

## EMERGENCY RESOLUTION NO. 51-2018

A RESOLUTION DECLARING THE NECESSITY OF ACQUIRING, CONSTRUCTING, INSTALLING, EQUIPPING, OR IMPROVING PUBLIC IMPROVEMENTS WITHIN THE CITY OF MONROE AND DECLARING AN EMERGENCY.

WHEREAS, the owners of the properties constituting 100% of the area to be assessed in accordance with this Resolution have executed and filed with this Council a petition (the "Petition") requesting such improvement;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1. Capitalized terms not otherwise defined in this Resolution shall have the meaning assigned to each term in the Petition filed with the Clerk of Council, which Petition is hereby accepted, ratified, adopted and approved, and is incorporated into this Resolution as if set forth in full in this Resolution. The form of such Petition is attached as Appendix A.

SECTION 2. It is hereby declared necessary to acquire, construct, install, equip, and improve in the City of Monroe, Ohio (the "City") public roads, sewers, drains, water pipes, together with the facilities and appurtenances necessary and proper therefor as shown on the Plans and Specifications on file in the office of the Clerk of Council (the "Improvements").

SECTION 3. The Plans and Specifications and estimated total cost of the Improvements (the "Estimated Improvements Cost") now on file in the office of the Clerk of Council (the "Clerk") are approved. The Improvements shall be made in accordance with the Plans and Specifications, and the grade of the Improvements and of any street shall be the grade as shown on the Plans and Specifications.

SECTION 4. This Council finds and determines (i) that the Improvements are conducive to the public health, convenience, and welfare of the City and its inhabitants and (ii) that the Improvements specially benefit the Parcels (as identified in Exhibit C to the Petition) to be assessed for the Improvements.

SECTION 5. The total principal cost of the Improvements (the "Improvements Cost") shall be an amount equal to the costs of acquiring, constructing, installing, equipping, or improving the Improvements, which Improvements Cost currently is estimated to be \$2,500,000 and shall in no case exceed \$2,500,000. The special assessments assessed on Parcels for the Improvements (the "Special Assessments") shall fund an amount necessary to pay the Improvement Cost, together with any interest and other costs, fees, and expenses associated with financing the Improvements or with the Special Assessments, including, without limitation, any costs of permanent improvements described in Section 133.15(B) of the Ohio Revised Code. The Special Assessments shall be collected in 40 consecutive semi-annual installments. The Special Assessments shall be assessed in proportion to the special benefits conferred by the Improvements upon the Parcels. The Special Assessments shall

be calculated as of the Determination Date and allocated to each Parcel based on the Apportionment Formula stated in the Definitions attached to the Petition as Exhibit A. The Apportionment Formula shall be applied to each Parcel to determine the annual amount of Special Assessments to be paid by each Parcel. In accordance with Section 727.06 of the Ohio Revised Code, because the City has received the Petition signed by owners of the properties constituting more than 75% of the area to be assessed in accordance with this Resolution, the portion of the Project Cost allocable to the City shall be 0%.

SECTION 6. The Clerk is hereby directed to certify a copy of this Resolution to the Finance Director of the City (the "Finance Director"), and the Finance Director is authorized and directed to prepare and file in the office of the Clerk a report containing the estimated amount of the Special Assessment allocated to each Parcel, which Special Assessments shall not exceed the special benefit of the Project to the Parcel as ascertained by applying the Apportionment Formula to each such Parcel.

SECTION 7. This Council 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, Ohio Revised Code Chapter 727, and consents to the immediate imposition of the Special Assessments upon the Parcels. This waiver encompasses, but is not limited to, waivers by the Owner of the following rights:

- (i) The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- (ii) The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06;
- (iii) The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- (iv) 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 727.17;
- (v) 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;
- (vi) The right to notice that bids or quotations for the Improvements may exceed estimates by 15%;
- (vii) The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251;
- (viii) The right to notice of the passage of the assessing Resolution under Ohio Revised Code Section 727.26; and
- (ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

SECTION 8. The Special Assessment as to any Parcel may be prepaid at any time by paying the full amount of the aggregate unpaid Parcel Special Assessments for such Parcel.

