

# COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2019-64

By Nick Haschka Sponsored By Mayor Cyril M. Hilem

AN ORDINANCE

## AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE CLEVELAND BROWNS TO EXTEND THE OPT-OUT CLAUSE IN THE CURRENT LEASE, AND DECLARING AN EMERGENCY.

**WHEREAS**, the City owns property located at 76 Lou Groza Boulevard and houses the facilities of the Cleveland Browns; and

**WHEREAS**, the Cleveland Browns wish to expand and make improvements to the grounds and facilities; and

**WHEREAS**, in furtherance of their improvement plan, they have entered into a Purchase Agreement with Mt. Zion Church, located at 572 Pearl Street, which includes a provision that the Browns will relocate the church; and

**WHEREAS**, the City owns one or more parcels, identified in Exhibit A, which is attached hereto and incorporated herein by reference, that are suitable for the church; and

**WHEREAS**, in consideration of the transfer of property from the City to the Cleveland Browns, the Browns agree to extend the opt-out clause in their existing lease by ten (10) years, through the 2038 NFL League Year; and by further agreeing to pay any and all Real Estate Taxes and Assessments levied, assessed or imposed on the facility including any improvements made to the described properties, plus penalties and interest, if any, in accordance with Ohio Revised Code 323.121, beginning in Tax Year 2020 and by amending the Incremental Income Tax section of the lease amendment dated June 9, 2015; and

**WHEREAS**, the City of Berea and the Cleveland Browns wish to execute any and all documents necessary to facilitate the transfer of the property identified in Exhibit A and to formalize the existing lease agreement to reflect the consideration received by the City in exchange for the transfer of property.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Berea, State of Ohio:

**SECTION 1.** That the Mayor shall be and is hereby authorized and directed to enter into any and all agreements necessary to effectuate the transfer of the properties designated in Exhibit A to the Cleveland Browns, and to amend the current lease in substantial conformance with Exhibit B, which is attached hereto and incorporated herein by reference, with the Cleveland Browns to extend the opt-out clause for an additional ten-year (10) period, through the 2038 NFL League Year; and to further provide that the Cleveland Browns shall be responsible for the payment of any and all Real Estate Taxes and Assessments levied, assessed or imposed on the facility, including any improvements made to the described properties, plus penalties and interest, if any, in accordance with Ohio Revised Code 323.121, beginning in Tax Year 2020 and to amend the Incremental Income Tax section of the lease amendment dated June 9, 2015.

**SECTION 2.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

# COUNCIL CHAMBER

City of Berea, Ohio

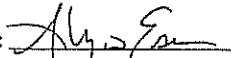
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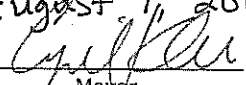
By Nick Haschka Sponsored By Mayor Gleen

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that the prompt transfer of the property will allow the Cleveland Browns to begin building a new Mt. Zion Church for the benefit of its members and the public. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: August 7, 2019

