

TEMPORARY ORDINANCE NO. 9-10

PERMANENT ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF A REVENUE NOTE, IN AN AGGREGATE PRINCIPAL AMOUNT OF FIVE HUNDRED FORTY-TWO THOUSAND ONE HUNDRED SIXTY DOLLARS (\$542,160.00) TO REIMBURSE ISLAND CAPITAL INVESTMENT GROUP, LLC FOR A DRAW ON A LETTER OF CREDIT, AND DECLARING AN EMERGENCY

WHEREAS, pursuant to Ordinance No. 39-06 (the "TIF Ordinance"), passed by this Council on September 11, 2006, the City declared certain improvements to certain property (the "Property") to be a public purpose, exempting portions of the value of those improvements from real property taxes, specified that certain public infrastructure improvements, including the improvements described in Section 1 (the "Improvements"), would benefit that property, requiring the owners of the Property to make service payments in lieu of taxes (the "Service Payments"), creating the Ety Road Municipal Tax Increment Equivalent Fund (the "TIF Fund"), and authorizing a Tax Increment Financing Agreement (the "TIF Agreement") by and among the City, Island Capital Investment Group, LLC ("Island Capital"), Menard, Inc. ("Menard"), RLG Lancaster Ltd. ("RLG Lancaster"), GCG Lancaster Ltd. ("GCG Lancaster"), Anchor Lancaster, LLC ("Anchor Lancaster" and together with RLG Lancaster and GCG Lancaster, "RG/Anchor") and Wal-Mart Stores East, LP ("Wal-Mart", and together with Island Capital, Menard and RG/Anchor, the "TIF Parties"); and

WHEREAS, pursuant to Ordinance No. 18-09, passed by this Council on September 28, 2009, the City issued general obligation notes, in anticipation of the issuance of bonds, in an aggregate principal amount of \$3,475,000 bearing interest at a rate of 1.75% to pay costs of the Improvements as required by the TIF Agreement (such notes, any prior notes issued to pay costs of the Improvements, and any subsequent notes or bonds retiring such notes or bonds are collectively referred to herein as the "Debt"); and

WHEREAS, pursuant to Section 3.15 of the TIF Agreement, Island Capital provided a letter of credit for a maximum amount of \$1,084,320 (the "Letter of Credit") to secure the payment of a portion of the Debt; and

WHEREAS, subsequent to the delivery of the Letter of Credit, the City and Island Capital agreed that the maximum amount of the Letter of Credit should be reduced by 50% to \$542,160; and

WHEREAS, Island Capital failed to provide to the City a new, revised or amended Letter of Credit reflecting the 50% reduction in the amount of the Letter of Credit; and

WHEREAS, Island Capital failed to provide a new Letter of Credit prior to the expiration of the existing Letter of Credit; and

WHEREAS, pursuant to the terms of the Letter of Credit and the terms of the TIF Agreement, the City drew the entire maximum amount of the Letter of Credit (\$1,084,320); and

WHEREAS, this Council has authorized the execution and delivery of a Settlement and Escrow Agreement by and between the City and Island Capital (the "Settlement and Escrow

Agreement") regarding the use of the draw on the Letter of Credit that provides that 50% of the draw on the Letter of Credit will be used to pay principal of and interest on the Debt when due;

WHEREAS, pursuant to Section 3.12 of the TIF Agreement, the City is required to provide to Island Capital a note in the amount of the draw upon the Letter of Credit to be used to pay principal of and interest on the Debt that bears interest from the date of that draw equal to the rate of interest borne by the then outstanding Debt; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lancaster, Fairfield County, Ohio, that:

SECTION 1. It is necessary to issue revenue notes of this City in an aggregate principal amount of \$542,160 (the "Island Capital TIF Note") to reimburse Island Capital for a draw on the Letter of Credit.

