

COUNCIL CHAMBER

City of Berea, Ohio

Ordinance No. 2019-11

By Margarette S. Key Sponsored By Mayor Cyril M. Klein
ORDINANCE NO. 2019-11

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND
SALE OF NOT TO EXCEED \$300,000 URBAN RENEWAL
TEMPORARY REVENUE BONDS, IN ANTICIPATION OF THE
ISSUANCE OF DEFINITIVE URBAN RENEWAL REVENUE
BONDS, FOR THE PURPOSE OF PAYING COSTS OF CITY
URBAN RENEWAL PROJECT ACTIVITIES IN THE FIRST
AVENUE COMMUNITY REVITALIZATION AREA, AND
DECLARING AN EMERGENCY.

WHEREAS, under the provisions of Article XVIII, Section 3 of the Ohio Constitution, and the City's Charter and ordinances, the City is authorized to and the City has determined to undertake and carry out urban renewal project activities in designated areas of the City; and

WHEREAS, pursuant to Chapter 725 of the Revised Code (the Act), the City has the power to issue "urban renewal bonds" to pay costs of "urban renewal project activities" as such terms are defined in the Act; and

WHEREAS, this Council, by Ordinance No. 90-22, passed on February 5, 1990, approved the First Avenue Community Revitalization Plan for the First Avenue Community Revitalization Area (the Plan Area) (that plan as amended, the Urban Renewal Plan), which constitutes an urban renewal plan within the meaning and requirements of the Act, and which Urban Renewal Plan includes undertakings and activities by the City comprising an urban renewal project for the public purpose of elimination and prevention of recurrence of blight in the Plan Area; and

WHEREAS, in furtherance of carrying out the Urban Renewal Plan, the City and the Cleveland Browns, Inc. (the Browns), entered into a Development Agreement (as amended and supplemented, the Development Agreement) to provide for redevelopment by the City and the Browns of certain properties in the Plan Area as identified therein (the Property), including the construction of a building to be leased to the Browns; and

WHEREAS, pursuant to the Act, and particularly Section 725.05(B) of the Revised Code, and Ordinance No. 2018-12, passed on February 20, 2018, the City issued its \$400,000 Urban Renewal Temporary Revenue Bonds, Series 2018, dated March 23, 2018, and maturing on March 22, 2019, in anticipation of the issuance of definitive urban renewal bonds under the Act, for the purpose of paying costs of the Project described in Section 1 (the Outstanding Temporary Bonds); and

WHEREAS, pursuant to the Act, and particularly Section 725.05(A) of the Revised Code, the City has determined to issue the Temporary Bonds described in Section 3, to be issued in anticipation of the issuance of Definitive Bonds described in Section 1, to retire the Outstanding Temporary Bonds at their maturity, with at least \$100,000 principal amount to be paid from other funds available to the City;

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

Section 1. It is necessary to issue definitive urban renewal revenue bonds of this City in an aggregate principal amount not to exceed \$300,000 (the Definitive Bonds) for the purpose of paying costs of carrying out City urban renewal project activities in the Plan Area in accordance with the Urban Renewal Plan and the Act, including without limitation direct and indirect costs of acquiring real property and any interests therein, demolishing structures thereon and on City owned land, preparing property for redevelopment, constructing public improvements, including, without limitation, parking lot improvements, and constructing improvements to City buildings in the Plan Area (the Project). This Council hereby confirms its determination that the Project is in accordance with the Urban Renewal Plan and is a proper public purpose of the City and will improve the general welfare of the residents of the City, and that carrying out the Project is in furtherance of

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the purposes of the Act and is necessary to carry out for the elimination and prevention of the development or spread of blight and deterioration in furtherance of the Urban Renewal Plan and therefore will benefit the people of the City and of the State of Ohio.

Section 2. The Definitive Bonds shall be dated approximately March 1, 2020, shall bear interest at the now estimated rate of 6% per year, payable on June 1 and December 1 of each year, commencing June 1, 2020, until the principal amount is paid, and are estimated to mature in three annual principal installments (ending in 2022), commencing December 1, 2020.