  
\_\_\_\_\_  
President of Council

ATTEST:   
Clerk of Council

APPROVED: August 7, 2019  
  
Mayor

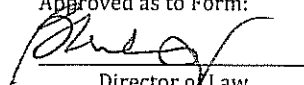
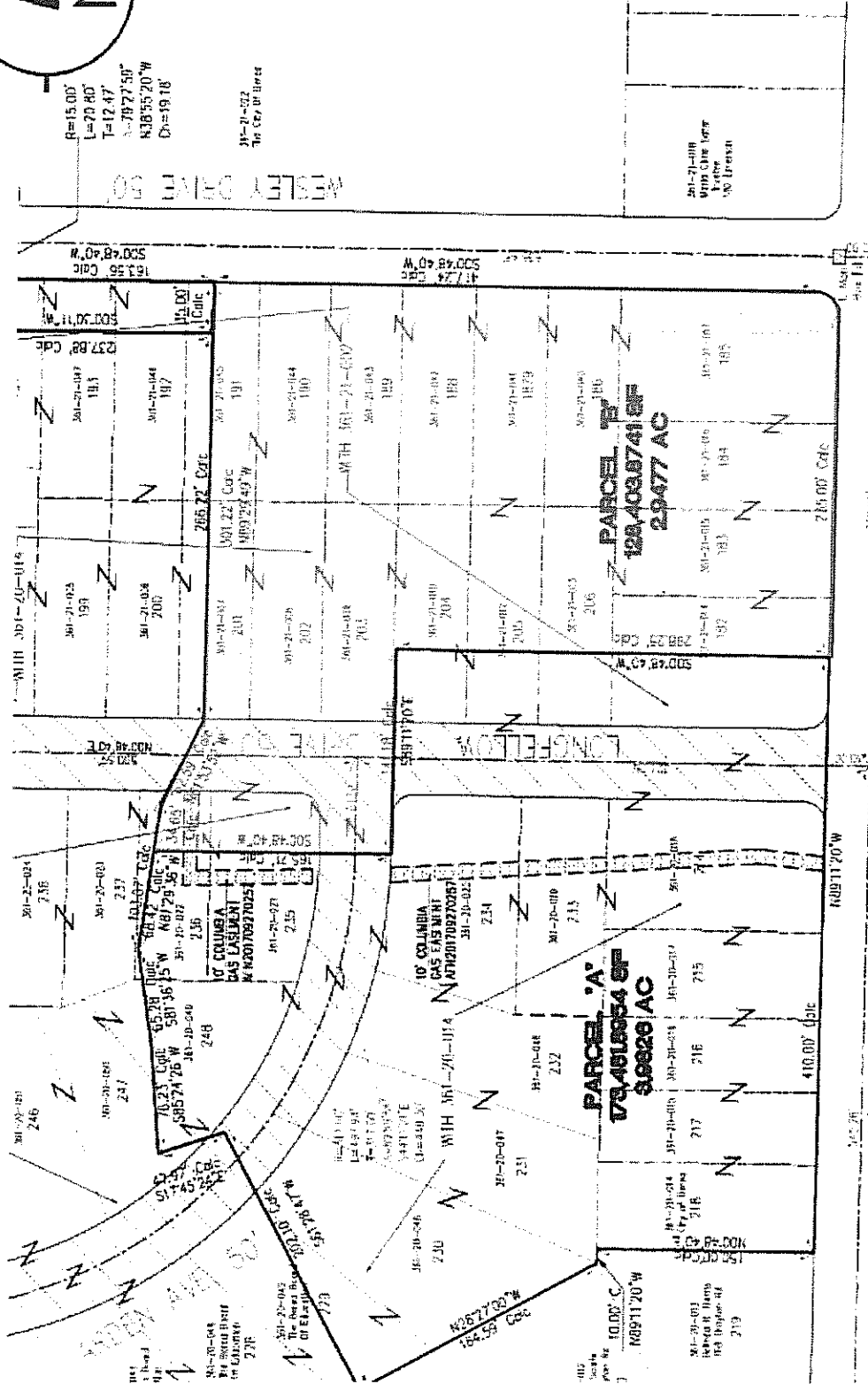
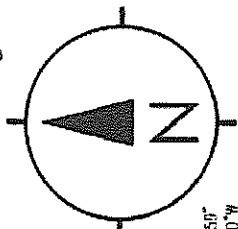
Approved as to Form:  
  
Director of Law

Exhibit  
"A"



$R=15.00'$   
 $L=20.80'$   
 $T=12.47'$   
 $A=79.7750^\circ$   
 $N18.5520^\circ W$   
 $D=19.18'$

WESTLEY DAVIS 30'

$R=15.00'$   
 $L=23.56'$   
 $T=15.00'$   
 $A=90.0000^\circ$   
 $S45.9640^\circ W$   
 $C=21.21'$

EMERSON AVENUE 60'

## AMENDMENT TO LEASE

This Amendment to Lease ("**Amendment**") is made and entered into as of the \_\_\_\_ day of August, 2019, by and between the **CITY OF BEREA**, a municipal corporation and political subdivision duly organized and validly existing under the laws of the State of Ohio (hereinafter referred to as "**Landlord**"), and **CLEVELAND BROWNS FOOTBALL COMPANY LLC**, a Delaware limited liability company (hereinafter referred to as "**Tenant**").

### WITNESSETH:

WHEREAS, Landlord and Tenant (as the ultimate successor in interest to Cleveland Browns, Inc., a Delaware corporation) are parties to that certain Lease dated as of August 1, 1990, as amended by an Amendment to Lease dated as of November 7, 1991, a Second Amendment to Lease dated September 16, 1992, an Amendment to Leases dated as of April 26, 1996, an Assignment, Assumption and Amendment of Leases dated as of October 23, 1998, and an Amendment to Lease dated June 9, 2015 (collectively, the "**Lease**"), for premises consisting of certain training and administrative office facilities and an adjacent indoor practice field located near the corner of Lou Groza Boulevard (formerly First Avenue) and Pearl Street in Berea, Ohio, as more particularly described in the Lease (being defined in the Lease, and also for purposes of this Amendment, as the "**Project**"); and

WHEREAS, Landlord and Tenant (as the ultimate successor in interest to Cleveland Browns, Inc.) also entered into that certain Lease for the outdoor practice fields (commonly known as PPN 362-24-003) dated November 21, 1989 (the "**Practice Field Lease**"); and