SECTION 2. The Island Capital TIF Notes shall be dated the date of its issuance and shall mature on December 31, 2010. The Island Capital TIF Note is prepayable, without penalty or premium, at the option of the City at any time prior to maturity if the City and the TIF Parties amend Section 3.12 of the TIF Agreement to permit payments on a date other than December 31 of each year. Prepayment prior to maturity shall be made by deposit with the Paying Agent (as defined in Section 3) of the principal amount of the Island Capital TIF Note together with interest accrued thereon to the date of prepayment. The City's right of prepayment shall be exercised by mailing a notice of prepayment, stating the date of prepayment and the name and address of the Paying Agent, by certified or registered mail to Island Capital not less than seven days prior to the date of that deposit, unless that notice is waived by Island Capital. If money for prepayment is on deposit with the Paying Agent on the specified prepayment date following the giving of that notice (unless the requirement of that notice is waived as stated above), interest on the principal amount prepaid shall cease to accrue on the prepayment date, and upon the request of the Auditor Island Capital shall arrange for the delivery of the Island Capital TIF Note at the designated office of the Paying Agent for prepayment and surrender and cancellation. The Island Capital TIF Note shall be designated the "Island Capital TIF Note, Series 2009" and shall bear interest at a rate of 1.75% per year (computed on the basis of a 12-month, 360-day year), commencing from October 6, 2009 (the date of receipt of the draw on the Letter of Credit) payable at maturity and until the principal amount is paid or payment is provided for.

SECTION 3. The debt charges on the Island Capital TIF Note shall be payable in lawful money of the United States of America, and shall be payable, without deduction for such services at the office of the Treasurer of the City (the "Paying Agent").

SECTION 4. The Island Capital TIF Note shall be signed by the Mayor and Auditor, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Island Capital TIF Note shall be issued as a single note to Island Capital in the aggregate principal amount of the Island Capital TIF Note. The Island Capital TIF Note shall not have coupons attached, shall be numbered as determined by the Auditor and shall express upon its face the purpose, in summary terms, for which it is issued and that it is issued pursuant to this Ordinance.

SECTION 5. The Island Capital TIF Note shall be delivered by the Auditor to Island Capital in accordance with law and the provisions of this Ordinance and the TIF Agreement. The Auditor shall cause the Island Capital TIF Note to be prepared, and have the Island Capital TIF Note signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Island Capital TIF Note if requested by Island Capital. The Mayor, the Auditor, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial

statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

SECTION 6. Fifty percent of the amount of the draw on the Letter of Credit shall be deemed proceeds from the sale of the Island Capital TIF Note and those proceeds are appropriated and shall be used to pay the principal of and interest on the outstanding Debt when due.

SECTION 7. The par value to be received from the sale of any renewal notes and any excess funds resulting from the issuance of the Island Capital TIF Note shall, to the extent necessary, be used to pay the debt charges on the Island Capital TIF Note at maturity and are pledged for that purpose.

SECTION 8. In accordance with the TIF Agreement, amounts on deposit in the TIF Fund are available for payment of debt charges on the Island Capital TIF Note and are hereby pledged to pay debt charges on the Island Capital TIF Note when and as the same fall due. The Island Capital TIF Note does not represent or constitute a debt or pledge of the faith and credit of the City, and are payable solely from the amounts on deposit in the TIF Fund pledged for their payment. The owner of the Island Capital TIF Note has no right to have any excise taxes levied by the City or the State of Ohio or any subdivision thereof for the payment of the Island Capital TIF Note.

SECTION 9. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Island Capital TIF Note in order to make it a legal, valid and binding special revenue obligation of the City have been performed and have been met, or will at the time of delivery of the Island Capital TIF Note have been performed and have been met, in regular and due form as required by law; that the amounts on deposit in the TIF Fund (as provided herein and in the TIF Agreement) are pledged for the timely payment of the debt charges on the Island Capital TIF Note; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Island Capital TIF Note.

SECTION 10. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

SECTION 11. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to issue and deliver the Island Capital TIF Note as required by the TIF Agreement; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: \_\_\_\_\_ after \_\_\_\_\_ reading. Vote: Yeas \_\_\_\_\_ Nays \_\_\_\_\_

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

Clerk: \_\_\_\_\_

\_\_\_\_\_  
President of Council

\_\_\_\_\_  
Mayor

The foregoing is a true and correct copy of Ordinance \_\_\_\_-10 as adopted by the Council of the City of Lancaster, Ohio at its meeting on \_\_\_\_\_, 2010.

Offered by: \_\_\_\_\_

Second by: \_\_\_\_\_

Requested by Finance Committee

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on \_\_\_\_\_, 2010 the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

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