imposed upon the Property; the jurisdiction of the Council of the City acting thereunder; and the right to file a claim for damages as provided in Section 727.18 of the Ohio Revised Code and any similar provision of the Charter of the City of Marion, Ohio or the Codified Ordinances of Marion, Ohio.

5. **Representations and Warranties.** The 107 LLC represents and warrants that:
- A. The 107 LLC is a duly organized and validly existing limited liability company under the laws of the State of Ohio;
  - B. The 107 LLC is the owner of the Property with the legal authority to subject the Property to the Special Assessments;
  - C. The 107 LLC and the individual executing this Agreement on behalf of the 107 LLC are duly authorized to enter into this Agreement;
  - D. Entering into this Agreement will not result in the breach of any other agreement to which the 107 LLC is a party;
  - E. The 107 LLC will complete the Energy Project, and has or will provide sufficient funds to complete the Energy Project in the event of additional costs or expenses above and beyond the estimated Energy Project Amount of Seventy Five Thousand dollars (\$75,000.00). In the event that the Energy Project is completed below the estimated cost of Seventy Five Thousand dollars (\$75,000.00) the remaining amount shall be used to reduce the final assessment amount payable; and
  - F. All of the factual statements concerning the 107 LLC contained in the Application and in this Agreement are true and accurate to the best of the 107 LLC's knowledge and belief and if there is a material change in the accuracy or truthfulness of any such factual statement, the 107 LLC will promptly disclose the same to the Marion ESID and the NWOAEID.
6. **Assignment; Third Party Beneficiaries.** The 107 LLC may not assign this Agreement without the consent of each of the Marion ESID and the NWOAEID, which consent shall not be unreasonably withheld. Either of the Marion ESID or the NWOAEID may assign this Agreement, or any portion of its benefits or obligations, freely to another party, with or without the consent of the 107 LLC.
7. **Default.** If any of the following events shall occur, it shall be deemed a default ("Default") under this Agreement and the Marion ESID and NWOAEID shall be entitled to any rights or remedies under this Agreement and any rights or remedies provided under law:

- A. The 107 LLC fails to pay an installment of any Special Assessment when due.
- B. The 107 LLC fails to perform any other obligation under this Agreement and the failure continues for a period of ten (10) days after written notice from the NWOAEID.
- C. The 107 LLC is in breach of any of its representations or warranties under this Agreement.
- D. The 107 LLC abandons the Property.
- E. The 107 LLC commits waste upon the Property.
- F. The 107 LLC becomes bankrupt or insolvent or files or has filed against it a petition in bankruptcy or for reorganization or arrangement or other relief under the bankruptcy laws or any similar state law or makes an assignment for the benefit of creditors.

In the event of a Default, then, in addition to any other remedy the Marion ESID and NWOAEID may have, the Marion ESID and the NWOAEID each may recover from 107 LLC all damages they respectively incur by reason of the Default, including reasonable attorneys' fees and expenses.

**8. General.**

- A. If any provision of this Agreement is found to be invalid, illegal or unenforceable under any applicable statute or law, such provision shall to that extent be deemed to be omitted, and the remaining provisions of this Agreement shall not be affected in any way.
- B. The 107 LLC acknowledges that it has read and understands this Agreement and is bound by its terms. This Agreement contains the entire understanding and agreement of the parties with respect to the matters contained in this Agreement, and supersedes all prior proposals and understandings between the parties.
- C. This Agreement shall not be modified or altered except as by a written instrument duly executed by all of the parties.
- D. The 107 LLC acknowledges that it has had an opportunity to review this Agreement and to be advised by an attorney of its choosing as to the Agreement's terms, conditions and provisions. The 107 LLC is entering into this Agreement knowingly and voluntarily.
- E. The Marion ESID, NWOAEID and the 107 LLC are, in relation to one another, independent contractors and not agents of one another, except to the extent the NWOAEID is authorized to act on behalf of the 107 LLC in accordance with paragraph 3 above. The parties have no fiduciary obligations to one another and are not, by entering into this Agreement, assuming any such fiduciary obligations.
- F. The 107 LLC acknowledges that the Marion ESID and NWOAEID have been created under provisions of the Ohio Revised Code and that and that their authority, as well as the authority of their employees, agents and representatives, is limited under law.
- G. The Marion ESID or NWOAEID may cause this Agreement to be recorded in the office of the Fiscal Officer. The obligations created by this Agreement shall run

with and be binding upon the land regardless of the owner of Property until duly released by the Marion ESID and NWOAEID.