WHEREAS, the term of the Lease will expire on August 1, 2040; but Tenant has the right (pursuant to Section 13.1 of the Lease, as amended by the Amendment to Lease dated June 9, 2015) to terminate the Lease at any time after the end of the 2028 NFL football season upon 365 days' prior written notice to Landlord ("**Tenant's Termination Right**"); and

WHEREAS, Landlord has agreed to certain revisions to the sharing of Incremental Browns Income Taxes; and

WHEREAS, Tenant has agreed not to exercise Tenant's Termination Right effective as of any date prior to the end of the 2038 NFL football season; and

WHEREAS, Landlord and Tenant desire to amend the Lease accordingly pursuant to Section 15.8 thereof (the Indenture previously having been released pursuant to its provisions).

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and obligations of the parties contained herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, and intending to be legally bound, the parties hereby agree as follows:

1. **Defined Terms.** Unless otherwise defined herein or unless the context clearly requires a different meaning, the capitalized and non-capitalized words and phrases defined in the Lease which are used in this Amendment shall have the same meaning ascribed to them in the Lease.

2. **Incremental Browns Income Taxes.** Effective January 1, 2020, Section 3(c) of the Amendment to Lease dated June 9, 2015 shall be deleted in its entirety and replaced with the following:

- (a) **Incremental Browns Income Taxes.** Fifty percent (50%) of the Incremental Browns Income Taxes attributable to the period through February 28, 2038. The parties acknowledge and agree that this constitutes a job creation and job retention refundable municipal income tax credit. The term “**Incremental Browns Income Taxes**” shall mean (i) the total amount of income taxes to which Landlord is entitled (or is deemed hereunder to be entitled) with respect to any calendar year as a result of Tenant’s activities at the Project or otherwise in the City of Berea (including, without limitation, income taxes on the base pay, bonuses and other taxable compensation paid to Tenant’s players, coaches, and administrative and/or corporate personnel), in excess of (ii) the fixed base amount of \$2,600,000 (the “**Base Amount**”), which commencing on January 1, 2020 and on each anniversary of that date thereafter, such Base Amount shall increase by one half of one percent (0.5%), thus the Base Amount for calendar year 2020 will be \$2,613,000. For purposes of determining the total amount of income taxes to which Landlord is entitled (or is deemed hereunder to be entitled) under item (i) above, Landlord’s municipal income tax rate shall be deemed to be no lower than the rate which was applicable to calendar year 2014.

3. **Funding and Disbursement Mechanisms.** Section 4(c)(i) of the Amendment to Lease dated June 9, 2015 shall be deleted in its entirety and replaced with the following:

- (i) To determine the amount of Incremental Browns Income Taxes in excess of the prorated Base Amount for each quarter of a calendar year, Landlord will utilize (A) a cumulative quarterly base amount of \$650,000 for the first quarter, \$1,300,000 for the second quarter, \$1,950,000 for the third quarter, and \$2,600,000 for the fourth quarter, compared with (B) a cumulative quarterly total of the income tax revenue received which is attributable to Tenant’s activities as described above for such calendar year through each such quarter. Commencing January 1, 2020 and on each anniversary of that date thereafter, such quarterly base amounts shall be increased by one half of one percent (0.5%).

4. **Payment of Real Estate Taxes and Property Assessments.** Tenant agrees to pay all real estate taxes and assessments of any and every kind which may be levied, assessed or imposed by any governmental entity on the real property identified in Exhibit A, which is attached hereto and incorporated herein by reference, including any improvements made to the described real property, plus penalties and interest, if any, in accordance with Ohio Revised Code 323.121, beginning in Tax Year 2020, and for or during each and every year during the continuance of the Lease.

- (i) Tenant shall pay the real estate taxes and assessments directly to the Cuyahoga County Treasurer in one or two installments. If paid in one installment, the Tenant shall make payment on or before December 14 of

each year during the Term. If paid in two installments, the Tenant shall make one installment payment on or before December 14 of each year during the Term and the second installment on or before July 14 of each year during the Term.

- (ii) Should the Tenant fail to make a timely payment of the real property taxes described in this Section 4, it shall be responsible for any and all penalties and interest assessed by the County Treasurer in accordance with state law.

5. **Delay in Exercise of Tenant's Termination Right.** In consideration of Landlord's agreements in this Amendment, and effective only for so long as Landlord is not in default under the Lease and the Dedicated Funds actually are being made available in the manner described in the Amendment to Lease dated June 9, 2015, as amended by this Amendment, Tenant hereby agrees (notwithstanding the provisions of Section 13.1 of the Lease) not to exercise Tenant's Termination Right to terminate the Lease (which shall continue to require 365 days' prior written notice to Landlord) effective as of any date prior to the end of the 2038 NFL football season.

