

TEMPORARY RESOLUTION NO. 148-10

PERMANENT RESOLUTION NO. \_\_\_\_\_

A RESOLUTION TO AUTHORIZE AND DIRECT THE ECONOMIC DEVELOPMENT DIRECTOR TO ENTER INTO AN AGREEMENT OF UNDERSTANDING WITH WAGENBRENNER DEVELOPMENT, INC. FOR THE REDEVELOPMENT OF THE FORMER LANCASTER GLASS PROPERTY LOCATED AT 240 WEST MAIN STREET, LANCASTER AND TO SUBMIT AN ASSOCIATED APPLICATION FOR ROUND 10 GRANT FUNDING OF UP TO THREE MILLION DOLLARS TO THE OHIO DEPARTMENT OF DEVELOPMENT FOR CLEANUP AT THE SITE UNDER THE CLEAN OHIO REVITALIZATION FUND PROGRAM; AND TO DECLARE AN EMERGENCY

WHEREAS, the State of Ohio, Clean Ohio Program will award up to Three Million Dollars per project to communities throughout Ohio for the purpose of cleanup and redevelopment of contaminated or abandoned properties known as "brownfields"; and

WHEREAS, the City of Lancaster contained brownfield properties which may qualify for Clean Ohio cleanup and redevelopment grant funding; and

WHEREAS, the Lancaster Economic Development Department and Lancaster has been involved with brownfield redevelopment since March 18, 2004 through its administration of the Anchor Hocking Brownfields CORF grant, and

WHEREAS, Clean Ohio grant funding will greatly complement the efforts of the Lancaster Economic Development Department in helping to cleanup and redevelop brownfield properties in Lancaster; and

WHEREAS, the Lancaster Economic Development Department has identified a brownfield property which may be eligible for Clean Ohio Program Round 10 grant funding at the site formerly known as Lancaster Glass Property and Wagenbrenner Development, Inc.; and

WHEREAS, an emergency exists in the usual daily operation of City Council in that it is immediately necessary to express its support for the application described herein in order to meet the Clean Ohio Program Round 10 grant application deadline of January 14, 2011, all for the preservation of public health, peace, property, safety and welfare by promoting the cleanup of a brownfields property;

BE IT RESOLVED BY COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO

SECTION 1. That the Director of the Lancaster Economic Development Director is hereby authorized and directed to enter into an agreement of understanding with Wagenbrenner Development, Inc. for the redevelopment of the Lancaster Glass property, located at 240 West Main Street, Lancaster and is authorized to submit an associated application for Round 10 grant funding of up to Three Million Dollars, to the Ohio Department of Development for cleanup at the site under the Clean Ohio Revitalization Fund Program.

SECTION 2. The Agreement of Understanding in the form presently on file with the Clerk of Council is hereby approved and authorized with changes therein not inconsistent

with this Resolution and not substantially adverse to the City and which has been tentatively approved by the Law Director. The Economic Development Director for and in the name of the City, is hereby authorized to execute the Final Agreement of Understanding in this matter, provided further that the approval of changes thereto by the Law Director, and their character not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This Council further authorizes the Economic Development Director for and in the name of the City, to execute any amendments or changes to the Agreement of Understanding, which amendments are not inconsistent with this Resolution and not substantially adverse to the City.

SECTION 3. This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City for further remediation of a brownfield, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

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

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

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

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

\_\_\_\_\_  
Mayor

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

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

Requested by Planning, Zoning & Economic Development Committee

## AGREEMENT OF UNDERSTANDING

THIS AGREEMENT OF UNDERSTANDING ("Agreement") is made and entered into this \_\_\_ day of July 2010, by and between the City of Lancaster, Ohio ("City") and Wagenbrenner Development, Inc. ("Wagenbrenner") and is intended to memorialize the agreement of the parties pending the signing of a Development Agreement or other contract.

### BACKGROUND INFORMATION

The state of Ohio, Department of Development, provides financial assistance to local governments for the purposes of addressing local needs for Brownfield remediation through the Clean Ohio Revitalization Fund as awarded by the Clean Ohio Council.

A "Brownfield" is a property that is difficult to develop because it is contaminated with hazardous substances or petroleum.