- H.** The 107 LLC will provide written notice to Marion ESID and NWOAEID of any sale or transfer of the Property.
- I.** The 107 LLC shall disclose the existence of this Agreement to any purchaser or transferee of the Property and inform such purchaser or transferee of the nature and extent of the Special Assessments before entering into a binding agreement for the sale or transfer of the Property.
- J.** The 107 LLC acknowledges that the Special Assessments, when levied against the Property, will be payable in cash within thirty (30) days from the date of passage of the ordinance levying the final assessment if permitted by law and that if such Special Assessment is not paid in cash, the balance will be certified to the Fiscal Officer, as provided by law, to be placed by the Fiscal Officer on the tax list and duplicate and collected as other taxes are collected in such number of semiannual installments as determined by the NWOAEID and as allowed by law, together with interest at the same rate as shall be borne by the loans received or bonds issued to pay the costs of the Energy Project or in anticipation of the collection of the Special Assessments. Notwithstanding the foregoing, the 107 LLC waives and authorizes the NWOAEID to waive on its behalf, the right to pay the Special Assessments in cash.
- K.** At such time as the Special Assessments are no longer necessary to finance the Energy Project, the NWOAEID having recovered all of its costs, and all other requirements under this Agreement have been fulfilled, the NWOAEID will provide a release of this Agreement and cause the same to be recorded in the office of the Fiscal Officer.
- L.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio, without regard to its conflict of laws principles.
- M.** Any legal proceeding, including any arbitration or litigation, concerning this agreement, directly or indirectly, shall be heard only in a state or federal court with proper jurisdiction in Lucas County, Ohio.

[Signature Pages Follow]

**107 LLC:**

107 LLC

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

Name: Lois J. Fisher

Title: Member

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

On the \_\_\_ day of \_\_\_\_\_, 2018 personally appeared before me, a notary public in and for the State of Ohio, Lois J. Fisher, Member, 107 LLC, who acknowledged that she did execute the foregoing Energy Project Agreement on behalf of 107 LLC and that the same was the free act and deed of 107 LLC and herself as such member of 107 LLC

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



**NWOAED:**

THE NORTHWEST OHIO ADVANCED ENERGY IMPROVEMENT DISTRICT

By: \_\_\_\_\_  
Kevin Moyer

Its: Chairperson

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

On the \_\_\_ day of \_\_\_\_\_, 2018 personally appeared before me, a notary public in and for the State of Ohio, Kevin Moyer, the Chairperson of the Northwest Ohio Advanced Energy Improvement District who acknowledged that he did execute the foregoing Energy Project Agreement on behalf of the Northwest Ohio Advanced Energy Improvement District and that the same was the free act and deed of said Northwest Ohio Advanced Energy Improvement District and of himself as such officer of the Northwest Ohio Advanced Energy Improvement District.

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

**MARION ESID:**

**CITY OF MARION, OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT**

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

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

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

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

On the \_\_\_ day of \_\_\_\_\_, 2018 personally appeared before me, a notary public in and for the State of Ohio, \_\_\_\_\_, the \_\_\_\_\_ of the City of Marion, Ohio Energy Special Improvement District who acknowledged that he/she did execute the foregoing Energy Project Agreement on behalf of the City of Marion, Ohio Energy Special Improvement District and that the same was the free act and deed of said City of Marion, Ohio Energy Special Improvement District and of himself/herself as such officer of the City of Marion, Ohio Energy Special Improvement District.

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

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY:**

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

**Tract 1:**

Being part of Lot 83 in the Original Town, now City of Marion, Ohio:

Beginning at the Northeast corner of Lot 83 in the Town, now City of Marion, as designated on the Original Plat of said Town;

Thence South along Main Street, 25 feet;

Thence West, parallel to the North line of said Lot 83, 165 feet to the West line thereof;

Thence North along the West line of said Lot 83, 25 feet to the Northwest corner of said Lot 83;

Thence East along the North line of said Lot 83, 165 feet to the Place of Beginning, and being 25 feet in width off the entire North side of said Lot 83.

**Tract 2:**

Situated in the City of Marion, County of Marion, State of Ohio and being 18.07 feet off the entire South side of Lot 84 in the Original Plat of the Town, now City of Marion, Ohio.

