

EMERGENCY

Legislative Resolution

RESOLUTION NO. _____ - 2024

DECLARING by legislative resolution the necessity of the special assessment project at 118 W. 9th Street in the City of Cincinnati, Ohio; **APPROVING** a petition for special assessments relating to the special assessment project at 118 W. 9th Street; and **AUTHORIZING** the City Manager to execute an agreement with the Ohio Air Quality Development Authority relating to the special assessment project at 118 W. 9th Street, pursuant to Ohio Revised Code Section 3706.051.

WHEREAS, 118 W 9TH ST, LLC (together with all future owners of the Project Site, as defined below, the “Owner” or “Petitioner”), as the fee title owner of certain real property located at 118 W. 9th Street in Cincinnati (the “Project Site”), which is to be assessed for the improvements described in this resolution pursuant to Ohio Revised Code (“R.C.”) Chapter 727 (collectively, the “Act”), has executed and delivered to Council a Petition to Request the Levy of a Special Assessment, a copy of which is attached hereto as Attachment A (the “Petition”); and

WHEREAS, pursuant to the Petition, the Owner has proposed the necessity of special assessments to pay the costs of developing and implementing an air quality facility (as defined in R.C. Section 3706.01) comprised of the Authorized Improvements (as defined in the Petition), specifically benefitting the Project Site (the “Project”); and

WHEREAS, in the Petition the Owner requests that the Project be paid for by special assessments assessed upon the Project Site in an amount sufficient to pay the costs of the Project, which is estimated to be an amount not to exceed \$810,000, plus interest thereon (the “Special Assessments”); and

WHEREAS, pursuant to the Act and R.C. Section 3706.051, the City may to enter into an agreement with the Ohio Air Quality Development Authority (the “Authority”) and levy special assessments upon property specially benefited by an air quality facility; and

WHEREAS, Council has determined (i) the Special Assessments are conducive to the public health, convenience, and welfare of this City and the inhabitants of Cincinnati; (ii) the Project Site is specially benefited by the Special Assessments; (iii) the Special Assessments have been petitioned for by the owner of 100 percent of the Project Site; and accordingly, has determined it necessary to approve the Petition; and

WHEREAS, Council has determined to authorize the City Manager to enter into an agreement with the Authority pursuant to the Act and R.C. Section 3706.051 in substantially the form of agreement attached hereto as Attachment B (the “Agreement”), which Agreement provides for the issuance of bonds by the Authority; now, therefore,

BE IT RESOLVED by the City Council of the City of Cincinnati, State of Ohio:

Section 1. That the recitals hereof are hereby incorporated by reference, and each capitalized term not otherwise defined herein or by reference to another document shall have the

meaning assigned to it in the Petition, which Petition, together with the Agreement, are hereby approved and accepted, and copies of which are attached to this resolution as Attachment A and Attachment B, respectively.

Section 2. That Council (a) declares the necessity of the Project, the costs of which shall be secured by the Special Assessments, as provided in the Petition, and (b) finds it necessary to specially assess the Project Site to support an air quality facility in accordance with the submitted plans, specifications, and estimates of cost. The Petition includes a listing of the parcel(s) of real property owned by the Owner to be assessed and is incorporated herein by reference.

Section 3. That the City Manager or her designee is authorized to execute the Agreement substantially in the form now on file with the Clerk of Council, together with any modifications as may be necessary, subject to any and all terms and conditions that the City Manager or her designee finds appropriate, to effectuate the purpose of the Petition and R.C. Section 3706.051; provided, that any such modification shall not, in the judgment of the City Manager, be adverse to the City.

Section 4. That the costs of the Project, as set forth in the Petition, shall be assessed in proportion to the benefits upon the Project Site, and the Special Assessments for the Project shall be assessed and paid as specified in the Petition. The portion of the costs of the Project allocable to the City will be zero percent. The City does not intend to issue securities in anticipation of the levy of the Special Assessments.

Section 5. That the City's Finance Director and/or her designee is authorized to cause to be prepared and filed in the office of the Clerk of Council the estimated Special Assessments and the cost of the Project in accordance with the method of assessment set forth in the Petition and this resolution.