Wagenbrenner is in contract to purchase the former Lancaster Glass property located at 240 West Main Street, Lancaster, Ohio 43130 consisting of six (6) parcels 0535035200; 0535035300; 0535035400; 0535035500; 0535035600; and 0535035700 (the "Site").

The Site is a Brownfield.

Wagenbrenner has proposed to redevelop the Site for new residential/commercial.

Neither the City nor Wagenbrenner contributed in any way toward the presence of hazardous substances or petroleum at the Site.

Wagenbrenner will not be able to redevelop the Site without an award of Clean Ohio Revitalization Funds or other financial assistance for the remediation of hazardous substances and petroleum.

Wagenbrenner cannot obtain Clean Ohio Revitalization Funds unless it is a development partner with a local government or other eligible entity who serves as the applicant of record for the funds.

On \_\_\_\_\_, Lancaster City Council passed legislation authorizing the City's application for a Clean Ohio Revitalization Fund grant to assist Wagenbrenner with the remediation of the Site and the City's signature on this Agreement;

The parties acknowledge that prior to executing any grant documents under the Clean Ohio program, they will negotiate and execute a Development Agreement or other contract governing their respective responsibilities and liabilities to the extent not addressed by the grant agreement, and that such Development Agreement or contract must be approved by Lancaster City Council.

## STATEMENT OF THE AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Responsibilities of the City.** Subject to the conditions set forth herein, the City agrees to serve as the sponsoring applicant of record for a grant from the Clean Ohio Revitalization Fund for the remediation of the Site. The sponsorship shall include:

- a) submitting and recommending for passage an ordinance authorizing the application and this Agreement with Wagenbrenner;
- b) assisting with completion of the application by the dates required and outlined by the Clean Ohio Council;
- c) advocating the award of funds before members of the Ohio Public Works Commission District 3 Integrating Committee as well as members of the Clean Ohio Council;
- d) subject to the passage of an ordinance by Lancaster City Council, performing the obligations required under the terms of the grant agreement with the Clean Ohio Council, if such grant is awarded;
- e) subject to the passage of an ordinance by Lancaster City Council, supporting a variance for and/or the rezoning of the Site from Manufacturing to Residential/Commercial;

2. **Responsibilities of Wagenbrenner.** In consideration of the City's sponsorship in obtaining Clean Ohio Revitalization Funds, Wagenbrenner agrees to engage in the following actions:

- a) prepare the application for Clean Ohio Revitalization Funds with the assistance of the City;
- b) work with the City to perform all of the public participation requirements of the Clean Ohio Council, which include obtaining input from community leaders, posting a 4' x 4' sign at the Site announcing the project, giving public Notice, placing a copy of the application in the local branch library, obtaining public comment at a public meeting and the formal filing of the application;
- c) perform the obligations required under the terms of the grant agreement with the Clean Ohio Council, if such grant is awarded.

3. **Term.** This Agreement shall last until December 31, 2011 or until all Clean Ohio

Revitalization Funds for 2011 are awarded by the Clean Ohio Council or until superseded by a subsequent development agreement or other contract between the parties.

4. **Equal Employment Opportunity.** The parties agree that in the performance of work under this Agreement, the parties shall not by reason of race, color, religion, sex, sexual preference, age, handicap, national origin, or ancestry, discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the Agreement relates.

5. **Compliance with Federal and State Laws, Rules and Regulation.** City and Wagenbrenner agree to comply with all federal and state laws, rules, and regulations, and auditing standards which are applicable to the performance of the Agreement;

6. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns (including successive, as well as immediate, successors and assignees) of the City and of Wagenbrenner. Wagenbrenner may assign all of its rights, duties and obligations of this Agreement to any affiliated entity of Wagenbrenner without further approval of the City and the Director of Development provided, however, that Wagenbrenner may not make any other assignment of this Agreement without the prior written consent of the Director of Development.

7. **Governing Law.** This Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to matters of validity, construction, effect and performance.

IN WITNESS WHEREOF, the parties have executed this Agreement of Understanding, effective as of the day and year first above written.

Wagenbrenner Development, Inc.

City of Lancaster, Ohio  
Department of Development

By: \_\_\_\_\_  
Mark Wagenbrenner, President

By: \_\_\_\_\_  
R. Michael Pettit, Director

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

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

APPROVED AS TO FORM

\_\_\_\_\_  
Terre L. Vandervoort, City Attorney