**Tract 3:**

Being part of Lot 84 in Original Town Plat in the City of Marion, Ohio and bounded and described as follows:

Beginning at a point in the East line of said Lot 84, 18.07 feet North of the Southeast corner of said Lot 84;

Thence Northward on the East line of said Lot 84, 18.07 feet to the Southeast corner of the Bartram Block;

Thence Westward, parallel with the North line of said Lot 84, 165 feet to the West line of said Lot 84; T

Thence Southward on the West line of said Lot 84, to a point 18.07 feet North of the Southwest corner of said Lot 84;

Thence Eastward on a line parallel to the South line of said Lot 84, 165 feet to the Place of Beginning.

ALSO Grantor's right to use the undivided one-half of the South wall of the Bartram Block, as conveyed to James S. Reed and Daniel Yake by article in writing on the 18th day of July, 1888, which writing is recorded in Volume 1, Page 42 of Articles of Agreement in Marion County, Ohio.

**Tract 4:**

Situated in the County of Marion, in the State of Ohio, and in the City of Marion:

Forty-one (41) feet off the entire South side of Lot 83 in the Original Town, now City of Marion, Ohio.

Parcel No. 12-201000.1300

Property Address: 107 N. Main Street, Marion, Ohio 43302

**EXHIBIT B**

**Project Plan for 107 LLC.**

The real property owned by at 107 N. Main Street, Marion, Ohio 43302, serves as a commercial office facility. The legal description of the property is set forth on the attached Exhibit A. The property will be subject to special assessments for energy improvements in accordance with Revised Code Chapter 1710.

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**EXHIBIT C**

**LOAN AGREEMENT**

**[attached]**

DRAFT

**CODE OF REGULATIONS OF THE  
CITY OF MARION, OHIO ENERGY  
SPECIAL IMPROVEMENT DISTRICT,  
INC.**

**AN OHIO NON-PROFIT CORPORATION  
CREATED UNDER CHAPTERS 1710 AND 1702 OF THE OHIO  
REVISED CODE**

**As adopted by the Board of Directors on  
\_\_\_\_\_, 2018**

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**ARTICLE I**  
**NAME OF THE CORPORATION; PRINCIPAL OFFICE**

The name of the corporation (“Corporation”) shall be “City of Marion, Ohio Energy Special Improvement District, Inc.”. The Corporation is a non-profit corporation under the laws of the State of Ohio, specifically, Chapters 1710 and 1702 of the Ohio Revised Code operating as an energy special improvement district, sometimes referred to as an “ESID” or simply “district”. The principal place of business of the Corporation shall be [REDACTED] Marion, Oh 43302, or such other location as the board of directors may from time to time designate. A copy of the Corporation’s Articles of Incorporation is attached to this Code of Regulations as Appendix A.

**ARTICLE II**  
**PURPOSE; APPLICATION OF CERTAIN LAWS; DEFINITIONS**

**(A) Purpose.** The purpose of the Corporation shall be to develop and implement special energy improvement projects as defined in Ohio Revised Code Chapter 1710, including energy efficiency and clean and renewable energy projects.

**(B) Application of Certain Laws.**

In accordance with Revised Code Chapter 1710, the following laws apply (or do not apply, as the case may be) to the Corporation:

(1) The Corporation is not a political subdivision but is considered a “public agency” under R.C. 102.01 (ethics laws) and a “public authority” under R.C. 4115.03 (prevailing wages).

(2) Each member of the board of directors, each member’s designee or proxy, and each officer and employee of a district is considered to be a public official or employee under R.C. 102.01 (ethics laws) and a public official and public servant under R.C. 2921.42 (prohibited interest in a public contract). However, the Corporation’s members, directors and officers and their designees or proxies are not required to file a statement with the Ohio ethics commission under R.C. 102.02.

(3) Membership on the board of directors is not considered to be holding a public office.

(4) The Corporation is subject to R.C. 121.22 (open meeting laws) and R.C. 121.23 (prohibition on award of contract to party guilty of unfair labor practice).

(5) The Corporation is considered to be a political subdivision for purposes of R.C. 4905.34 (free or reduced cost utility services may be provided to certain governmental and charitable institutions).

(6) The Corporation’s records shall be treated as public records under R.C. 149.43, except that records of organizations contracting with Corporation shall not be considered to be public records under R.C. 149.43 or R.C. 149.431 solely by reason of any contract with a Corporation.

**(C) Definitions.**

(1) In accordance with R.C. 1710.01(I), “special energy improvement project” means:

any property, device, structure, or equipment necessary for the acquisition, installation, equipping, and improvement of any real or personal property used for the purpose of creating a solar photovoltaic project , a solar thermal energy project, a geothermal energy project, a customer-generated energy project, or an energy efficiency improvement, whether such real or personal property is publicly or privately owned.

