

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2016-58

By Jim Maxwell Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

PROVIDING FOR THE ISSUANCE AND SALE OF A NOTE IN ANTICIPATION OF THE ISSUANCE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$7,000,000 FOR THE PURPOSE OF IMPROVING THE CITY-OWNED ADMINISTRATIVE OFFICES, TRAINING FACILITY AND SURROUNDING GROUNDS LEASED TO THE CLEVELAND BROWNS FOOTBALL COMPANY LLC, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Berea, Ohio (the "City"), is authorized and empowered by virtue of the laws of the State of Ohio, including, without limitation, Section 13 of Article VIII of the Ohio Constitution, among other things, (a) to issue bond anticipation notes and bonds to create or preserve jobs and employment opportunities and improve the economic welfare of the people of the City; (b) to secure such notes and bonds by nontax revenues, as provided herein; and (c) to enact this Ordinance and enter into related agreements, upon the terms and conditions provided herein; and

WHEREAS, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the City, the City, pursuant to Ordinance No. 2015-62 passed September 21, 2015, issued \$7,000,000 principal amount of Cleveland Browns Headquarters and Training Facility Nontax Revenue Bond Anticipation Notes, Series 2015 dated October 6, 2015, in anticipation of the issuance of bonds, to mature on October 6, 2016 (the "Outstanding Note") for the purpose of improving the City-owned administrative offices, training facility and surrounding grounds leased to the Cleveland Browns Football Company LLC (the "Project");

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

WHEREAS, the Director of Finance has certified to this Council that the estimated life or period of usefulness of the Project is at least five years, the estimated maximum maturity of the bonds described in Section 5 is at least 15 years, and the maximum maturity of the Note described in Section 3, to be issued in anticipation of the bonds, is October 6, 2035.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, Cuyahoga County, State of Ohio, that:

Section 1. In addition to the words and terms defined elsewhere in this Ordinance, unless the context or use clearly indicates another meaning or intent:

"Bond" means a bond in anticipation of which the Note is issued, the estimated terms of which are described in Section 5 hereof.

"Director of Finance" means the Director of Finance or any person serving in an interim or acting capacity with respect to that office.

"Director of Law" means the Director of Law or the person at the time performing the duties of the chief legal officer of the City.

"Mayor" means the Mayor or any person serving in an interim or acting capacity with respect to that office.

"Nontax Revenues" means all moneys of the City which are not moneys raised by taxation, to the extent available for the purpose including, but not limited to the following: (a) proceeds from the sale or lease of all or a portion of the Project; (b) grants from the United States of America and the State; (c) payments in lieu of taxes now or hereafter authorized by State statute to the extent not pledged to pay debt charges on other City indebtedness; (d) fines and forfeitures which are deposited in the City's General Fund; (e) fees deposited in the City's General Fund for services provided and from properly imposed licenses and permits; (f) investment earnings on the City's General Fund and which are credited to the City's General Fund; (g) investment earnings on other funds of the City that are credited to the City's General Fund; (h) proceeds from the sale of assets which are deposited in the City's General Fund; and (i) gifts and donations.

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"Note" or "Notes" means the Taxable Cleveland Browns Headquarters and Training Facility Nontax Revenue Bond Anticipation Note, Series 2016 of the City authorized in Section 3 and Section 6 hereof.

"Note service charges" means, for any period of time, the principal of and interest required to be paid by the City on the Note for such time period.

"Ordinance" means this ordinance as amended or supplemented from time to time.

"Original Purchaser" means the purchaser to whom the Note is sold in accordance with Section 7.

"Paying Agent" means a bank or trust company designated by the Director of Finance to serve as paying agent for the Notes in the Certificate of Award or the office of the Director of Finance if agreed to by the Director of Finance and the Original Purchaser.

Any reference herein to the City, to this Council, or to any officer or member of either, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Section 2. This Council determines that (i) the Project is consistent with the purposes of Section 13 of Article VIII of the Ohio Constitution and (ii) the utilization of the Project will benefit the people of the City and of the State of Ohio by creating and preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State; and it is necessary for the City to borrow money, by the issuance and sale of the Note, as provided herein, to provide funds necessary to pay costs of the Project.