SECTION 9. The Special Assessment relating to a subdivided Parcel shall be reapportioned to each new Parcel upon the subdivision of the original Parcel. The Special Assessment shall

be reapportioned to each new Parcel by applying the Apportionment Formula to the new Parcels.

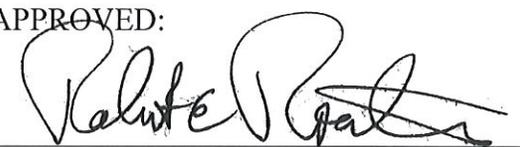
SECTION 10. An Owner of a Parcel claiming that a calculation error has been made in the amount of the Special Assessment to be collected from such Parcel shall send a written notice describing the error to the Finance Director not later than 30 days after having paid such Special Assessment that is alleged to have been calculated incorrectly, or within 30 days of receiving notice of any other calculation alleged to have been calculated incorrectly, prior to seeking any other remedy. The Finance Director shall promptly review the notice, and if necessary, meet with the Owner, consider written and oral evidence regarding the alleged error, and decide whether, in fact, such a calculation error occurred. If the Treasurer determines that a calculation error did in fact occur that requires the Special Assessment to be modified or changed in favor of the Owner, a cash refund shall not be made (except for the final year during which the Special Assessment shall be collected), but an adjustment may be made in the amount of the Special Assessment to be paid in the following year.

SECTION 11. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in open meetings of this Council, and that all such deliberations of this Council and of any of its committees that resulted in any such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 12. Pursuant to Section 7.08 of the Charter, this Resolution provides for improvements petitioned for by the owners of the requisite majority of the area of the property benefited and to be especially assessed therefor. Accordingly, this Resolution shall take effect immediately upon its passage.

PASSED August 28, 2018

ATTEST:  
  
\_\_\_\_\_  
Clerk of Council

APPROVED:  
  
\_\_\_\_\_  
Mayor

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.

  
\_\_\_\_\_  
Clerk of Council  
City of Monroe, Ohio

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.

**PETITION TO ASSESS PROPERTY WITHIN THE CITY OF MORE TO PAY A PORTION OF THE COSTS OF PUBLIC IMPROVEMENTS**

**To:** *Mayor and City Council, City of Monroe, Ohio*

The undersigned (“we”) respectfully petition the Council to assess property in the manner described in this Petition to pay for the costs connected with the acquisition, construction, installation, equipping, or improvement of public roads, sewers, drains, water pipes, together with the facilities and appurtenances necessary and proper therefor (exclusive of interest and other costs, fees, and expenses) not to exceed \$2,500,000 (the “Improvements”). Capitalized terms in this Petition have the meanings stated in Exhibit A unless otherwise indicated.

We are the owners of certain Parcels (the “Parcels”) within the City of Monroe, Ohio (the “City”). The Parcels comprise 100% of the area to be assessed. A map of the Parcels is attached to this Petition as Exhibit B, and a list of the Parcels is attached to this Petition as Exhibit C.

We petition the Council to Develop the Improvements as set forth in the Plans and Specifications; provided, however, that the cost of the Improvements (exclusive of interest and other costs, fees, and expenses) assessed to the Parcels shall not exceed \$2,500,000. We request that the Council adopt the Resolution of Necessity in a form substantially similar to the form attached to this Petition as Exhibit D in order to levy the Special Assessments to fund a portion of the costs of the Improvements.

The Special Assessments shall be calculated as of the Determination Date and levied against the Parcels in accordance with this Petition and Chapter 727 of the Ohio Revised Code. The Special Assessments will be apportioned to each Parcel based on the Apportionment Formula. We acknowledge that the Apportionment Formula apportions the Special Assessments among the Parcels based on the special benefits to be received by each Parcel in accordance with the laws of the State, and we agree that the Special Assessments shall be assessed upon the Parcels based on the Apportionment Formula.