(2) In accordance with R.C. 1710.01(K) “energy efficiency improvement” means:

energy efficiency technologies, products, and activities that reduce or support the reduction of energy consumption, allow for the reduction in demand, or support the production of clean, renewable energy and that are or will be permanently fixed to real property.

(3) In accordance with R.C. 1710.01(L), “customer-generated energy project” means:

a wind, biomass, or gasification facility for the production of electricity that meets either of the following requirements:

(1) The facility is designed to have a generating capacity of two hundred fifty kilowatts of electricity or less.

(2) The facility is:

(a) Designed to have a generating capacity of more than two hundred fifty kilowatts of electricity;

(b) Operated in parallel with electric transmission and distribution facilities serving the real property at the site of the customer-generated energy project;

(c) Intended primarily to offset part or all of the facility owner’s requirements for electricity at the site of the customer-generated energy project and is located on the facility owner’s real property; and

(d) Not producing energy for direct sale by the facility owner to the public.

**ARTICLE III  
GEOGRAPHICAL BOUNDARIES; MEMBERS OF THE CORPORATION**

Except as provided herein, the geographical boundaries of the district and the Corporation shall be coterminous with those of the City of Marion, Ohio as they now exist or may be revised from time to time. Upon approval by a majority of the members of the board, parcels of property within the City of Marion shall be added to the district, and the owner of such property shall become a member of the district and of the Corporation; provided that each such parcel of property shall include an approved special energy improvement project. Such special energy improvement project need not exist at the outset of the admission of the property to the district and the property shall remain within the district so long as in the judgment of the board of directors adequate progress toward the implementation of the special energy improvement project is being made.

The geographical boundaries of the Corporation may be expanded to include areas contained within municipalities other than City of Marion and within townships, provided: (1) the board of directors approves such expansion by a majority vote; (2) such expansion is approved by the applicable municipality or township (a/k/a participating political subdivision) in accordance with the procedures set forth in Revised Code Chapter 1710; and (3) each parcel of property contains or will contain an energy special improvement project.

If a property owner not within the area of one of the Corporation's participating political subdivisions submits an application to become a member, and a majority of the board approves the application, the Corporation and the property owner shall jointly submit a petition to the political subdivision in question seeking to bring the parcel and the political subdivision into the district and the Corporation.

In accordance with Revised Code Chapter 1710, the owner of each parcel of property within the district for which a special energy improvement project is provided for in the district's Plan for Improvements and Services shall be a member of the Corporation and possess all the rights of a member as provided under law. Each parcel of property shall be represented by one owner, no matter if more than one person or entity has an ownership interest in the parcel. Similarly, if an owner owns more than one parcel in the district, the owner shall nevertheless be entitled to only one vote as a member of the district and member of the Corporation. In the case of any doubt or ambiguity, the board shall be the final judge of the members, the parcels of property and the votes.

The identity and address of the parcel owners shall be determined for any particular action of the Corporation, including notice of meetings, no more than sixty days prior to the date of the action, from the most current records available at the county

auditor's office. The persons shown on such records as having common or joint ownership interests in a parcel of real property collectively shall constitute the owner of the real property.

If a participating political subdivision also is the owner of a parcel of property within the district upon which there is a special energy improvement project, such political subdivision shall be deemed to be a member of the Corporation for the purpose of voting and participating in meetings of members of the district.

A member may appoint a designee to carry out the member's rights and responsibilities by filing a written designation form with the Corporation's secretary. The form shall include the name and address of the member, the name and address of the designee, and the expiration date, if any, of the designation and may authorize the designee to vote at any meeting of the Corporation.

A proxy or designee need not be an elector or resident of any participating political subdivision of the district or a member of the district. The appointment of a proxy or a designee may be changed by filing a new form with the Corporation's secretary. The most current form filed with the secretary is the valid appointment. Service of any notice upon a proxy or designee at the proxy's or designee's address as shown on the form satisfies any requirements for notification of the member.

#### **ARTICLE IV MEETINGS OF MEMBERS**

There shall be an annual meeting of all of the members of the Corporation held on a date in November selected by the board of directors. At the annual meeting of the members, the members shall elect the members of the board of directors, in addition to those members of the board of directors appointed by the participating political subdivisions. In addition, at the annual meeting, the members shall review the progress of the Corporation in achieving its purposes and implementing its plans.

By the first day of March of each year, the Treasurer shall submit to each member of the Corporation and to the municipal executive, chief fiscal officer, and legislative authority of each municipal corporation with territory within the boundaries of the district and the board of township trustees of each township with territory within the boundaries of the district, a report of the Corporation's activities and financial condition for the previous year.