Section 3. This Council determines it to be necessary to issue, and the City shall, issue, sell and deliver, as provided and authorized herein the Note, in anticipation of the issuance of bonds, in the maximum principal amount of \$7,000,000 for the purpose of paying costs of the Project and to retire, together with other funds available to the City, the Outstanding Note. The Note shall be designated "Taxable Cleveland Browns Headquarters and Training Facility Nontax Revenue Bond Anticipation Note, Series 2016" or as otherwise designated by the Director of Finance in the Certificate of Award defined below in this Section.

The aggregate principal amount of the Note to be issued consistent with this Section shall be issued in an amount determined by the Director of Finance in the Certificate of Award to be the aggregate principal amount required to be issued at this time, taking into account any premium above or discount from the aggregate principal amount of the Note at which it is sold to the Original Purchaser and other City funds available to refund the Outstanding Note, including the costs of issuance of the Note.

The Note shall bear interest from its date of issuance at a rate of not to exceed 4.5%. Interest on the Note shall be computed on the basis of a 360-day year consisting of twelve months, which each consist of 30 days, and shall be payable at maturity, and or when the principal amount is paid or payment is provided for. The rate of interest on the Note shall be determined by the Director of Finance in the certificate awarding the Notes in accordance with Section 7 (the Certificate of Award). The Notes shall be dated the date of issuance and shall mature not earlier than nine months from the date of issuance nor later than one year from the date of issuance, as determined by the Director of Finance in the Certificate of Award.

If requested by the Original Purchaser and if the Mayor and Director of Finance have determined to sign the Standby Note Purchase Agreement (as defined and provided in Section 7), the Note may provide that, in the event that the City does not pay or make provision for payment at maturity of the debt charges on the Note, the principal amount of the Note shall bear interest at a different rate not to exceed the After Maturity Rate (as defined in the Standby Note Purchase Agreement provided for in Section 7) from the maturity date until the City pays or makes provision to pay that principal amount.

If agreed to by the Original Purchaser, the Note shall be prepayable in whole or in part, without penalty or premium, at the option of the City, at any time or at any time following a period of no prepayment agreed to by the Original Purchaser (the Prepayment Date). Prepayment prior to maturity shall be made by deposit with the Paying Agent of the principal amount of the Note to be prepaid, together with interest accrued thereon to the Prepayment Date. The City's right of prepayment shall be exercised by mailing a notice of prepayment, stating the principal amount to be

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prepaid, the Prepayment Date and the name and address of the Paying Agent, by certified or registered mail to the Original Purchaser of the Note not less than thirty days prior to the Prepayment Date, unless such notice is waived by the Original Purchaser. If money for prepayment is on deposit with the Paying Agent on the Prepayment Date following the giving of that notice, interest on the principal amount prepaid shall cease to accrue on the Prepayment Date. The Director of Finance may request the Original Purchaser of the Note to use its best efforts to arrange for the delivery of the Note at the designated office of the Paying Agent for prepayment, surrender and cancellation if the Note has been prepaid in whole, or for replacement with a Note in the principal amount then outstanding, if the Note has been prepaid in part.

Section 4. The Note service charges shall be payable in lawful money of the United States of America, or in Federal Reserve funds of the United States of America, as determined by the Director of Finance in the Certificate of Award and shall be payable, without deduction for services of the Paying Agent, at the office of the Paying Agent. Interest on the Note shall be paid at maturity. Principal on the Note shall be payable without deduction for services of the Paying Agent, upon presentation and surrender of the Note.

Section 5. It is necessary that bonds be issued in the maximum principal amount of \$7,000,000 to pay costs of the Project and to retire the Note (unless the Note is retired with cash or with the proceeds of bonds or bond anticipation notes), which bonds are anticipated to be dated approximately October 1, 2017, shall bear interest at the now estimated rate of 6.0% per year, payable semiannually until the principal amount is paid; and such bonds are estimated to mature in 11 annual principal installments on December 1 of each year that are in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable are not more than three times the amount of those payments in any other fiscal year. Nothing in this Ordinance shall prevent the City from retiring all or any portion of the Note with the proceeds of bond anticipation notes, or with the proceeds of bonds or other obligations containing terms different than those described in this Ordinance.

