

TEMPORARY ORDINANCE NO. 17-13

PERMANENT ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOTES IN AN AGGREGATE PRINCIPAL AMOUNT OF TWO HUNDRED TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$212,500), IN ANTICIPATION OF THE ISSUANCE OF BONDS, TO PAY A PORTION OF THE 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; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A NOTE PURCHASE AGREEMENT; AUTHORIZING CERTAIN OTHER ACTIONS RELATED TO THE ISSUANCE OF THE NOTES; AND DECLARING AN EMERGENCY

WHEREAS, pursuant to Ordinance No. 10-12 passed September 10, 2012, a note in anticipation of bonds in the amount of \$218,900, dated October 11, 2012 (the "Outstanding Note"), was issued to pay costs of the Improvement (as defined in Section 1), to mature October 11, 2013; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Note with the proceeds of the Notes described in Section 3 and other funds available to the City; and

WHEREAS, the Auditor as fiscal officer of this City has certified to this Council that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years, the estimated maximum maturity of the Bonds described in Section 1 is at least 18 years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is October 19, 2026.

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

SECTION 1. It is necessary to issue bonds of this City in an aggregate principal amount of \$212,500 (the "Bonds") to pay a portion of the 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 (the "Improvement").

SECTION 2. The Bonds shall be dated approximately October 1, 2014, shall bear interest at the now estimated rate of 5-1/4% per year, payable semi annually until the principal amount is paid, and are estimated to mature in 18 annual principal installments that are in such amount that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable are substantially equal. The first principal payment of the Bonds is estimated to be December 1, 2015.

SECTION 9. During the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes. The tax shall be within the ten mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the principal of and interest on the Notes or the Bonds when and as the same fall due.

In each year to the extent payments in lieu of taxes are available pursuant to the Tax Increment Financing Adjustment by and among the City, Island Capital Investment Group, L.L.C., Menard, Inc., RLG Lancaster Ltd., CGC Lancaster Ltd., Anchor Lancaster, LLC and Wal-Mart Stores East, LP for the payment of the principal and interest on the Notes and Bonds, and are appropriated on the Notes and Bonds, and are appropriated for that purpose, the amount of tax shall be reduced by the amount of the payments in lieu of taxes available and appropriated.

SECTION 10. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Notes in such manner and to such extent as may be necessary so that (a) the Notes will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest on the Notes will not be an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Notes to be and remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Notes to the governmental purpose of the Borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The City hereby represents that the Outstanding Note was treated as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Code. Further, the City represents and covenants that, during any time or in any manner as might affect the status of the Notes as "qualified tax-exempt obligations", it has not formed or participated in the information of, or benefited from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The City further represents that the Notes are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers. The City hereby covenants that it will retire the Outstanding Note from proceeds of, and within 90 days after issuance of, the Notes, and represents that all other conditions are met for treating the Notes as "qualified tax-exempt obligations" and as not to be taken into account under subparagraph (D) of Section 265(b)(3) of the Code, without necessity for further designation, by reason of subparagraph (D)(ii) of Section 265(b)(3) of the Code.

The Auditor or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval or waiver on behalf of the City with respect to the Notes as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, that facts circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Notes.

Each covenant made in this section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this section to take with respect to the Notes.

SECTION 11. The City desires to retain Benesch, Friedlander, Coplan & Aronoff LLP (“Benesch”) as bond counsel to the City in connection with the issuance and sale of the Notes in accordance with the terms and conditions provided in the engagement letter from Benesch now on file with the Clerk of Council. That engagement letter is approved, and the Mayor is authorized to sign and deliver, in the name of and on behalf of the City, the acceptance of that engagement letter in substantially the form now on file with the Clerk of Council with such changes therein that are not materially adverse to the interests of the City and are approved by the Mayor. The signing and delivery of the engagement letter shall be conclusive evidence that any changes therein are not materially adverse to the interests of the City and have been approved by the Mayor.

The City acknowledges that few legal firms actively represent public and private entities in connection with the authorization, sale and issuance of obligations by Ohio political subdivisions, and that the Original Purchaser may desire to retain Benesch to represent it in a matter or matters unrelated to the City. If in the future the Original Purchaser requests Benesch to represent it in a matter or matters unrelated to the City, the Mayor, after consultation with the Director of Law, is authorized to waive any conflict arising from Benesch’s representation of the Original Purchaser.

SECTION 12. The Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Auditor.

SECTION 13. 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 Notes in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Notes have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 9) of the City are pledged for the timely payment of the principal of and interest on the Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

SECTION 14. This Council finds and determines that all formal actions of this Council or its committees concerning and relating to the passage of this ordinance were taken in an open meeting of this Council or Committees, and that 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, in compliance with the law.

SECTION 15. 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 sell the Notes, which is necessary to enable the City to timely retire the Outstanding Note 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

The foregoing is a true and correct copy of Ordinance ____-13 as adopted by the Council of the City of Lancaster, Ohio at its meeting on _____, 2013.

Offered by: _____

Second by: _____

Requested by Finance Committee

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on _____, 2013 and _____, 2013 the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

Clerk of Council