Special meetings of the members may be called by the President, the Treasurer or by members constituting at least one-third of the total membership of the Corporation.

Notice of the time, date, place, and agenda for any meeting of the members shall be by written notice to each member, transmitted by certified mail, personal service, or electronic device prior to the meeting. Notice shall be served at least one week prior to the meeting.

**ARTICLE V**  
**BOARD OF DIRECTORS; DUTIES; MEETINGS**

The Corporation shall be governed by and its affairs shall be managed by its board of directors which shall consist of at least five (5) directors. The initial organization of the Corporation shall provide for five (5) directors. The board may elect to expand the number of directors to no more than fifteen (15). The board shall include a person appointed by the legislative authority of each participating political subdivision and the municipal executive of each municipal corporation with territory within the boundaries of the district. All other board members shall be members of the district, that is, they shall be owners of property within the district with an approved special energy project but they need not be residents of the district.

The members of the board of directors shall elect a Chairperson, Vice-Chairperson, Secretary, and Treasurer of the board. These officers shall serve at the pleasure of the board and may be removed with or without cause. A director may be elected to more than one office, except that the director elected as Treasurer shall not be elected to any other office of the board.

A director may file a written statement with the Corporation's Secretary at least three days prior to any meeting of the board to have a person act as proxy to carry out the director's rights and responsibilities at that meeting.

A director may also appoint a designee to carry out the director's rights and responsibilities by filing a written designation form with the Corporation's Secretary. The form shall include the name and address of the director, the name and address of the designee, and the expiration date, if any, of the designation.

A proxy or designee need not be an elector or resident of a participating political subdivision of the district or a member of the Corporation. The appointment of a proxy or designee may be changed by filing a new form with the Corporation's Secretary. The most current form filed with the Secretary is the valid appointment. Service of any notice upon a proxy or designee at the proxy's or designee's address as shown on that form satisfies any requirements for notification of the director.

The board shall meet quarterly or such number of times annually as the board shall determine, upon a schedule established by the board at its first meeting each year and at such place as the board shall determine. The board shall also meet at the call of the Chairperson or any two directors. Notice of the time, date, place, and agenda for any meeting of the board of directors shall be by written notice to each director, transmitted by certified mail, personal service, or electronic device prior to the meeting. If possible, the notice shall be served at least one week prior to the meeting. The board shall comply with all notice requirements under Ohio's open meeting laws, R.C. 121.22.

The board shall act by a majority vote of those present and authorized to vote at any meeting where proper notice has been served.

The members of the board shall serve without compensation but may be reimbursed for their actual out-of-pocket expenses incurred in behalf of the Corporation upon the presentation of proper documentation.

**ARTICLE VI  
PLANS FOR SPECIAL ENERGY IMPROVEMENT PROJECTS**

The board of directors shall develop and adopt one or more written plans for public improvements or public services that benefit all or any part of the district. Each plan shall set forth the specific public improvements or public services that are to be provided, identify the area in which they will be provided, and specify the method to pay for the improvements and services. Plans may include, but are not limited to, provisions for the following:

(1) Creating and operating the district and the nonprofit corporation, including hiring employees and professional services, contracting for insurance, and purchasing or leasing office space and office equipment and other requirements of the district;

(2) Planning, designing, and implementing a public improvements or public services plan, including hiring architectural, engineering, legal, appraisal, insurance, consulting, energy auditing, and planning services, and, for public services, managing, protecting, and maintaining public and private facilities, including public improvements;

(3) Paying the costs of issuing, paying interest on, and redeeming notes and bonds issued for funding special energy improvement projects;

(4) Sale, lease, lease with an option to purchase, conveyance of other interests in, or other contracts for the acquisition, construction, maintenance, repair, furnishing, equipping, operation, or improvement of any special energy improvement project undertaken by the Corporation, between a participating political subdivision and the Corporation, and between the Corporation and any owner of real property in the district on which a special energy improvement project has been acquired, installed, equipped, or improved; and

(5) Aggregating the renewable energy credits generated by one or more special energy improvement projects within a district, upon the consent of the owners of the credits and for the purpose of negotiating and completing the sale of such credits.