Section 6. That the Special Assessments shall be levied and paid in fifty semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition. The

Owner has waived the right to pay the Special Assessments in cash within thirty days after the first publication of the notice of the assessing ordinance.

Section 7. That the Owner has waived notice of the adoption of this resolution and the filing of the estimated Special Assessments upon the filing of the estimated Special Assessments with the Clerk of Council under R.C. Section 727.13.

Section 8. That Council hereby accepts and approves the waivers contained in the Petition of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including, without limitation, those specified in the Ohio Constitution, R.C. Chapter 727, R.C. Chapter 1710, and the Charter of the City of Cincinnati, Ohio, and consents to the immediate imposition of the Special Assessments upon the Project Site.

Section 9. That it is hereby found and determined that all formal actions of Council concerning and relating to the passage of this resolution were adopted in an open meeting of Council, and that all deliberations of 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 R.C. Section 121.22.

Section 10. That this resolution shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to ensure that the Ohio Air Quality Development Authority can consider the issuance of the bonds to be secured by the Special Assessments and allow the work on the Project to proceed at the earliest possible time.

Passed: _____, 2024

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

**PETITION TO REQUEST THE
LEVY OF A SPECIAL ASSESSMENT**

TO THE CITY COUNCIL OF THE CITY OF CINCINNATI, OHIO:

The undersigned, 118 W 9TH ST, LLC, an Ohio limited liability company (the "Owner") represents and warrants that it is, on the date of this Petition and on the date of submission of this Petition to the City Council of the City of Cincinnati ("Council"), the owner of fee simple title to the real property described in Exhibit A attached hereto and incorporated herein by this reference ("Property"), and that the Property includes one hundred percent (100%) of the area and lots and lands benefited by and to be assessed for the improvements hereinafter described ("Assessed Lands").

Petition for Authorized Improvements. The Owner, together with its grantees or transferees, and its and their successors and assigns as owner of all of the lots and lands included in the Assessed Lands, hereby respectfully petitions the City of Cincinnati (the "City"), through its Council for the improvements which constitute an air quality facility as further described in Exhibit B attached hereto, which Exhibit is incorporated herein by this reference (collectively, "Authorized Improvements"), as the same are further described and detailed in the plans, specifications, profiles and estimates of cost (collectively, "Plans") filed in the office of the Clerk of the Cincinnati City Council ("Clerk of Council") prior to or concurrently with the filing of this Petition.

Costs to be Assessed; Period of Assessment. The undersigned further requests, on behalf of the Owners, that 100% of the total assessable cost of the Authorized Improvements, determined subject to and as further described herein and in the Plans ("Assessable Cost"), be assessed upon the lots and lands constituting the Assessed Lands, with such assessments ("Special Assessments") to be allocated and assessed to the Assessed Lands in proportion to the benefits received, as further described herein, and to be payable, when levied, semi-annually for not more

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than twenty-five (25) years following two years of interest only Special Assessments. The Owner requests that the Special Assessments be collected semi-annually but understands that the Special Assessments will be collected as determined by the Hamilton County Auditor. The Special Assessments will be pledged to the payment of bonds ("Obligations") anticipated to be issued by the Ohio Air Quality Development Authority.

The Assessable Cost of the Authorized Improvements may include, if so elected by the City, any one or more of the following costs:

(a) all costs ("Direct Costs") incurred with respect to the design, engineering, acquisition, construction, installation and equipping of the Authorized Improvements;

(b) all costs ("Indirect Costs") incurred in connection with the preparation, levy, collection and enforcement of the Special Assessments and the financing of the Authorized Improvements including, without limitation, the following: (i) County Auditor and Treasurer collection fees, (ii) with respect to the issuing or servicing of any revenue, general obligation or other debt obligations, including without limitation revenue bonds to be issued by the Ohio Air Quality Development Authority to finance costs of the Authorized Improvements under an agreement with the City, in anticipation of collection of the Special Assessments (whether or not also issued in anticipation of other revenues) or otherwise, to finance the Authorized Improvements, subject to the limitations established in the ordinance levying the assessments (or such other ordinances as may be applicable), together with any bond service charges or other like charges, administrative expenses and transaction costs.

