

TEMPORARY ORDINANCE NO. 37-21

PERMANENT ORDINANCE NO. 35-21

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF A REVENUE NOTE IN THE AGGREGATE PRINCIPAL AMOUNT OF TWO HUNDRED EIGHTY-EIGHT THOUSAND EIGHT HUNDRED THIRTY-SIX DOLLARS AND SIXTY-ONE CENTS (\$288,836.61) TO REIMBURSE FLAGSTAR BANK, FSB FOR A DRAW ON THE LETTER OF CREDIT IN CONNECTION WITH 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, the City has previously issued general obligation notes and bonds to pay costs of the Improvements as required by the TIF Agreement (such notes and bonds are collectively referred to herein as the "Debt"); and

WHEREAS, pursuant to the TIF Agreement, the City previously drew upon a letter of credit provided by Flagstar Bank, FSB to Island Capital (the "Letter of Credit") for the payment of a portion of the Debt; and

WHEREAS, pursuant to Ordinance No. 24-20 passed by this Council on October 26, 2020, the City issued a note (the "Outstanding Island Capital TIF Note") in the amount of \$300,264.18 dated December 31, 2020 and maturing on December 31, 2021 to reimburse Flagstar Bank, FSB ("Flagstar"), as successor to Island Capital, for the prior draw on the Letter of Credit, being an amount equal to the draw on the Letter of Credit, plus accrued interest, minus any repayments by the City; and

WHEREAS, the Outstanding Island Capital TIF Note is 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, 2021, to the extent amounts on deposit in the TIF Fund are not available to pay the principal of and interest on the Outstanding Island Capital TIF Note, the City is required to issue a new note to Flagstar in an amount equal to the unpaid principal of and interest on the Outstanding Island Capital TIF Note, and such new Island Capital TIF Note is to bear interest at a rate equal to the interest rate on the City's Debt; and

WHEREAS, approximately \$20,123.22 of funds available on deposit in the TIF Fund available to pay a portion of the principal of and all of the interest on the Outstanding Island Capital TIF Note;

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

SECTION 1. It is necessary to issue and this Council determines that a revenue note in the aggregate principal amount of \$288,836.61 (the "Island Capital TIF Note") shall be issued to reimburse Flagstar Bank, FSB for a draw on the Letter of Credit in connection with 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 to retire the Outstanding Island Capital TIF Note and to pay any financing costs. The Island Capital TIF Note shall be secured solely by monies on deposit in the TIF Fund. The Island Capital TIF Note shall be issued pursuant to the Constitution of the State, the Ohio Revised Code and this Ordinance.

SECTION 2. The Island Capital TIF Note shall be dated December 31, 2021 and shall mature on December 31, 2022. The Island Capital TIF Note shall bear interest at a rate of 2.938% 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 Treasurer of the City is hereby appointed to act as the initial note registrar and paying agent for the Island Capital TIF Note (the "Paying Agent"). The principal of and interest on the Island Capital TIF Note shall be payable when due in Federal Reserve funds of the United States of America, without deduction for the services of the Paying Agent as paying agent, upon presentation and surrender of the Island Capital TIF Note at the main office of the Paying Agent.

SECTION 4. The Island Capital TIF Note shall be signed by the Mayor and the Auditor, in the name of the City and in their official capacities; provided that either or both of those signatures may be a facsimile. The Island Capital TIF Note shall be issued as a single note to Flagstar, or its successors or assigns, in the aggregate principal amount of the Island Capital TIF Note. The Island Capital TIF 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 Island Capital TIF Note shall be sold and delivered by the Auditor to Flagstar in exchange for its delivery of the Outstanding Island Capital TIF Note to the Treasurer in accordance with law and the provisions of this Ordinance and the TIF Agreement and payment by the City to Flagstar of an amount needed to pay a portion of the principal and all of the accrued interest due on the Outstanding Island Capital TIF Note, which amount shall be determined by the Auditor to be in the best interests of the City. The Auditor shall cause the Island Capital TIF Note to be prepared, and have the Island Capital TIF Note signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Island Capital TIF Note if requested by Flagstar. The Mayor, the Auditor, the Clerk of Council and other City officials, as appropriate, each are

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 Island Capital TIF Note shall be deemed to have been paid into the TIF Fund and those proceeds are appropriated and shall be used to retire the Outstanding Island Capital TIF Note.

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 Island Capital TIF Note shall, to the extent necessary, be used to pay the principal of and interest on the Island Capital TIF Note at maturity and are pledged for that purpose.

SECTION 8. The Island Capital TIF Note is a special obligation of the City. The principal of and interest on the Island Capital TIF Note is payable solely from the proceeds of any bonds (including any renewal bond anticipation notes) and by 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 Island Capital TIF Note, 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 Island Capital TIF Note.

Nothing in this Ordinance or the Island Capital TIF Note 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 Island Capital TIF Note. Nothing in this Ordinance gives the holder of the Island Capital TIF Note, and it does not have, the right to have excises or taxes levied by the Council for the payment of principal of or interest on the Island Capital TIF Note, but the Island Capital TIF Note is payable solely from the proceeds of any bonds (including any renewal bond anticipation notes) and the monies on deposit in the TIF Fund, all as provided in this Ordinance, and the Island Capital 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 Island Capital TIF Note.

SECTION 9. 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 Island Capital TIF Note and securities issued in renewal of the Island Capital TIF Note and rendering at delivery any related and required 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 10. 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 Island Capital TIF Note in order to make it a legal, valid and binding special obligation of the City have been performed and have been met, or will at the time of delivery of the Island Capital TIF 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 principal of and interest on the Island Capital TIF Note and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Island Capital TIF Note.

SECTION 11. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or any of its committees, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law, including Section 121.22 of the Ohio Revised Code.

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 Island Capital TIF Note, which is necessary in order to enable the City to retire the Outstanding Island Capital TIF 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: 10/25/21 after 2<sup>nd</sup> reading. Vote: Yeas 9 Nays 0

Date Approved: 10/25/21

Clerk: Jeresa Lee Dandy

David C. Cole  
President of Council  
David L. Schuyler  
Mayor

Offered by: Tom Stah

Second by: Melody L. Bobbitt

Requested by Finance Committee

The foregoing is a true and correct copy of Ordinance 35-21 as passed by the Council of the City of Lancaster, Ohio at its meeting on 10/25, 2021.

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on \_\_\_\_\_, 2021 and \_\_\_\_\_, 2021, 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