(B) Once the board adopts a plan, it shall submit the plan to the legislative authority of each participating political subdivision and the municipal executive of each municipal corporation in which the district is located. The legislative authorities and municipal executives shall review the plan and, within sixty days after receiving it, may submit their comments and recommendations about it to the Corporation. After reviewing

these comments and recommendations, the board may amend the plan. It may then submit the plan, amended or otherwise, in the form of a petition to members of the district whose property may be assessed for the plan. All special energy improvement projects shall require a petition signed by one hundred per cent of the owners of the area of all real property located within the area to be assessed for the special energy improvement project.

The petition seeking assessments shall thereafter be submitted to the appropriate legislative authority for consideration and adoption as provided by law. Each legislative authority shall, by resolution, approve or reject the petition within sixty days after receiving it. If the petition is approved by the legislative authority of each participating political subdivision, the plan contained in the petition shall be effective at the earliest date on which a nonemergency resolution of the legislative authority with the latest effective date may become effective. A plan may not be resubmitted to the legislative authorities and municipal executives more than three times in any twelve-month period.

Each participating political subdivision shall levy, by special assessment upon specially benefited property located within the district, the costs of the special energy improvement project. The levy shall be made in accordance with the procedures set forth in Chapters 1710 and 727 of the Revised Code. Church property or property owned by a political subdivision, including any participating political subdivision in which the district is located, shall be included in and be subject to special assessments made pursuant to a plan adopted under this section or division (F) of section 1710.02 of the Revised Code, if the church or political subdivision has specifically requested in writing that its property be included within the special improvement district and the church or political subdivision is a member of the district.

As a condition of proceeding with the special energy improvement project, the board may require the owner to provide such financial assurances or guarantees that the board deems to be reasonable and necessary.

## **ARTICLE VII QUORUM AND VOTING**

A majority of the board shall constitute a quorum for all meetings. Proxies and designees shall be counted for all purposes. A majority of a quorum shall be sufficient to authorize taking any action, except when the Articles of Incorporation require a greater number.

Action may be taken by the members of the Corporation by a majority of those present in person or by designee or proxy at a duly called annual or special meeting.

**ARTICLE VIII  
OFFICERS OF THE BOARD OF TRUSTEES; DUTIES**

The board shall elect from among its members a Chairperson, Vice-Chairperson, Secretary, and Treasurer of the board who shall serve for a one (1) year term. The officers shall continue to serve until their successors are elected and qualified.

The Chairperson shall preside at all meetings of the board and may sign, with the Secretary, or any other officer of the Corporation specifically authorized by the board, any deed, mortgages, bonds, notes, contracts or other instruments which the board has authorized, and in general shall be the leader and spokesperson for the Corporation. The Chairperson shall perform all other duties as may be prescribed by the board from time to time. The Chairperson shall conduct and preside at all meetings of the members of the Corporation.

The Vice-Chairperson shall perform the duties of the Chairperson when the Chairperson is absent or unable to perform the duties of the office. The Vice-Chairperson shall also be designated as the Assistant Secretary and Assistant Treasurer and shall perform the duties of those offices in the absence of the Secretary or Treasurer. The Vice-Chairperson shall also perform such duties as are assigned by the Chairperson or by the board.

The Secretary shall keep an accurate record of the acts and proceedings of the board and the Corporation and shall keep the minutes of the board; see that all notices are duly given in accordance with the provisions of this Code of Regulations or as required by law; shall be the custodian of the corporate records; and in general shall perform all of the duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Chairperson or by the board.

The Treasurer shall have charge and custody of and be responsible for the funds and securities of the Corporation from any source whatsoever, and shall deposit all such monies in the name of the Corporation in such banks, trust companies, or other depositories and shall perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the President or the board.

**ARTICLE IX  
EMPLOYEES OF AND AGENTS FOR THE CORPORATION;  
PROCUREMENT PROCEDURES**

The board may hire such employees and agents as the board deems to be necessary, proper and consistent with the board's plan for improvements within the district. The employees and agents shall receive such compensation as shall be authorized and approved by the board.



The Corporation shall utilize the competitive bidding rules and procedures adopted by the City of Marion, or similar rules implemented by any governmental entity which provides financing to the Corporation for the cost of implementation of a portion of, or all of, the adopted improvement plan. The Corporation shall have full authority to contract, without advertising or competitive bidding, with any of its members and participating political subdivisions. The board is vested with the authority to determine other instances when, in the judgment of the board, advertising and competitive bidding should be waived. Further, any sale, transfer, lease, or conveyance of a special energy improvement project by a participating political subdivision or the board may be made without advertising, receipt of bids, or other competitive bidding procedures applicable to the participating political subdivision or the district under Revised Code Chapters 153 or 735, or under R.C. 1710.11 or other representative provisions of the Revised Code.