Estimated Assessments. In connection with this Petition and in furtherance of the purposes hereof, the Owner acknowledges that it has reviewed the Plans, including the estimated costs of the Authorized Improvements (including any debt service relating thereto) and the estimated

useful life of the Authorized Improvements, and now on file with the Clerk of Council. In connection with this Petition and in furtherance of the purposes hereof, the Owner further acknowledges that it has reviewed the estimated Special Assessments to be levied for the Authorized Improvements, including all estimated costs to be included therein which are now on file with the Clerk of Council, and acknowledges and agrees that the estimated Special Assessments have been determined in accordance with this Petition.

Benefit. The undersigned Owner acknowledges and agrees that the Special Assessments as contemplated herein do not exceed the benefit to be received by the Assessed Lands as a result of the Authorized Improvements. The Owner acknowledges that these Special Assessments are fair, just and equitable and are being imposed at the Owner's specific request.

Acknowledgments, Consents and Waivers. The Owner hereby 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 Chapter 727 and consents to proceeding with the Authorized Improvements. Without limiting the foregoing, the Owner 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 727.14;
- The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06, including the right to consider the Special Assessments authorized by this Petition within the limitations contained in Ohio Revised Code Sections 727.03 and 727.06 applicable to the Special Assessments and any other special assessments properly levied now or in the future;
- The right to file an objection to the Special Assessments 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 727.17;
- 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.

Covenants of Owners. In consideration of the special benefits conferred by the Authorized Improvements, the undersigned Owner covenants and agrees that it will (so long as it is an Owner of Assessed Lands), and that each other Owner will, pay promptly all Special Assessments levied against those Assessed Lands owned by such Owner as they come due and before they become delinquent, and further agrees that the determination by the Council of the Special Assessments to be imposed against the Assessed Lands will be final, conclusive and binding upon each and all of the Assessed Lands and each such Owner (except as may be subsequently amended by the Council to establish the final amount of said Special Assessments).

The undersigned Owner further covenants and agrees, so long as the Obligations remain outstanding and/or any Special Assessments remain unpaid, upon the transfer of any of the Assessed Lands or any portion thereof to any transferee: (a) to disclose the existence of any outstanding Special Assessments for the Authorized Improvements, (b) to pay or cause to be paid prior to any such transfer, as a condition to the effectiveness of the delivery of any deed or instrument of transfer, all Special Assessments then or theretofore due and payable with respect to the Assessed Lands to be transferred, and (c) to require that each such transferee in writing agrees to make such payments, make such disclosure to any subsequent transferee and require subsequent transferees to take on the same obligations. As a condition to any transfer of Assessed Lands while any of the Special Assessments remain unpaid, the deed or instrument of transfer to any transferee shall provide for (i) the acquisition of such property subject to any outstanding Special Assessments imposed on such property and for the waiver by such transferee of any rights that the undersigned Owner has waived pursuant to this Petition and (ii) the requirement that each transferee from time to time of any of the Assessed Lands covenant to include in the deed or instrument of transfer to any subsequent transferee the conditions described in clause (i) of this sentence so long as any such Special Assessments remain unpaid; provided, that if a

declaration conforming to the requirements of this Petition shall have been recorded with respect to all of the Assessed Lands, the deed or instrument of transfer may instead make specific reference to that declaration. For purposes of this Petition, the term "transfer" shall include any transfer or assignment of either the controlling voting interest, or of all or substantially all of the economic interest, in any entity formed for the purpose of owning (or otherwise owning) one or more parcels included in the Assessed Lands as all or a substantial part of the assets of such entity, but excluding a collateral assignment for security purposes only.

Additional Agreements and Waivers of Owners: To the extent, if any, not included above, the undersigned Owner further waives any and all irregularities and defects in the proceedings for the Special Assessments, the issuance or incurrence of the Obligations, and the certification, collection and enforcement of the Special Assessments and the lien thereof.