We acknowledge and agree that if any Parcel is subdivided following the Determination Date, the City, acting in good faith, may equalize the Special Assessments on the subdivided parcels by applying the Apportionment Formula to each of the subdivided parcels; provided, however, that if the County Auditor requires an alternate method of apportioning the Special Assessments, the City will act in good faith to apportion the Special Assessments in a manner which approximates the Apportionment Formula to the greatest extent possible. We acknowledge and affirm that our preferred method of apportionment of the Special Assessments upon any subdivision of any Parcel is the Apportionment Formula, which we acknowledge and affirm apportions the Special Assessments in accordance with the special benefits to be received by each subdivided parcel in accordance with the laws of the State.

The Special Assessments shall be collected in 40 consecutive semi-annual installments. We agree that the semi-annual installments shall be certified to the County Auditor for collection pursuant to Section 727.33 of the Ohio Revised Code.

The Parcel Special Assessment attributable to any Parcel may be prepaid at any time by paying the full amount of the aggregate unpaid installments of the Parcel Special Assessment for such Parcel.

We understand that by signing and submitting this petition, we consent to the Special Assessments and specifically request that the Special Assessments be levied and collected. We further acknowledge and agree that the Parcels will receive special benefits from the Improvements. We therefore agree that we will not challenge or contest the Special Assessments levied against our Parcels for the Improvements in a judicial, assessment equalization board, or other administrative proceeding.

The Petitioners hereby waive notice and publication of all resolutions, legal notices and hearings provided for in the Ohio Revised Code with respect to the Improvements and the Special Assessments, particularly those in Chapter 727 of the Ohio Revised Code and consent to proceeding with the Improvements. Without limiting the foregoing, the Petitioners specifically waive any notices and rights under the following Ohio Revised Code Sections:

- 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 the Improvements may exceed estimates by 15%;
- The right to seek a deferral of payments of Special Assessments under Section 727.251;
- The right to notice of the passage of the Assessing Ordinance under Section 727.26; and
- Any and all procedural defects, errors, or omissions in the Special Assessment process.

The Petitioners consent to immediately proceeding with all actions necessary to acquire, install and construct the Improvements and impose the Special Assessments.

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

The Petitioner acknowledges that the Special Assessments set forth herein are based upon an estimate of costs, and that the final Special Assessments shall be calculated in the same manner,

which, regardless of any statutory limitation thereon, may be more or less than the respective estimated assessments for the Improvements. In the event the final assessments exceed the estimated assessments, the Petitioners, without limitation of the other waivers contained herein, also waive any rights it may now or in the future have to object to those assessments, any notice provided for in Chapters 727 of the Ohio Revised Code, and any rights of appeal provided for in such Chapters or otherwise. The Petitioners further acknowledge and represent that the respective final assessments may be levied at such time as determined by the City and regardless of whether or not any of the parts or portions of the Improvements have been completed.

The Petitioners acknowledge and understand that the City will be relying upon this Petition in taking actions pursuant thereto. Therefore this Petition shall be irrevocable and shall be binding upon the Petitioners, any successors or assigns thereof, the Parcels, and any grantees, mortgagees, lessees, or transferees thereof. The Petitioners acknowledge that it has had an opportunity to be represented by legal counsel in this undertaking and has knowingly waived the rights identified herein. By signing this Petition, each of us states and agrees that the person or persons signing this Petition have the full right and authority to sign this Petition and that no other signatures or approvals are required to give the consent of the Petitioners. Each of us understands that our statement is made under penalty of perjury.

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IN WITNESS WHEREOF, this Petition was executed as of the date set forth below, by the undersigned Petitioner(s), the Owner(s) of the Parcel(s) set forth below.

Date: \_\_\_\_\_  
\_\_\_\_\_ (signature of Authorized Signatory)

Property Owner: 17ac East of Senate, LLC  
(printed name of Property Owner)

Authorized Signatory: John P. Westheimer  
(printed name of Authorized Signatory)

Address for notices to Property Owner: 4779 Red Bank Expressway  
Cincinnati, Ohio 45227

Tax Parcel Number(s): 11051280051, 11051280052

## **Exhibit A**

### **Definitions**

“Apportionment Formula” means, as applied to each Parcel, the proportion that the acreage of such Parcel bears to the total acreage of all Parcels to be assessed (which proportion shall be expressed as a fraction) multiplied by the Special Assessment. The Petitioners agree that the Apportionment Formula assesses each Parcel in proportion to the special benefits each Parcel receives from the Improvements, all in accordance with Chapter 727 of the Ohio Revised Code.

