

TEMPORARY ORDINANCE NO. 10-12

PERMANENT ORDINANCE NO. 10-12

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOTES IN AN AGGREGATE PRINCIPAL AMOUNT OF TWO HUNDRED EIGHTEEN THOUSAND NINE HUNDRED DOLLARS (\$218,900), 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. 9-11 passed September 12, 2011, a note in anticipation of bonds in the amount of \$542,160, dated October 11, 2011 (the "Outstanding Note"), was issued to pay costs of the Improvement (as defined in Section 1), to mature October 11, 2012; 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 19 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 \$218,900 (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, 2013, shall bear interest at the now estimated rate of 6% per year, payable semi-annually until the principal amount is paid, and are estimated to mature in 19 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, 2014.

SECTION 3. It is necessary to issue and this Council determines that notes in an aggregate principal amount of \$218,900 (the "Notes") shall be issued, in anticipation of the issuance of the Bonds, to retire, together with other funds available to the City, the Outstanding Note and to pay "financing costs", as defined in Ohio Revised Code Section 133.01(K), of the Notes. The Notes shall be dated October 11, 2012 and shall mature on October 11, 2013, provided that the Auditor may, if it is determined to be necessary or advisable to the sale of the Notes, establish a maturity date that is up to 15 days less than one year from the date of issuance by setting forth that maturity date in a final terms certificate (the "Final Terms Certificate"). The Notes shall bear interest at a rate or rates not to exceed 6% per year (computed on the basis of a 360-day year), payable at maturity and until the principal amount is paid or payment is provided for. The rate of interest on the Notes shall be determined by the Auditor in the Final Terms Certificate.

SECTION 4. The principal of and interest on the Notes shall be payable in lawful money of the United States of America, and shall be payable, without deduction for services of the City's paying agent, at the principal office of a bank or trust company designated by the Auditor in the Final Terms Certificate after determining that the payment at that bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose or at the office of the Auditor if agreed to by the Auditor and the original purchaser (the "Paying Agent").

SECTION 5. The 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 Notes shall be issued in the denominations and numbers as requested by Fifth Third Securities, Inc. (the "Original Purchaser") and approved by the Auditor in the Final Terms Certificate. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Auditor will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code if it is determined by the Auditor that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The 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.

The Notes may be issued to any securities depository (a "Depository") that is a clearing agency under federal law operating and maintaining, with any participants contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations or otherwise ("Participants"), a system (a "book entry system") under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes "immobilized" in the custody of the Depository or its agent for that purpose. If, and as long as a book entry system is utilized, (i) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as Depository for the Notes for use in a book entry system, the Auditor may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Auditor does not or is unable to do so, the Auditor, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any cost of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Auditor is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

SECTION 6. The Notes shall be sold to the Original Purchaser at not less than par plus accrued interest by the Auditor in accordance with law and the provisions of this Ordinance. The Auditor shall sign the Final Terms Certificate referred to in Sections 3 and 4. The note purchase agreement by and between the City and the Original Purchaser (the "Note Purchase Agreement") now on file with the Clerk of this Council is now approved, and the Auditor shall sign and deliver, on behalf of the City, the Note Purchase Agreement with such changes that are not inconsistent with the provisions of this ordinance, are not materially adverse to the interests of the City and are approved by the Auditor. That any such changes to the Note Purchase Agreement are not materially adverse to the interests of the City and approved by the Auditor shall be evidenced conclusively by the signing of the Note Purchase Agreement by the Auditor. The Auditor shall cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price. 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. The Auditor is authorized, if it is determined to be in the best interest of the City, to combine the issue of the Notes with one or more other note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code.

SECTION 7. Proceeds from the sale of the Notes sufficient, together with other funds available to the City, to retire the Outstanding Note when due shall be deposited into the Bond Retirement Fund. The remaining proceeds from the sale of the Notes shall be deposited, or deemed deposited, into a proper fund to pay the financing costs of the Notes. Any amounts remaining in that fund 90 days after the issuance of the Notes shall be transferred to the Bond Retirement Fund and used to pay the principal of and interest on the Notes when due. All interest earned on amounts deposited in each of those funds derived from proceeds from the sale of the Notes (including interest earned on such interest) shall be credited to the fund and used for the purposes set forth above and shall not be transferred to the General Fund. All of the proceeds from the sale of the Notes and interest earned on those proceeds are hereby appropriated for the purposes set forth above.

SECTION 8. The par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the principal of and interest on the Notes at maturity and are pledged for that purpose.

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: 9/10/12 after 2nd reading. Vote: Yeas 8 Nays 0

Date Approved: 9/10/12




President of Council


Clerk: 



Mayor

The foregoing is a true and correct copy of Ordinance _____. as adopted by the Council of the City of Lancaster, Ohio at its meeting on _____, 20

Offered by: 

Second by: 

Requested by Finance Committee