

TEMPORARY ORDINANCE NO. 25-14

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

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF REVENUE NOTES, IN AN AGGREGATE PRINCIPAL AMOUNT OF ONE MILLION ONE HUNDRED FIFTY-EIGHT THOUSAND FIVE HUNDRED FORTY DOLLARS AND ONE CENT (\$1,158,540.01), TO PAY COSTS OF IMPROVING ETY ROAD, MEMORIAL DRIVE AND MICHAELS WAY BY GRADING, WIDENING, PAVING, CURBING, AND 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, 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 Section 3.13 of the TIF Agreement, if the costs of the Improvements exceed the \$3,600,000 (a "Project Shortfall"), Island Capital was required to pay to the City 30.12% of the Project Shortfall, Menard was required to pay to the City 24.56% of the Project Shortfall, RG/Anchor was required to pay to the City 10.23% of the Project Shortfall and Wal-Mart was 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. 22-13 passed by this Council on November 18, 2013, 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 current portion of the Project Shortfall (being the amount of the Project Shortfall, plus accrued interest, minus any repayments by the City); and

WHEREAS, the Outstanding TIF Notes mature on December 31, 2014;

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 of each year, 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 the principal of and interest 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 principal of and interest on the Outstanding TIF Notes, the City is required to issue new TIF Notes to the TIF Parties or their successors in an amount equal to the unpaid principal of and interest on the Outstanding TIF Notes and such new TIF Notes are to bear interest at a rate equal to the interest rate on the City's Debt (as defined in the TIF Agreement);

WHEREAS, there are no funds on deposit in the TIF Fund available to pay the principal of and interest on the Outstanding TIF Notes;

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

SECTION 1. It is necessary to issue revenue notes of this City in an aggregate principal amount of \$1,158,540.01 (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, and 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, 2014 and shall mature on December 31, 2015. The TIF Notes shall be designated the "Street Improvement TIF Notes, Series 2014" and shall bear interest at a rate of 2.533% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for.

SECTION 3. The principal of and interest on the 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 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 TIF Notes shall be issued as four notes, one to Flagstar Bank, FSB ("Flagstar"), as successor to Island Capital, one to Menard, one to RG/Anchor and one to Wal-Mart, or their successors or assigns, representing 30.12%, 24.56%, 10.23% and 35.09%, respectively, of the aggregate principal amount of the TIF Notes. The 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 TIF Notes shall be delivered by the Auditor to the TIF Parties in exchange for their delivery of their respective 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 TIF Notes to be prepared, and have the TIF Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the TIF Notes if requested by the TIF Parties, 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 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 or bonds and any excess funds resulting from the issuance of the TIF Notes shall, to the extent necessary, be used to pay the principal of and interest on the TIF Notes at maturity and are pledged for that purpose.

SECTION 8. The TIF Notes are special obligations of the City. The principal of and interest on the TIF Notes are payable solely from a pledge of and lien on monies on deposit in the TIF Fund established by the TIF Ordinance and the TIF Agreement. If any monies remain in the TIF Fund following the payment of the principal of and interest on the TIF Notes, then those remaining monies may be used for any other lawful purpose.

The City hereby covenants and agrees to diligently pursue the collection of the Service Payments required pursuant to the TIF Ordinance, including taking all lawful actions necessary to claim and maintain the exemption from real property taxation granted by the TIF Ordinance and taking all lawful actions as are necessary and advisable to collect delinquent Service Payments and to deposit those Service Payments into the TIF Fund for the purpose of paying the principal of and interest on the TIF Notes.

Nothing in this Ordinance or the TIF Notes shall constitute a general obligation debt or tax-supported bonded indebtedness of the City; the general resources of the City shall not be required to be used, and neither the general credit nor taxing power or full faith and credit of the City are or shall be pledged, for the performance of any duty under this Ordinance or the TIF Notes. Nothing in this Ordinance gives the holders of TIF Notes, and they do not have, the right to have excises or taxes levied by the Council for the payment of principal of or interest on the TIF Notes, but the TIF Notes are payable solely from the monies on deposit in the TIF Fund, all as provided in this Ordinance, and each TIF Note shall contain a statement to that effect; *provided, however*, that nothing shall be deemed to prohibit the City, of its own volition, from using to the extent it is lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of this Ordinance or the 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 TIF Notes in order to make them legal, valid and binding special obligations of the City have been performed and have been met, or will at the time of delivery of the 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 principal of and interest on the TIF Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the TIF Notes.

SECTION 10. The legal services of the law firm of Squire Patton Boggs (US) LLP are hereby retained. Those legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the authorization, sale and issuance of the Notes and securities issued in renewal of the Notes and rendering at delivery related legal opinions. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county or municipal corporation or of this City, or the execution of public trusts. For those legal services that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services. The Auditor is authorized and directed to execute an engagement letter for the retention of those legal services, a form of which is on file with the Clerk of Council and approved as to form. The Auditor is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

SECTION 11. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance, and all deliberations of this Council and of any of its committees that resulted in those formal actions, were taken in meetings open to the public, all in compliance with the law.

SECTION 12. 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 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 \_\_\_\_\_

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

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

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

\_\_\_\_\_  
Mayor

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

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

Requested by Finance Committee

The foregoing is a true and correct copy of Ordinance \_\_\_\_\_-14 as adopted by the Council of the City of Lancaster, Ohio at its meeting on \_\_\_\_\_, 2014.

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on \_\_\_\_\_, 2014 and \_\_\_\_\_, 2014 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