Section 3. It is necessary to issue and this City Council determines that urban renewal temporary revenue bonds in an aggregate principal amount not to exceed \$300,000 (the Temporary Bonds) shall be issued in anticipation of the issuance of the Definitive Bonds and to retire, together with other funds available of the City, the Outstanding Temporary Bonds. The Temporary Bonds shall bear interest at a rate not exceeding 6% per year (computed on the basis of a 360-day year consisting of 12 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. If requested by an original purchaser, the Temporary Bonds may provide that, in the event the City does not pay or make provision for payment at maturity of the debt charges on the Temporary Bonds, the principal amount of the Temporary Bonds shall bear interest at a different rate not to exceed 11% per year from the maturity date until the City pays or makes provision to pay that principal amount. The aggregate principal amount of and rate or rates of interest on the Temporary Bonds shall be determined by the Director of Finance in the certificate awarding the Temporary Bonds in accordance with Section 6 (the Certificate of Award). The Temporary Bonds shall be dated the date of issuance and shall mature not earlier than six 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. The Temporary Bonds shall be designated "Urban Renewal Temporary Revenue Bonds, Series 2019", or such other designation as set forth in the Certificate of Award.

Section 4. The debt charges on the Temporary Bonds shall be payable in Federal Reserve funds of the United States of America and shall be payable, without deduction for services of the City's paying agent (the Paying Agent), at the office of a bank or trust company designated by the Director of Finance in the Certificate of Award 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 Director of Finance if agreed to by the Director of Finance and an original purchaser of the Temporary Bonds (the Original Purchaser). If agreed to by the Original Purchaser and set forth in the Certificate of Award, the Temporary Bonds shall be prepayable without penalty or premium at the option of the City at any time prior to maturity as provided in this Ordinance. Prepayment prior to maturity shall be made by deposit with the Paying Agent of the principal amount of the Temporary Bonds together with interest accrued thereon to the date of prepayment. The City's right of prepayment shall be exercised by mailing a notice of prepayment, stating the date of prepayment and the name and address of the Paying Agent, by certified or registered mail to the Original Purchaser not less than seven days prior to the date of that deposit, unless that notice is waived by the Original Purchaser. If money for prepayment is on deposit with the Paying Agent on the specified prepayment date following the giving of that notice (unless the requirement of that notice is waived as stated above), interest on the principal amount prepaid shall cease to accrue on the prepayment date, and upon the request of the Director of Finance the Original Purchaser shall arrange for the delivery of the Temporary Bonds at the designated office of the Paying Agent for prepayment and surrender and cancellation.

Section 5. The Temporary Bonds 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 Temporary Bonds shall be issued in the denominations and numbers as requested by the Original Purchaser and approved by the Director of Finance, provided that no such denomination shall be less than \$100,000 and provided further that the entire principal amount may be represented by a single Temporary Bond. The entire principal amount may be represented by a single Temporary Bond and may be issued as fully registered securities (for which the Director of Finance will serve as Temporary Bond registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 725 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 Temporary Bonds. The Temporary Bonds 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

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terms, for which they are issued and that they are issued pursuant to this Ordinance, and shall contain on the face thereof a statement to the effect that the Temporary Bonds, as to both principal and interest, are not a general obligation of the City but are payable solely from receipts pledged for their payment.

Section 6. The Temporary Bonds are offered at par and any accrued interest to the Director of Finance, as the officer in charge of the Bond Retirement Fund of the City. The Temporary Bonds not purchased by the Bond Retirement Fund shall be sold at not less than par plus accrued interest 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 her 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 Section 3, establish the interest rate or rates to be borne by the Temporary Bonds and their maturity, sign the Certificate of Award referred to in Section 3 evidencing that sale, cause the Temporary Bonds to be prepared, and have the Temporary Bonds signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Temporary Bonds if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price. The Mayor, the Director of Finance, the Law Director, the Clerk of the City 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 7. The proceeds from the sale of the Temporary Bonds shall be paid into the special fund established for those proceeds, and those proceeds are appropriated thereto and shall be used for the purpose for which the Temporary Bonds are being issued, including the reimbursement of moneys advanced or applied by the City to pay costs of the Project.

