

TEMPORARY ORDINANCE NO. 11-10

PERMANENT ORDINANCE NO. 13-10

AN ORDINANCE APPROVING, AND AUTHORIZING THE EXECUTION AND DELIVERY OF, AN INDEMNIFICATION AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER, OHIO, AND FLAGSTAR BANK, FSB, 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 from Flagstar Bank, FSB ("Flagstar") 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 TIF Agreement, the City drew the entire maximum amount of the Letter of Credit (\$1,084,320); and

WHEREAS, this Council has authorized a Settlement and Escrow Agreement with Island Capital regarding the use of the proceeds of the draw on the Letter of Credit; and

WHEREAS, Flagstar sent a letter to the City asserting that (i) one-half of the draw on the Letter of Credit (\$542,160), (ii) Island Capital is in default in respect of its obligations to Flagstar Bank, (iii) any delivery by the City of a portion of the draw of the Letter of Credit to Island Capital is wrongful, and (iv) failure of the City to return one-half of the draw on the Letter of Credit to Flagstar may subject the City to immediate legal action by Flagstar; and

WHEREAS, the City and Flagstar desire to have a court determine the competing claims of Flagstar and Island Capital to one-half of the draw on the Letter of Credit;

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

SECTION 1. It is in the best interests of the City to file an interpleader complaint pursuant to Ohio Civil Rule 22 in the Fairfield County Court of Common Pleas naming Flagstar and Island Capital as defendants to resolve their competing claims to portions of the draw on the Letter of Credit. Since Flagstar desires to indemnify the City for certain amounts the City desires to withhold from one-half of the draw of the Letter of Credit should Island Capital prevail in the dispute regarding the draw on the Letter of Credit, it is also in the best interest of the City to enter into an Indemnification Agreement with Flagstar. Thus, the Indemnification Agreement in the form now on file with this Council is approved, and the Mayor is authorized to execute and deliver on behalf of the City the Indemnification Agreement in substantially the form now on file with this Council with such changes that are not materially adverse to the interests of the City and are approved by the Mayor. The Mayor's execution and delivery of the Indemnification Agreement shall be conclusive evidence of his approval of any changes to that agreement. Upon the execution and delivery of the Indemnification Agreement, the Director of Law is authorized to file an interpleader complaint substantially in the form attached to the Indemnification Agreement and the Treasurer is authorized to deposit the Funds (as defined in the Indemnification Agreement) with the Fairfield County Court of Common Pleas.

SECTION 3. 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 4. 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 avoid possible legal action against the City by Flagstar and/or Island Capital; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: 8/9/10 after 1st reading. Vote: Yeas 8 Nays 0

Date Approved: 8/9/10

Clerk: Jessica Lee Hamel

Tom Staff  
President of Council  
Herbert L. Calk  
Mayor

The foregoing is a true and correct copy of Ordinance 13-10 as adopted by the Council of the City of Lancaster, Ohio at its meeting on August 9, 2010.

Offered by: Brian Skel

Second by: [Signature]

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