**ARTICLE X  
TERMINATION AND WINDING-UP**

The existence of the Corporation shall be perpetual, provided however, that the Corporation may be dissolved in accordance with the procedure proscribed under R.C. 1710.13. No rights or obligations of any person under any contract, or in relation to any bonds, notes, or assessments made by the Corporation shall be affected by the dissolution of the Corporation or the repeal of a plan, except with the consent of that person or by order of a court with jurisdiction over the matter. Upon dissolution of the Corporation, any assets or rights of the Corporation, after payment of all bonds, notes, or other obligations, shall be deposited in a special account in the treasury of each participating political subdivision, prorated among all participating political subdivisions to reflect the percentage of the district's territory within that political subdivision, to be used for the benefit of the territory that made up the district.

Once the members have approved the repeal of a plan, all bonds, notes, and other obligations of the Corporation associated with the plan shall be paid. Thereafter, the plan shall be repealed. Upon receipt of proof that all bonds, notes, and other obligations have been paid and that the plan has been repealed, the participating political subdivisions shall terminate any levies imposed to pay for costs of the plan.

**ARTICLE XI  
AMENDMENT OF CODE OF REGULATIONS**

The Code of Regulations of the Corporation may be amended by the action of two-thirds of the members of the board of directors; provided, however, that no such amendment shall divest any member of the Corporation of any rights granted under Revised Code Chapters 1702 and 1710, and provided further that all participating

political subdivisions shall approve such amendment by resolution and the resolution and amendment shall be filed with the Secretary of State.

**ARTICLE XII  
INDEMNIFICATION**

Directors and their designees shall be entitled to the immunities provided by Chapter 1702 and to the same immunity as an employee under division (A)(6) of section 2744.03 of the Revised Code, except that directors and their designees shall not be entitled to the indemnification provided in section 2744.07 of the Revised Code unless the director or designee is an employee or official of a participating political subdivision of the district and is acting within the scope of the director's or designee's employment or official responsibilities.

Except to the extent such individuals are encompassed within and covered by the foregoing paragraph, board members, officers and employee of the Corporation shall be indemnified by the Corporation against all costs, expenses, judgments, and liabilities, including attorneys' fees, reasonably incurred by such person in connection with or resulting from any pending or threatened action, suit, or proceeding in which such person being or having been such board member, officer or employee, or by reason of any action alleged to have been taken or omitted by such board member, officer or employee except in relation to matters as to which such board member, officer or employee shall be finally adjudged, without right of further appeal, in such action, suit or proceeding to have been liable for willful misconduct in the performance of his or her duties.

EXHIBIT A  
ARTICLES OF INCORPORATION

ARTICLES OF INCORPORATION  
OF  
CITY OF MARION, OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

- THIRD:** The purpose for which the Corporation is formed shall be:
- PURPOSE
- (A) To govern the City of Marion, Ohio Energy Special Improvement District, Inc., a special improvement district (the “District”) created pursuant to Ohio Revised Code (“ORC”) Chapter 1710. The District’s purpose is to enhance the value of properties within the District and improve the environment by developing and assisting in developing within the District special energy improvement projects. The District will be authorized to provide special energy improvement projects pursuant to ORC Chapter 1710 that will benefit property and the environment within the boundaries of the District. The District will be authorized to take any other actions pursuant to ORC Chapter 1710 that may be taken by a special improvement district organized for the purpose of developing and implementing plans for special energy improvement projects. The City of Marion, Ohio (“City”) is a “participating political subdivision,” as that term is defined in ORC Section 1710.01(E), that will be authorized to levy a special assessment on each property within the territorial boundaries of the City within the District to pay for such improvements, based on the benefits those special energy improvement projects confer.
- (B) To engage in any lawful act, activity, or business not contrary to, and for which a nonprofit corporation may be formed under, the laws of the State of Ohio.
- (C) To have and exercise all powers, rights, and privileges conferred by the laws of the State of Ohio on nonprofit corporations or on special improvement districts, including, but not limited to, buying, leasing, or otherwise acquiring and holding, using or otherwise enjoying and selling, leasing or otherwise disposing of any interest in any property, real or personal, of whatever nature and wheresoever situated, and buying and selling renewable energy credits, stocks, bonds, or any other security of any issuer as the Corporation by action of its Board may, at any time and from time to time, deem advisable.
- (D) The reasons for establishing the District include enhancing the value of properties within the District and improving the environment. The District will enhance the public health, safety, peace, convenience, and welfare by developing and assisting in developing special energy improvement projects that reduce the territory’s carbon footprint, promote the District as a location for green technology job creation, benefit property within the District, and improve the environment.
- FOURTH:** No part of the net earnings of the Corporation shall inure to the benefit of or be

RESTRICTIONS

distributable to its members, directors, trustees, officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article III of these Articles of Incorporation and to make distributions to its members as authorized by ORC Chapter 1702, including any distribution upon dissolution of the Corporation.