Section 8. The City Council hereby creates and orders maintained a separate fund of the City that constitutes an urban renewal debt retirement fund within the meaning of the Act (and particularly Sections 725.03 and 725.05 of the Revised Code) and that shall be designated the "Urban Renewal Debt Retirement Fund" (the Debt Retirement Fund). There shall be deposited into the Debt Retirement Fund, as and when received, (a) the Net Urban Renewal Service Payments (as defined below); (b) any proceeds of the Temporary Bonds, the Definitive Bonds or any Additional Bonds (as defined in Section 10) (collectively, Urban Renewal Bonds) which remain following the payment of all costs of the project to be paid therefrom; (c) the proceeds received from the sale of any Additional Bonds issued to refund any outstanding Urban Renewal Bonds; and (d) any other "urban renewal service payments", as defined in the Act, that the City determines to deposit in the Debt Retirement Fund. As used herein, the term "Net Urban Renewal Service Payments" means "urban renewal service payments", as defined in the Act, required to be paid with respect to the "improvements", as defined in the Act, on the Property pursuant to the Development Agreement and the Act and which are received or deemed received by the City.

Section 9. The Temporary Bonds and any Urban Renewal Bonds issued to refund the Temporary Bonds shall be special obligations of the City, and the payment of debt charges thereon is secured by a pledge of the Net Urban Renewal Service Payments on deposit in the Debt Retirement Fund. The Temporary Bonds and any Urban Renewal Bonds issued to refund the Temporary Bonds are not and shall not be secured by an obligation or pledge of any money raised by taxation. The Temporary Bonds and any Urban Renewal Bonds issued to refund the Temporary Bonds 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 debt charges on the Temporary Bonds or debt charges on any Urban Renewal Bonds issued to refund the Temporary Bonds.

The par value to be received from the sale of any Urban Renewal Bonds issued to refund the Temporary Bonds shall, to the extent necessary, be used to pay the debt charges on the Temporary Bonds at maturity and are pledged for that purpose. Nothing in this Ordinance shall prevent the City from retiring all or any portion of the Temporary Bonds with the proceeds of Urban Renewal Bonds or other obligations containing terms different than those described in this Ordinance.

The Debt Retirement Fund is pledged to and shall be used, so long as any Urban Renewal Bonds are outstanding, solely and exclusively for the payment of debt charges on outstanding Urban

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Renewal Bonds when due as provided in this Ordinance and in any ordinance authorizing the issuance of the Definitive Bonds or any Additional Bonds. As used herein, the term "Additional Bonds" means urban renewal bonds issued (other than the Temporary Bonds or the Definitive Bonds) or other obligations entered into by the City pursuant to or as described in the Act and as permitted by Section 10.

The City hereby covenants and agrees that so long as any Urban Renewal Bonds are outstanding, it will deposit or cause to be deposited in the Debt Retirement Fund, Net Urban Renewal Service Payments, to the extent received, sufficient in time and amount to pay the debt charges on any outstanding Urban Renewal Bonds, as the same become due and payable, and the City covenants and agrees that, so long as any Urban Renewal Bonds are outstanding, it will diligently and promptly proceed in good faith and use its best efforts to cause the urban renewal service payments required by the Development Agreement to be paid to the City, and that, should there be a default in the payment thereof, the City shall cooperate with the any holder of any such Urban Renewal Bonds to fully protect the rights and security of that holder and shall diligently and promptly proceed in good faith and use its best efforts to enforce the payments of the urban renewal service payments under the Development Agreement to the end that, at all times, Net Urban Renewal Service Payments shall be derived sufficient in time and amount to pay the debt charges on outstanding Urban Renewal Bonds as the same become due and payable.

Nothing herein shall be construed as requiring the City to use or apply to the payment of debt service charges on the Temporary Bonds any funds or revenues from any source other than Net Urban Renewal Service Payments and the proceeds of any Urban Renewal Bonds issued to refund the Temporary Bonds. 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 Temporary Bonds.

An Urban Renewal Bond shall no longer be considered to be outstanding, and the pledge of the Net Urban Renewal Service Payments and Debt Retirement Fund pursuant to this Ordinance shall be released with respect to such Urban Renewal Bond, if the City has placed in escrow, and pledged for the payment of debt charges on such Urban Renewal Bond, money or direct or guaranteed obligations of the United States, or a combination of those obligations, determined by an independent firm experienced in making such determinations to be sufficient, with the interest or other investment income accruing on those direct or guaranteed obligations, for the payment of debt charges on such Urban Renewal Bond. For purposes of this paragraph, "direct obligations of or obligations guaranteed as to payment by the United States" includes rights to receive payment or portions of payments of the principal of or interest or other investment income on those obligations, and other obligations fully secured as to payment by those obligations and the interest or other investment income on those obligations.