Section 6. The Note shall be signed by the Mayor and the Director of Finance, 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 the Original Purchaser and approved by the Director of Finance, provided that no Note shall be issued in a denomination less than \$100,000. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance 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 Director of Finance 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 Director of Finance 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. As used in this Section and in this Ordinance:

"Book entry form" or "book entry system" means a form or 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. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"Participant" means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

The Notes may be issued to a Depository for use in a book entry system and, 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

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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 a Depository for the Notes for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, 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 costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Finance 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 7. The Note shall be sold at not less than 97% of par at private sale by the Director of Finance in accordance with law and the provisions of this Ordinance. The Director of Finance shall, in accordance with that officer's determination of the best interests of and financial advantages to the City and its taxpayers and based on conditions then existing in the financial markets, consistently with the provisions of this Ordinance, establish the interest rate to be borne by the Notes and their maturity and other terms required in this Ordinance to be set forth in the Certificate of Award, sign the Certificate of Award evidencing that sale to the selected original purchaser, cause the Note to be prepared, and have the Note signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Note if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price.

The Mayor, the Director of Finance, the Director of Law, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements, paying agent agreement, term sheet, placement or purchase agreement and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance, and all actions heretofore taken by those officers and officials in connection with the Project and the Note are hereby confirmed, ratified and approved.

Ohio Market Access Program. The Standby Note Purchase Agreement (Standby Note Purchase Agreement) is hereby authorized in the form presented to this Council with such changes not materially adverse to the City as may be approved by the Mayor and the Director of Finance of the City, which officers are hereby authorized to execute the Standby Note Purchase Agreement if determined by the Mayor and the Director of Finance to be in the best interest of and financial advantage to the City. The City acknowledges the agreement of the Treasurer of State in the Standby Note Purchase Agreement that, in the event the City is unable to repay the principal amount and accrued and unpaid interest of the Note at its maturity, whether through its own funds or through the issuance of other obligations of the City, the Treasurer of State agrees (A) to purchase the Note from the holders or beneficial owners thereof upon their presentation to the Treasurer of State for such purchase at a price of par plus accrued interest to maturity or (B) to purchase renewal notes of the City in a principal amount not greater than the principal amount of the Note plus interest due at maturity, with such renewal notes bearing interest at the Renewal Note Rate (as defined in the Standby Note Purchase Agreement), maturing not more than one year after the date of their issuance, and being prepayable at any time with 30 days' notice, provided that in connection with the Treasurer of State's purchase of such renewal notes the City shall deliver to the Treasurer of State an unqualified opinion of nationally recognized bond counsel that such renewal notes are the legal, valid and binding special obligations of the City, and the principal of and interest on such renewal notes, are secured by a pledge and lien on nontax revenues on deposit in the Bond Fund.

The officers signing the Note are authorized to take all actions that may in their judgment reasonably be necessary to provide for the Standby Note Purchase Agreement, including but not limited to the inclusion of a notation on the form of the Note providing notice to the holders

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or beneficial owners of the existence of the Standby Note Purchase Agreement and providing instructions to such holders or beneficial owners regarding the presentation of the Note for purchase by the Treasurer of State at stated maturity.

Section 8. The proceeds from the sale of the Note shall be paid into the proper fund and those proceeds are appropriated and shall be used for the purpose for which the Note is being issued.

Section 9. The Note and any bonds issued to retire the Note shall be special obligations of the City, and the Note service charges on the Note and the debt charges on any bonds issued to retire the Note shall be payable solely from the Nontax Revenues, and the payment of Note service charges is secured by a pledge of and lien on the Nontax Revenues on deposit in the Bond Fund, as described below. The Note and any bonds issued to retire the Note are not and shall not be secured by an obligation or pledge of any money raised by taxation. The Note and any bonds issued to retire the Note do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and the holder or holders thereof have and shall have no right to have taxes levied by the City for the payment of Note service charges on the Note or debt charges on any bonds issued to retire the Note.

The City covenants and agrees that while the Note is outstanding, it will appropriate and maintain Nontax Revenues at such times and in such amounts as will be sufficient, together with the proceeds of any bonds issued to retire the Note or renewal notes issued in anticipation of such bonds available for the purpose, to pay the Note service charges on the Note when due and will so restrict other obligations payable from Nontax Revenues prior to or on a parity with the Note service charges on the Note as will ensure the continuing availability for appropriation of sufficient Nontax Revenues to pay Note service charges when due.

