

TEMPORARY ORDINANCE NO. 5-12

PERMANENT ORDINANCE NO. 5-12

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF A REPLACEMENT REVENUE NOTE IN AN AGGREGATE PRINCIPAL AMOUNT OF THREE HUNDRED THIRTY-EIGHT THOUSAND FIVE HUNDRED FIFTY FOUR DOLLARS AND TWENTY CENTS (\$338,554.20) RELATED TO THE REIMBURSEMENT TO ISLAND CAPITAL INVESTMENT GROUP, LLC FOR A DRAW ON A LETTER OF CREDIT IN CONNECTION WITH COSTS OF IMPROVING ETY ROAD, MEMORIAL ROAD 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 THEREOF, 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., RLG Lancaster Ltd., GCG Lancaster Ltd., Anchor Lancaster, LLC and Wal-Mart Stores East, LP (collectively, the "TIF Parties"); and

WHEREAS, pursuant to Ordinance No. 20-11, passed by this Council on December 5, 2012, the City issued its \$563,554.20 Island Capital TIF Note, Series 2011, dated December 31, 2011, maturing December 31, 2012 and bearing interest at a rate of 1.75% (the "Series 2011 Note") for a draw on a letter of credit (the "Letter of Credit") issued by Flagstar Bank, FSB ("Flagstar") for the benefit of Island Capital to pay costs of the Improvements as required by the TIF Agreement; and

WHEREAS, this Council previously this day passed an ordinance approving and authorizing the execution and delivery of a Settlement Agreement and Mutual Release by and among the City, Flagstar and Island Capital (the "Settlement Agreement"); and

WHEREAS, pursuant to the Settlement Agreement, the City is required to issue a replacement revenue note in an aggregate principal amount of \$338,554.20 and bearing interest at a rate of 1.75% from December 31, 2011 in exchange for the delivery by Island Capital of the Series 2011 Note to the City;

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 \$338,554.20 (the "Series 2011B Note") to replace the Series 2011 Note issued to reimburse Island Capital for a draw on the Letter of Credit in connection with costs of improving Ety Road, Memorial Road 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 thereof.

SECTION 2. The Series 2011B Note shall titled "Island Capital TIF Note, Series 2011B", shall be dated the date of its issuance and delivery and shall mature on December 31, 2012. The Series 2011B Note shall bear interest at a rate of 1.75% per year (computed on the basis of a 12-month, 360 day year) from December 31, 2011 payable at maturity and until the principal amount is paid or payment is provided for.

SECTION 3. The debt charges on the Series 2011B Note 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 2011B Note 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 2011B Note shall not have coupons attached, shall be numbered as determined by the Auditor and shall express upon its face the purpose, in summary terms, for which it is issued and that it is issued pursuant to this Ordinance.

SECTION 5. The Series 2011B Note shall be delivered by the Auditor to Island Capital in exchange for Island Capital's delivery of the Series 2011 Note in accordance with law and the provisions of this Ordinance, the Settlement Agreement and the TIF Agreement. The Auditor shall cause the Series 2011B Note to be prepared, and have the Series 2011B Note signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Series 2011B Note if requested by Island Capital. 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 of the sale of the Series 2011B Note shall be deemed to have been paid into the TIF Fund and those proceeds are appropriated and shall be used to retire the Series 2011 Note.

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 2011B Note shall, to the extent necessary, be used to pay the debt charges on the Series 2011B Note 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 2011B Note and are hereby pledged to pay debt charges on the Series 2011B Note when and as the same fall due. The Series 2011B Note does 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 owner of the Series 2011B Note has 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 2011B Note.

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 2011B Note in order to make it a legal, valid and binding special revenue obligation of the City have been performed and have been met, or will at the time of delivery of the Series 2011B Note 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 2011B Note; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Series 2011B Note.

SECTION 10. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance, 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, 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 2011B Note as required by the Settlement Agreement; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: 3/26/2012 after 1st reading. Vote: Yeas 7 Nays 0

Date Approved: 3/26/2012

Kenet J. Carl
President of Council

Clerk: Teresa Lee Sandy

W. H. Smith
Mayor

The foregoing is a true and correct copy of Ordinance 5-12 as adopted by the Council of the City of Lancaster, Ohio at its meeting on March 26, 2012.

Offered by: Tom Smith

Second by: John E. Wells

Requested by Finance Committee

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on _____, 2012 the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

Clerk of Council