The undersigned Owner further consents and agrees that all legislation required to be enacted to permit the Authorized Improvements to commence immediately be enacted at one Council meeting, including the resolution of necessity specified in Section 727.12 of the Revised Code, the ordinance to proceed specified in Section 727.23 of the Revised Code and the assessing ordinance specified in Section 727.25 of the Revised Code, and further consents and requests that the Special Assessments shall be levied and may be collected before the actual cost of the Authorized Improvements is ascertained. The Owner, and each of the Owners, specifically agrees that it will not contest, in a judicial or administrative proceeding the Special Assessments levied against the Assessed Lands for the Authorized Improvements.

Petition Binds all Future Owners. Whether or not expressly stated herein, each and every covenant, agreement, representation, warranty, certification, verification, waiver, imposition or other condition or term of this Petition made by the undersigned Owner is and shall constitute a covenant running with the Assessed Lands, made for and on behalf of each Owner from time to

time of any and all of the Assessed Lands, and each of their successors and assigns, as if each such Owner (or successor or assign) had owned the Assessed Lands on the dates of this Petition and its submission to Council, and had joined in the execution hereof. The undersigned Owner hereby acknowledges and affirms, for itself and on behalf of each Owner from time to time, that (i) it intends that the City rely on each covenant, agreement, representation, warranty, certification, verification, waiver, imposition or other condition or term of this Petition, and (ii) if the City elects to levy the Special Assessments and otherwise take the actions contemplated hereby, that the City is acting in consideration of each such covenant, agreement, representation, warranty, certification, verification, waiver, imposition or other condition or term of this Petition.

Authority to Sign. The undersigned signatory represents and warrants that they have full right and authority to sign this Petition and no other signatures or approvals are required.

[Signature Page Follows]

OWNER:
118 W 9TH ST LLC

By: [Signature]

Name: Sheri Scott

Its: Member

Dated: October 17, 2024

STATE OF OHIO)
COUNTY OF WARREN)

The foregoing instrument was acknowledged before me this 17 day of October __, 2024 by Sheri Scott, Member of 118 W 9TH ST, LLC, an Ohio limited liability company, on behalf of the Owner. This is an acknowledgment, and no oath or affirmation was administered to the signer with regard to this acknowledgment.



ARIANA RAINN ALCORN
Notary Public
State of Ohio
My Comm. Expires
April 3, 2029

[Signature]

Notary Public
My commission expires: April 3, 2029

**EXHIBIT A
DESCRIPTION OF PROPERTY**

Legal Description:

W NINTH ST 71 X 130 IRR LOTS 27-28 & PT LOT 26 PIATT-GRANDINS SUB SQ 5

PARS 351-352 CONS

Land Area: Total: 0.21 acre (9,322 sf)

Land to Building Ratio: 0.61:1

Building Type: Religious / Recreational / Class Buildings

Year Built: 1963

Condition: Good

Number of stories: 2 Story

Religious Building: 7,600

Basement / Class: 7,424

Gross Building Area: 15,024 SF

Zoning: DD (Downtown Development)

Zoning Authority: DD (Downtown Development) City of Cincinnati Zoning Administration

**EXHIBIT B
AUTHORIZED IMPROVEMENTS**

This project consists of the following Energy Savings Improvements:

- 1. Building Envelope Improvements: No to Exceed \$742,500**
- 2. Electrical Upgrades: \$67,500 (estimated)**

Energy Conservation Measures ("ECM") Summary and Useful Life

The Air Quality Facility includes energy conservation measures that consist of building envelope upgrades, new high-efficiency HVAC equipment, new energy-efficient lighting, new energy-efficient domestic water heaters, and electrical upgrades required for the improvements.

The following table outlines the useful life of the equipment upgrades.

(Add)	ECM	Expected Useful Life
	Envelope: Roof Insulation	100+ years
	HVAC: Air-to-air heat pumps	15 - 20 years
	Lighting: LED	20 - 25 years
	Domestic Water Heating: Electric storage water heater	15 - 20 years

1.