The par value to be received from the sale of any bonds issued to retire the Note or of any renewal notes and any excess funds resulting from the issuance of the Note shall, to the extent necessary, be used to pay the Note service charges on the Note at maturity and are pledged for that purpose.

The City has heretofore created a separate fund or account designated "Taxable Bond Retirement Fund" (the "Bond Fund") into which Nontax Revenues shall be deposited on or prior to the date of maturity of the Note in an amount sufficient to pay Note service charges.

Nothing herein shall be construed as requiring the City to use or apply to the payment of Note service charges on the Note any funds or revenues from any source other than Nontax Revenues. Nothing herein, however, shall be deemed to prohibit the City, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Ordinance or of the Note.

Section 10. In addition to other representations and warranties of the City contained in this Ordinance, the City covenants and agrees that:

(a) **Payment of Note Service Charges.** The City will, solely from the Nontax Revenues, pay or cause to be paid the Note service charges on the dates, at the places and in the manner provided herein and in the Note. For that purpose, in each year while the Note is outstanding, this Council, after providing for the payment of debt charges payable on the City's general obligation securities in that year from sources available for that purpose, will appropriate Nontax Revenues required to pay, and for the purpose of paying, the Note service charges due in that year. Further, this Council will give effect to such appropriations in all ordinances it passes thereafter in that year appropriating money for expenditure and encumbrance and limit the other appropriations of Nontax Revenues in that year to the amount available after deducting the amount required for the payment of debt charges payable on the City's general obligation securities and to pay those Note service charges.

(b) **Performance of Covenants and City Actions.** The City will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions to be performed on its part under this Ordinance and the Note and under all proceedings of this Council pertaining thereto. The City represents that (i) it is a municipal corporation, duly organized and existing under and by virtue of the laws of the State; (ii) it is, and upon delivery of the Note covenants that it will be, duly authorized by the Constitution and laws of the State, to issue the Note and any bonds issued to retire the Note and to provide the security for payment of the Note service charges in the manner and to the extent set forth herein and in the Note; (iii) all actions on its part

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for the issuance of the Note have been or will be taken duly and effectively; and (iv) the Note will be a valid and enforceable special obligation of the City according to its terms. Each obligation of the City required to be undertaken pursuant to the Ordinance and the Note is binding upon the City, and upon each officer or employee of the City as may from time to time have the authority under law to take any action on behalf of the City as may be necessary to perform all or any part of such obligation, as a duty of the City and of each of those officers and employees resulting from an office, trust or station within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

(c) Inspection of Project Books. All books and documents in the City's possession relating to the Project and the Nontax Revenues shall be open at all times during the City's regular business hours to inspection by such accountants or other agents of the holder of the Note as the holder of the Note may from time to time designate.

(d) Transcript of Proceedings. The Clerk of Council, or another appropriate officer of the City, shall furnish to the Original Purchaser a true transcript of proceedings, certified by that officer, of all proceedings had with reference to the issuance of the Note along with such information from the records as is necessary to determine the regularity and validity of the issuance of the Note.

Section 11. The City does not intend or represent that the interest on the Note will be excluded from gross income for federal income tax purposes under Section 103(a) of the Internal Revenue Code of 1986, as amended, and the City is not and shall not be obligated to take any action to attempt to secure or maintain any such exclusion.

Section 12. If the City shall pay or cause to be paid and discharged the Note, the covenants, agreements and other obligations of the City hereunder and in the Note shall be discharged and satisfied.

Section 13. If any date on which Note service charges are due shall be a Sunday or a day on which the holder of the Note is required, or authorized or not prohibited, by law (including executive orders) to close and is closed, then payment of Note service charges need not be made on that date but may be made on the next succeeding business day on which the holder is open for business with the same force and effect as if made on the due date and no interest shall accrue for the period after that date.

Section 14. The Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Fiscal Officer.

Section 15. This Council finds and determines that all formal actions of this Council and of any of 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 any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

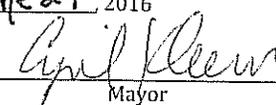
Section 16. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Note, 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: June 20, 2016



President of Council

Attest: [Signature]
Clerk of Council

Approved: June 24, 2016


Mayor