6. **Lease for Outdoor Practice Fields.** For the avoidance of doubt, the parties hereto acknowledge and agree that pursuant to Section 1.C. of the Practice Field Lease, the Practice Field Lease has been superseded by this Lease and the outdoor practice fields contemplated thereby are included in the terms of this Lease and such property (PPN 362-24-003) shall be deemed part of the Project Facilities and Project Site as those terms are defined under the Lease.

7. **Payment by City.** Landlord shall pay to Tenant the amount of One Hundred Fifty Thousand Dollars (\$150,000) on or before January 31, 2020.

8. **Ratification of Lease.** This Amendment shall be deemed to form a part of and shall be construed in connection with and as part of the Lease. Except as expressly amended hereby, all of the other terms, covenants and conditions contained in the Lease shall continue to remain unchanged and in full force and effect and are hereby ratified and confirmed. Landlord and Tenant hereby affirm that to the best of its knowledge on the date hereof no breach or uncured default has occurred with respect to the Lease and that the Lease is in full force and effect. To the extent that any terms of the Lease are inconsistent with the terms of this Amendment, this Amendment shall govern and control and the Lease shall be deemed to be amended to conform to the terms of this Amendment.

9. **Further Assurances.** The parties each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action as may be necessary or desirable to fully carry out this Amendment and to fully consummate and effect the transactions contemplated hereby.

10. **Binding Effect.** Each of the provisions of this Amendment shall extend to and shall, as the case may require, bind or inure to the benefit of Landlord and of Tenant, and also to each of their respective legal representatives, successors and permitted assigns.

11. **Severability.** In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality,

or unenforceability shall not affect any other provisions of this Amendment, but this Amendment shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

12. **Authority.** The Lease, as amended by this Amendment, may be further amended or altered only by written agreement executed by both parties, and this Amendment supersedes all prior agreements, whether written or oral, between the parties with respect to the specific subject matter hereof. Each party (the “**Representing Party**”) hereby represents and warrants to the other party that (a) the Representing Party has the legal power and authority to execute and deliver this Amendment; (b) the official(s) executing this Amendment has/have been duly authorized (including without limitation by any required legislative action) to execute and deliver the same and bind the Representing Party with respect to the provisions hereof; (c) the execution and delivery hereof by the Representing Party and the performance and observance by the Representing Party of the provisions hereof do not violate or conflict with the organizational or governing documents of the Representing Party or result in a breach of any provisions of or constitute a default under any other agreement, instrument or document binding upon or enforceable against the Representing Party; and (d) this Amendment constitutes a valid and binding obligation upon the Representing Party in every respect

13. **Counterparts.** This Amendment may be executed in multiple copies and multiple counterparts, each of which shall be deemed to be and form one and the same instrument.

*[Signature Page Follows]*

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the date first set forth on the first page of this instrument.

LANDLORD:

**CITY OF BEREA, OHIO**

By: \_\_\_\_\_  
Cyril Kleem, Mayor

TENANT:

**CLEVELAND BROWNS FOOTBALL  
COMPANY LLC**

By: \_\_\_\_\_  
Name: David A. Jenkins  
Title: EVP, Chief Operating Officer

And: \_\_\_\_\_  
Andrea Morris, Director of Finance

Approved as to Form:

\_\_\_\_\_  
Director of Law



STATE OF OHIO                    )  
  ) ss.  
COUNTY OF CUYAHOGA        )

On this \_\_\_\_\_ day of July, 2019, before me, a Notary Public in and for said County and State, personally appeared The Honorable Cyril Kleem, the Mayor, and Andrea Morris, the Director of Finance, respectively, of the CITY OF BEREA, OHIO who acknowledged that with due authorization and as such officers on behalf of the Landlord they did sign said instrument on behalf of the Landlord, and who acknowledged that the same is their free act and deed individually as such officers and the free act and deed of the Landlord.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

[Seal]

STATE OF OHIO                    )  
  ) ss.  
COUNTY OF CUYAHOGA        )

On this \_\_\_\_\_ day of July, 2019, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of CLEVELAND BROWNS FOOTBALL COMPANY LLC, who acknowledged that with due authorization and as such officer on behalf of the Tenant he/she did sign said instrument on behalf of the Tenant, and who acknowledged that the same is his/her free act and deed individually as such officer and the free act and deed of the Tenant.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

[Seal]

**CERTIFICATE OF DIRECTOR OF FINANCE**

The undersigned, fiscal officer of the City of Berea, Ohio, hereby certifies that the money required to meet the obligations of the City under the foregoing Amendment has been lawfully appropriated by the Council of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

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Director of Finance  
City of Berea, Ohio