

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2015-62

By Dale A. Lange 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 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 has determined to issue the note authorized in Section 3 hereof, in anticipation of the issuance of bonds described in Section 5 hereof, 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, 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 twenty years

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.

"Note" means the Taxable Cleveland Browns Headquarters and Training Facility Nontax Revenue Bond Anticipation Note, Series 2015 of the City authorized in Section 3 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.

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"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 aggregate principal amount of \$7,000,000 for the purpose of paying costs of the Project. The Note shall be designated "Taxable Cleveland Browns Headquarters and Training Facility Nontax Revenue Bond Anticipation Note, Series 2015" or as otherwise designated by the Director of Finance in the Certificate of Award.

The Note shall be issued as a single instrument in the full principal amount of the issue and in fully registered form and numbered R1 (and upwards upon any exchange of the Note for a new Note).

The Note shall bear interest from its date of issuance at a rate of not to exceed 4.0%. 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.

Section 4. The Note service charges shall be payable in lawful money of the United States of America, 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 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, 2016, 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 12 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 a negotiable instrument, and the Note shall express on its face the purpose for which it is issued and such other statements or legends as may be required by law. 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.

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Section 7. The Note shall be sold at not less than 98% 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 Section 3, establish the interest rate to be borne by the Notes and their maturity, sign the Certificate of Award referred to in Section 3 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, 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.

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

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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 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.

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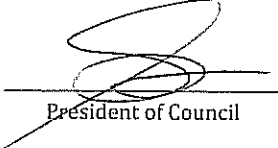
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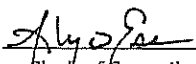
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Section 16. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Note, which is urgently needed so that the City is able to meet its contractual commitments for the undertaking of the Project and so that the City may provide for additional jobs and employment opportunities and improve the economic welfare of the City and its residents; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

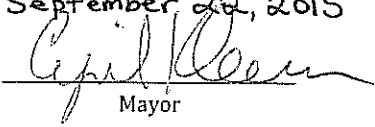
PASSED: September 21, 2015



President of Council

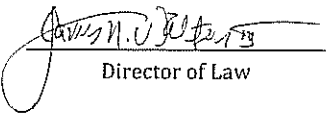
ATTEST: 

Clerk of Council

APPROVED: September 22, 2015


Mayor

Approved as to Form:



Director of Law