“Completion” means the completion—as determined by the City—of the Improvements.

“City” means the City of Monroe, Ohio, a municipal corporation and political subdivision organized and existing under the constitution and laws of the State.

“Council” means the Council of the City.

“County Auditor” means the Auditor of Warren County, Ohio.

“Determination Date” means the date on which the Finance Director certifies the final Special Assessments to the County Auditor pursuant to Ohio Revised Code Chapter 727.33.

“Develop” means to acquire, construct, equip, maintain, and repair the Improvements.

“Finance Director” means the Finance Director of the City of Monroe.

“Improvements” means the acquisition, construction, installation, equipping, or improvement of public roads, sewers, drains, water pipes, together with the facilities and appurtenances necessary and proper therefor, all as more specifically described in the Plans and Specifications; provided, that the principal cost of the Improvements, exclusive of interest and other costs, fees, and expenses, shall not exceed \$2,500,000.

“Owner” means the owner or owners of a Parcel, and any successors in interest to such owner.

“Parcel” means a property designated in the records of the County Auditor as a tax parcel with an assigned tax parcel number against which a portion of the Special Assessments shall be levied in accordance with this Petition, and, upon any subdivision of any such property, each subdivided property designated in the records of the County Auditor as a tax parcel with an assigned tax parcel number against which a portion of the Special Assessments shall be levied in accordance with this Petition.

“Parcel Special Assessment” means, with respect to each Parcel, the Special Assessment allocated to such Parcel as of the Determination Date by applying the Apportionment Formula to such Parcel.

“Person” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities, and natural persons.

“Petition” means this Petition filed by the Petitioners relating to their request that the City levy the Special Assessments to pay the costs of the Improvements.

“Petitioners” means the Owners who have signed or caused their authorized representatives to sign the Petition.

“Plans and Specifications” means the plans, specifications, and profiles for the Improvements filed with the Clerk of Council prior to the passage of the Resolution of Necessity.

“Resolution of Necessity” means any preliminary resolution declaring the necessity of the Improvements, in substantially the form set forth in **Exhibit D** attached to the Petition, and required to be passed by the Council pursuant to Section 727.12 of the Ohio Revised Code.

“Special Assessments” means the aggregate semi-annual special assessments levied by the City against the Parcels pursuant to this Petition.

“State” means the State of Ohio.

“We,” “us,” and any possessive or other case of such words mean the Petitioners.

**Exhibit B**

**Map of the Parcels**



**Exhibit C**

List of Parcels

11051280051

11051280052

**Exhibit D**

**A RESOLUTION  
DECLARING THE NECESSITY OF ACQUIRING,  
CONSTRUCTING, INSTALLING, EQUIPPING, OR  
IMPROVING PUBLIC IMPROVEMENTS WITHIN THE  
CITY OF MONROE.**

WHEREAS, the owners of the properties constituting 100% of the area to be assessed in accordance with this Resolution have executed and filed with this Council a petition (the "Petition") requesting such improvement;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO THAT:**

SECTION 13. Capitalized terms not otherwise defined in this Resolution shall have the meaning assigned to each term in the Petition filed with the Clerk of Council, which Petition is hereby accepted, ratified, adopted and approved, and is incorporated into this Resolution as if set forth in full in this Resolution. The form of such Petition is attached as Appendix A.

SECTION 14. It is hereby declared necessary to acquire, construct, install, equip, and improve in the City of Monroe, Ohio (the "City") public roads, sewers, drains, water pipes, together with the facilities and appurtenances necessary and proper therefor as shown on the Plans and Specifications on file in the office of the Clerk of Council (the "Improvements").

SECTION 15. The Plans and Specifications and estimated total cost of the Improvements (the "Estimated Improvements Cost") now on file in the office of the Clerk of Council (the "Clerk") are approved. The Improvements shall be made in accordance with the Plans and Specifications, and the grade of the Improvements and of any street shall be the grade as shown on the Plans and Specifications.