Section 10. The City, to the extent then permitted by law and for purposes consistent with the Act, may, to the extent deemed necessary by the City to finance costs of carrying out the City's undertakings and activities necessary to eliminate blight and prevent the recurrence of blight, issue Additional Bonds, from time to time to provide for:

- (a) additional costs of the Project, or
- (b) other urban renewal project costs in accordance with the Act in the Plan Area or other urban renewal areas of the City, including those heretofore or hereafter designated by the City Council, or
- (c) refunding any outstanding Urban Renewal Bonds, or
- (d) any combination of the purposes described in clauses (a), (b) and (c);

provided that the proceeds of any Additional Bonds shall be used by the City solely to pay permissible costs under the Act. Such Additional Bonds shall be secured by a pledge of and be payable from money in the Debt Retirement Fund on a parity with the Urban Renewal Bonds

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theretofore or thereafter issued and shall be dated, mature, bear interest and be secured as provided by the ordinance authorizing such Additional Bonds.

Section 11. The City does not intend or represent that the interest on the Temporary Bonds 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. In addition to other covenants of the City in this ordinance, the City further covenants and agrees as follows:

- (a) The City will, solely from the sources herein provided, pay or cause to be paid the debt charges on the Temporary Bonds, the Definitive Bonds, and any Additional Bonds on, as to the Temporary Bonds, the dates and in the manner provided herein and in the Temporary Bonds, and as to the Definitive Bonds and any Additional Bonds, on the dates and in the manner provided in the ordinance or ordinances authorizing issuance thereof and as provided in the Definitive Bonds or Additional Bonds.
- (b) The City will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in this Ordinance, in the Temporary Bonds as executed and delivered, and in all proceedings of the City Council pertaining to the Temporary Bonds. The City warrants and covenants that it is, and upon delivery of the Temporary Bonds will be, duly authorized by the Constitution and laws of the State of Ohio, including particularly and without limitation the Act, to issue the Temporary Bonds and to provide the security for payment of the debt charges in the manner and to the extent herein set forth; that all actions on its part for the issuance of the Temporary Bonds have been or will be duly and effectively taken; and that the Temporary Bonds will be valid and enforceable special obligations of the City according to the terms thereof. Each provision of this Ordinance and the Temporary Bonds is binding upon such officer of the City as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duty required by such provision; and each duty of the City and of its officers and employees undertaken pursuant to such proceedings for the Temporary Bonds is established as a duty of the City and of each such officer and employee having authority to perform such duty, resulting from an office, trust or station within the meaning of Section 2731.01 of the Revised Code, providing for enforcement by writ of mandamus.
- (c) The City will not make any pledge or assignment of, or create any lien or encumbrance upon, the Debt Retirement Fund or the Net Urban Renewal Service Payments other than the pledge and assignment thereof, and encumbrance thereof, under this Ordinance or under the ordinance or ordinances authorizing issuance of the Definitive Bonds or Additional Bonds.

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 Temporary Bonds in order to make them legal, valid and binding special obligations of the City have been performed and have been met, or will at the time of delivery of the Temporary Bonds have been performed and have been met, in regular and due form as required by law; that the Net Urban Renewal Service Payments which are on deposit in the Urban Renewal Debt Retirement Fund are pledged for the timely payment of the debt charges on the Temporary Bonds; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Temporary Bonds.

Section 14. The legal services of Squire Patton Boggs (US) LLP, as bond counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and

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recommendations as to the documents and the proceedings in connection with the issuance and sale of the Temporary Bonds and the rendering of the necessary legal opinion upon the delivery of the Temporary Bonds. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. The Director of Finance is authorized to provide for the payment of those fees and any reimbursements from the proceeds of the Temporary Bonds to the extent available and otherwise 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 15. 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 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, all in compliance with the law.

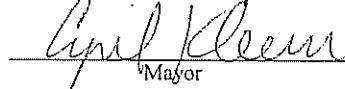
Section 16. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Temporary Bonds, which is necessary to enable the City to timely retire the Outstanding Temporary Bonds 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: February 19, 2019


President of Council

Attest: John Eas
Clerk of Council

Approved: February 21, 2019


Mayor Kleem