**EXHIBIT C
ESTIMATED ASSESSMENTS**

<u>Aggregate Special Assessment</u>	<u>Semi-Annual Installment of Special Assessment</u> (i.e., this amount is to be paid 50 times over a 25-year period following 2 years of interest only Special Assessments)
\$ 810,000	Amount Not to Exceed \$43,742.92

ATTACHMENT B

SECTION 3706.051 AGREEMENT

THIS SECTION 3706.051 AGREEMENT (this “Agreement”) is made and entered into as of October __, 2024, between the OHIO AIR QUALITY DEVELOPMENT AUTHORITY, a body corporate and politic (the “Authority”) duly created, organized and existing under the laws of the State of Ohio (the “State”), and THE CITY OF CINCINNATI, OHIO, a municipal corporation duly organized and validly existing under the constitution and laws of the State and its Charter (the “City”).

RECITALS:

- A. Pursuant to Section 3706.051 of the Ohio Revised Code, the Authority is authorized to enter into an agreement with the legislative authority of the City.
- B. 118 W 9TH ST, an Ohio limited liability company (the “Owner”) signed and delivered to the City Council of the City a Petition to request the levy of a Special Assessment (the “Petition”).
- C. The Petition requests the levy of special assessments by the City for the purpose of developing and implementing an air quality facility as defined in Ohio Revised Code Section 3706.01(G)(12) specifically benefiting the real property located at 118 W. 9th Street, Cincinnati, Hamilton County, Ohio (the “Project”).
- D. The Authority and the City desire to secure the payment of the principal of, and any premium and unpaid interest on revenue bonds or notes issued by the Authority pursuant to Ohio Revised Code Section 3706.05 (the “Bonds”) used to finance the Project, which Bonds shall be secured by the City’s levy, collection, and pledge of special assessments.

In consideration of the foregoing and the mutual covenants contained in this Agreement, the Authority and the City agree that:

- 1. The Owner has requested the assistance of the City and the Authority in the development and implementation of the Project. For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement, the City has agreed to assist and cooperate with the Authority in the development and implementation of the Project. This Agreement is intended as and shall be an agreement between the City and the Authority to cooperate in the financing, acquisition, construction, equipping, improvement, and installation of the Project, and the agreements contained herein are intended to and shall be construed as agreements to further effect cooperative action.
- 2. The Authority may issue Bonds for the purpose of paying any part of the cost of the Project.
- 3. The City may levy a special assessment under Ohio Revised Code Section 727.01 of the Revised Code upon property specially benefited by the Project.

4. The City shall pledge the special assessments levied under Section 3 for the payment of the Bonds.

5. The obligations of the Authority under this Agreement, with the sole exception of the obligation to work cooperatively with the City, shall be subject to the following conditions precedent:

- a. the levying of special assessments by the City as provided in Section 3;
- b. the pledge of the special assessments by the City as provided in Section 4;
- c. the Owner's obligation to secure a lender or investor to purchase the Bonds, which lender or investor shall be subject to the reasonable discretion of the Authority;
- d. the Owner's certification to the Authority that the Project constitutes an air quality facility as defined in Ohio Revised Code Section 3706.01(G)(12); and
- e. the execution of a special assessment agreement further memorializing the obligations of the City and the Authority, as well as the obligations of additional parties, including the county treasurer, the Owner, and the lender or investor, and any other related documents.

6. **Miscellaneous Provisions.**

a. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by each party hereto. No waiver of any term of this Agreement shall be binding upon any party until such waiver is reduced to writing, executed by the party to be charged with such waiver, and delivered to the other parties hereto.

b. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State.

c. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

d. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns. In no event shall the provisions of this Agreement be deemed to inure to the benefit of or be enforceable by any third party, except for permitted assigns.

[Signature Pages Follow]

IN WITNESS WHEREOF, each party to this Agreement has caused this Agreement to be executed in its respective name and capacity by its respective duly authorized officers, all as of the day and the year first written above.

AUTHORITY

**OHIO AIR QUALITY DEVELOPMENT
AUTHORITY**

By: _____
Name: _____
Title: _____

CITY

Approved as to form:

THE CITY OF CINCINNATI, OHIO

By: _____
Assistant City Solicitor

By: _____
Sheryl M.M. Long, City Manager

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director