SECTION 16. This Council finds and determines (i) that the Improvements are conducive to the public health, convenience, and welfare of the City and its inhabitants and (ii) that the Improvements specially benefit the Parcels (as identified in Exhibit C to the Petition) to be assessed for the Improvements.

SECTION 17. The total principal cost of the Improvements (the "Improvements Cost") shall be an amount equal to the costs of acquiring, constructing, installing, equipping, or improving the Improvements, which Improvements Cost currently is estimated to be \$2,500,000 and shall in no case exceed \$2,500,000. The special assessments assessed on Parcels for the Improvements (the "Special Assessments") shall fund an amount necessary to pay the Improvement Cost, together with any interest and other costs, fees, and expenses associated with financing the Improvements or with the Special Assessments, including, without limitation, any costs of permanent improvements described in Section 133.15(B) of the Ohio Revised Code. The Special Assessments shall be collected in 40 consecutive semi-annual installments. The Special Assessments shall be assessed in proportion to the special benefits conferred by the Improvements

upon the Parcels. The Special Assessments shall be calculated as of the Determination Date and allocated to each Parcel based on the Apportionment Formula stated in the Definitions attached to the Petition as Exhibit A. The Apportionment Formula shall be applied to each Parcel to determine the annual amount of Special Assessments to be paid by each Parcel. In accordance with Section 727.06 of the Ohio Revised Code, because the City has received the Petition signed by owners of the properties constituting more than 75% of the area to be assessed in accordance with this Resolution, the portion of the Project Cost allocable to the City shall be 0%.

SECTION 18. The Clerk is hereby directed to certify a copy of this Resolution to the Finance Director of the City (the "Finance Director"), and the Finance Director is authorized and directed to prepare and file in the office of the Clerk a report containing the estimated amount of the Special Assessment allocated to each Parcel, which Special Assessments shall not exceed the special benefit of the Project to the Parcel as ascertained by applying the Apportionment Formula to each such Parcel.

SECTION 19. This Council 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, Ohio Revised Code Chapter 727, and consents to the immediate imposition of the Special Assessments upon the Parcels. This waiver encompasses, but is not limited to, waivers by the Owner of the following rights:

- (x) The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- (xi) The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06;
- (xii) The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- (xiii) 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 727.17;
- (xiv) 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;
- (xv) The right to notice that bids or quotations for the Improvements may exceed estimates by 15%;
- (xvi) The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251;
- (xvii) The right to notice of the passage of the assessing Resolution under Ohio Revised Code Section 727.26; and
- (xviii) Any and all procedural defects, errors, or omissions in the Special Assessment process.

SECTION 20. The Special Assessment as to any Parcel may be prepaid at any time by paying the full amount of the aggregate unpaid Parcel Special Assessments for such Parcel.

SECTION 21. The Special Assessment relating to a subdivided Parcel shall be reapportioned to each new Parcel upon the subdivision of the original Parcel. The Special

Assessment shall be reapportioned to each new Parcel by applying the Apportionment Formula to the new Parcels.

SECTION 22. An Owner of a Parcel claiming that a calculation error has been made in the amount of the Special Assessment to be collected from such Parcel shall send a written notice describing the error to the Finance Director not later than 30 days after having paid such Special Assessment that is alleged to have been calculated incorrectly, or within 30 days of receiving notice of any other calculation alleged to have been calculated incorrectly, prior to seeking any other remedy. The Finance Director shall promptly review the notice, and if necessary, meet with the Owner, consider written and oral evidence regarding the alleged error, and decide whether, in fact, such a calculation error occurred. If the Treasurer determines that a calculation error did in fact occur that requires the Special Assessment to be modified or changed in favor of the Owner, a cash refund shall not be made (except for the final year during which the Special Assessment shall be collected), but an adjustment may be made in the amount of the Special Assessment to be paid in the following year.

SECTION 23. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in open meetings of this Council, and that all such deliberations of this Council and of any of its committees that resulted in any such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 24. Pursuant to Section 7.08 of the Charter, this Resolution provides for improvements petitioned for by the owners of the requisite majority of the area of the property benefited and to be especially assessed therefor. Accordingly, this Resolution shall take effect immediately upon its passage.

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PASSED: \_\_\_\_\_, 2018

ATTEST:

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Mayor