FIFTH:  
MEMBERS

The members of the Corporation (“Members”) shall be those persons or organizations described in the Code of Regulations. The annual meeting of Members shall be determined by the Board of Directors (“Board”) as described in the Code of Regulations.

SIXTH:  
BOARD OF  
DIRECTORS

The Corporation shall be controlled and managed under the direction of the Board. The Board shall consist of at least five (5) individuals (individually a “Director”).

(A) One Director shall be the City’s municipal executive—its Mayor—or an employee of the City who is involved with the City’s planning or economic development functions and who shall be appointed by and serve at the pleasure of the Mayor.

(B) One Director shall be a person appointed by and serving at the pleasure of the City’s Council (the “Council”), the City’s legislative authority.

(C) The remaining Directors shall be Members or executive representatives of Members elected by the Members as described in the Code of Regulations of the Corporation.

The Board of Directors of the Corporation from time to time shall constitute the Board of Directors of the Corporation under ORC Chapter 1710.

SEVENTH:  
TERRITORY

The territory within the District shall be described generally as that portion of the City consisting of property owned by each property owner within the City that has petitioned the City for the development of a special energy improvement project, as that term is defined in ORC Section 1710.01(I). As provided in ORC Section 1710.02(A), the territory in the District may be noncontiguous if at least one special energy improvement project is designated for each parcel of real property included in the District. As further provided in Section 1710.02(A), additional territory may be added to the District for the purpose of developing and implementing plans for special energy improvement projects if at least one special energy improvement project is designated for each parcel of real property included within such additional territory and the addition of territory is authorized by the plan for the District under Chapter 1710. The addition of such territory shall be authorized in the plan for the District.

The following is a listing of properties that are initially included in the District, which are identified by owner and parcel number:

Owner 107 LLC

Parcel No. 12-201000.1300.

EIGHTH:  
CERTAIN  
TRANSACTIONS

No person shall be disqualified from being a Director of the Corporation because he or she is or may be a party to, and no Director of the Corporation shall be disqualified from entering into, any contract or other transaction to which the Corporation is or may be a party.

No contract, action, or other transaction shall be void or voidable for the reason that any Director or officer or other agent of the Corporation is a party to the contract, action, or transaction, or otherwise has any direct or indirect interest in the contract, action or transaction or in any other party to the contract, action, or transaction, or for reason that any interested director or officer or other agent of the Corporation authorizes or participates in the authorization of such contract, action or transaction, provided that:

The material facts as to such interest and as to the contract, action or transaction are disclosed or are otherwise known to the Board or applicable committee of Directors at the time the contract, action, or transaction is authorized and the Directors or the Members of the committee, in good faith reasonably justified by the facts, authorize the contract, action, or transaction by at least a majority vote of the disinterested Directors or disinterested Members of the committee, even though such disinterested Directors or Members are less than a quorum; or

The material facts as to such interest and as to the contract, action, or transaction are disclosed or are otherwise known to the member at the time the contract, action, or transaction is authorized and the member authorizes the contract, action, or transaction; or the contract, action, or transaction (i) is not less favorable to the Corporation than an arm's length contract, action, or transaction in which no director or officer or other agent of the Corporation has any interest or (ii) is otherwise fair to the Corporation as of the time it is authorized.

Any interested director may be counted in determining the presence of a quorum at any meeting of the Board or any committee of the Board which authorizes the contract, action, or transaction.

NINTH:  
DISSOLUTION

Upon the dissolution of the Corporation, all assets remaining after paying or making provision for the payment of all of the liabilities of the Corporation shall be conveyed to any person or organization as shall be selected by the affirmative vote of a majority of the Board.

TENTH:  
AMENDMENT

Any provision of these Articles of Incorporation may be amended only (a) by the affirmative vote of a majority of the Members of the Corporation at any meeting at which a quorum is present, and (b) after receipt of approval of such amendment by resolution of the legislative authority of each participating political subdivision, and (c) upon filing the approved amendment and resolution with the Ohio Secretary of State; provided that such amendment shall be consistent with the applicable provisions of ORC Chapters 1702 and 1710.