

TEMPORARY ORDINANCE NO. 21-10

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

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF REVENUE NOTES, IN AN AGGREGATE PRINCIPAL AMOUNT OF ONE MILLION SIXTY-SEVEN THOUSAND SEVEN HUNDRED FOURTEEN DOLLARS AND TWENTY CENTS (\$1,067,714.20) TO PAY COSTS OF IMPROVING ETY ROAD, MEMORIAL DRIVE AND MICHAELS WAY BY GRADING, WIDENING, PAVING, CURBING, IMPROVING BRIDGES AND RAILROAD CROSSINGS, RELOCATING UTILITIES, AND INSTALLING SIDEWALKS, TRAFFIC SIGNALS AND SIGNS, AND WATER, SANITARY AND STORM WATER LINES AND FACILITIES, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO, 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, L.L.C. ("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. 16-10, passed by this Council on September 27, 2010, the City issued general obligation notes, in anticipation of the issuance of bonds, in an aggregate principal amount of \$542,160 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 3.13 of the TIF Agreement, if the costs of the Improvements exceed the \$3,600,000 provided by the initial Debt (a "Project Shortfall"), Island Capital is required to pay to the City 30.12% of the Project Shortfall, Menard is required to pay to the City 24.56% of the Project Shortfall, RG/Anchor is required to pay to the City 10.23% of the Project Shortfall and Wal-Mart is required to pay to the City 35.09% of the Project Shortfall; and

WHEREAS, a Project Shortfall occurred; and

WHEREAS, pursuant to Section 3.12 of the TIF Agreement, in exchange for the payment of the Project Shortfall by Island Capital, Menard, RG/Anchor and Wal-Mart, and pursuant to Ordinance No. 27-09 passed by this Council on November 11, 2009, the City issued to each of those entities a note (each an "Outstanding TIF Note" and collectively, the "Outstanding TIF Notes") in an amount equal to each entity's portion of the Project Shortfall; and

WHEREAS, the Outstanding TIF Notes mature on December 31, 2009;

WHEREAS, the Outstanding TIF Notes are payable solely from amounts on deposit in the TIF Fund and available for that purpose pursuant to Section 4.3 of the TIF Agreement; and

WHEREAS, on December 31, 2010, to the extent amounts on deposit in the TIF Fund are available, the City is required by Section 3.12 of the TIF Agreement to pay debt charges on the Outstanding TIF Notes; and

WHEREAS, on December 31 of each year, to the extent amounts on deposit in the TIF Fund are not available to pay the entire debt charges on the Outstanding TIF Notes, the City is required to issue new TIF Notes to Island Capital, Menard, RG/Anchor and Wal-Mart in an amount equal to the unpaid debt charges and such new TIF Notes are to bear interest at a rate equal to the interest rate on the then outstanding Debt;

WHEREAS, there are no funds on deposit in the TIF Fund available to pay the debt charges on the Outstanding TIF Notes;

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 \$1,067,714.20 (the "TIF Notes") to retire the Outstanding TIF Notes issued to pay costs of improving Ety Road, Memorial Drive and Michaels Way by grading, widening, paving, curbing, improving bridges and railroad crossings, relocating utilities, and installing sidewalks, traffic signals and signs, and water, sanitary and storm water lines and facilities, together with all necessary appurtenances thereto.

SECTION 2. The TIF Notes shall be dated December 31, 2010 and shall mature on December 31, 2011. The TIF Notes are 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 TIF Notes 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 the TIF Parties not less than seven days prior to the date of that deposit, unless that notice is waived by the TIF Parties. 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 the TIF Parties shall arrange for the delivery of the TIF Notes at the designated office of the Paying Agent for prepayment and surrender and cancellation. The TIF Notes shall be designated the "Street Improvement TIF Notes, Series 2010" (the "Series 2010 TIF Notes") and shall bear interest at a rate of 1.75% per year (computed on the basis of a 12-month, 360-day year), payable at maturity and until the principal amount is paid or payment is provided for.

SECTION 3. The debt charges on the Series 2010 TIF Notes 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 Series 2010 TIF Notes 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 Series 2010 TIF Notes shall be issued as four notes, one to Island Capital, one to Menard, one to

RG/Anchor and one to Wal-Mart, representing 30.12%, 24.56%, 10.23% and 35.09%, respectively, of the aggregate principal amount of the Series 2010 TIF Notes. The Series 2010 TIF Notes shall not have coupons attached, shall be numbered as determined by the Auditor and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance.

SECTION 5. The Series 2010 TIF Notes shall be delivered by the Auditor to Island Capital, Menard, RG/Anchor and Wal-Mart in exchange for their delivery of its Outstanding TIF Note to the Treasurer in accordance with law and the provisions of this Ordinance and the TIF Agreement. The Auditor shall cause the Series 2010 TIF Notes to be prepared, and have the Series 2010 TIF Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Series 2010 TIF Notes if requested by Island Capital, Menard, RG/Anchor or Wal-Mart, to each of those entities upon its delivery of its Outstanding TIF Note to the Treasurer. 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. The proceeds from the sale of the Series 2010 TIF Notes shall be deemed to have been paid into the TIF Fund and those proceeds are appropriated and shall be used to retire the Outstanding TIF Notes.

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 Series 2010 TIF Notes shall, to the extent necessary, be used to pay the debt charges on the Series 2010 TIF Notes 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 Series 2010 TIF Notes and are hereby pledged to pay debt charges on the Series 2010 TIF Notes when and as the same fall due. The Series 2010 TIF Notes do 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 owners of the Series 2010 TIF Notes have 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 Series 2010 TIF Notes.

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 Series 2010 TIF Notes in order to make them legal, valid and binding special revenue obligations of the City have been performed and have been met, or will at the time of delivery of the Series 2010 TIF Notes 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 Series 2010 TIF Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Series 2010 TIF Notes.

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 Series 2010 TIF Notes, which is necessary to enable the City to retire the Outstanding TIF Notes and thereby preserve its credit; 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: \_\_\_\_\_

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

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

\_\_\_\_\_  
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.

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Clerk of Council