

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2015-48

By Dale A. Lange Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE CLEVELAND BROWNS FOR IMPROVEMENTS TO, AND USE OF, THE BUILDING AND FACILITIES AT 76 LOU GROZA BOULEVARD, AND DECLARING AN EMERGENCY.

WHEREAS, the City owned property located at 76 Lou Groza Boulevard and housing the facilities of the Cleveland Browns is an aging building and is in need of updating and improvement; and

WHEREAS, the Cleveland Browns have expressed interest in continuing their use and occupancy of that building and grounds beyond the year 2020; and

WHEREAS, the City of Berea and the Cleveland Browns would like to memorialize and formalize their agreement concerning improvements to, and continued occupancy of, the City owned property at 76 Lou Groza Boulevard,

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

SECTION 1. That the Mayor shall be and he is hereby authorized and directed, after approval by the Board of Control, to enter into an agreement with the Cleveland Browns for the construction, installation and improvement of the City owned property located at 76 Lou Groza Boulevard and providing for the continued occupancy of that facility by the Cleveland Browns beyond the year 2020, all as set forth in the Agreement which is attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 2. That this Council acknowledges that further legislative items will be presented to it for consideration pursuant to the agreement including funding items and contracting items which may include the bidding process.

SECTION 3. 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.

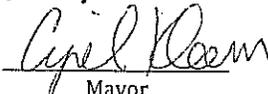
SECTION 4. That this Ordinance is hereby declared to an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that it is immediately necessary to provide for stability in the ongoing relationship between the City of Berea and the Cleveland Browns as its tenant. 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: June 1, 2015


President of Council

ATTEST: Theresa Eason
Clerk of Council

APPROVED: June 2, 2015


Mayor

Approved as to Form:

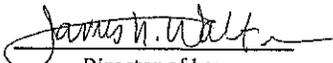

Director of Law

Exhibit
"A"

AMENDMENT TO LEASE

This Amendment to Lease ("**Amendment**") is made and entered into as of the ____ day of June, 2015, by and between the **CITY OF BERE**A, 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, and a Third Amendment to Lease dated as of October 23, 1998 (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**");

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) to terminate the Lease at any time after August 1, 2020 upon 365 days' prior written notice to Landlord ("**Tenant's Termination Right**"); and,

WHEREAS, as described in Section 7.2 of the Lease Tenant may make additions, modifications and improvements to the Project as it deems desirable for its uses and purposes, the cost of which shall be paid by the Tenant from its own funds, but in consideration of the terms of this Amendment Landlord agrees to contribute funds towards Capital Work (defined below) to the Project, and Landlord and Tenant desire to have Tenant perform certain Capital Work to the Project for which Landlord shall contribute funds to Tenant as described herein; and

WHEREAS, in consideration for (and conditioned upon) such contribution to Tenant by Landlord, Tenant is willing to agree (a) not to exercise Tenant's Termination Right to terminate the Lease effective as of any date prior to the end of the 2028 NFL football season, and (b) to perform certain additional charitable and community activities; 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. **Capital Work.** Tenant may from time to time make such capital additions, modifications, improvements, replacements, and substitutions to the Project as Tenant deems desirable for its uses and purposes, including fixtures, equipment and furnishings, and related engineering, architectural and other third party soft costs (collectively, "**Capital Work**") (even if such engineering, architectural

and other third party soft costs are incurred by the Tenant for Capital Work that is not undertaken because Landlord does not issue the bonds referred to in Section 3(b) hereof and does not otherwise make funds in the same amount as what would have been the \$7,000,000 Borrowed Contribution (defined below) available for the Capital Work as described herein). All such Capital Work shall be included for all purposes under the terms of the Lease as part of the Project and the Project Site, including for purposes of the parties' respective obligations under the Lease with respect thereto. Subject to the Borrowed Contribution being made by Landlord in such amount, Tenant agrees that it diligently and in good faith shall use commercially reasonable efforts to complete at least \$7,000,000 of Capital Work consisting of improvements or additions to the buildings and grounds (not including movable equipment) that have an expected useful life of five (5) or more years within twenty-four (24) months (subject to force majeure events) after the date on which the Borrowed Contribution actually is made available to Tenant for such purpose. Landlord shall make contributions towards Capital Work in the manner described in this Amendment. Any and all contributions made by Landlord shall be for the sole purpose of Capital Work for the Project- after the date of this Amendment.

3. **Dedicated Funds**. Notwithstanding Sections 7.2 or 15.4 or any other provision of the Lease, contributions towards the cost of the Capital Work shall be made by Landlord to Tenant from the Dedicated Funds (defined below), up to the total amount of such Dedicated Funds. The term "**Dedicated Funds**" shall mean, collectively

- (a) **2014 Contribution**. The amount of \$660,000 in immediately available funds (the "**2014 Contribution**"), plus
- (b) **Borrowed Contribution**. Subject to the City issuing bonds for the purpose of making contributions towards the cost of the Capital Work, the amount of \$7,000,000, which bonds Landlord diligently and in good faith shall use commercially reasonable efforts to issue (and make the proceeds in such amount from fully available for such purpose) by November 1, 2015, but no later than January 1, 2016 (the "**Borrowed Contribution**"), plus
- (c) **Incremental Browns Income Taxes**. Forty percent (40%) of the Incremental Browns Income Taxes attributable to the period through February 28, 2029. 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**"). 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.

4. **Funding and Disbursement Mechanisms**. The Dedicated Funds shall be made available the purposes described in this Amendment at the following times and in the following manner:

- (a) **2014 Contribution**. Landlord will retain funds and make available the 2014 Contribution to Tenant from and after the date of this Agreement for Capital Work upon Tenant's compliance with State purchase or State bidding requirements (including prevailing wage

requirements) but only to the extent (if any) required by law, and submission of invoices to Landlord for such Capital Work as described below.

- (b) Borrowed Contribution. Landlord will retain funds and make available the Borrowed Contribution to Tenant for Capital Work from the date the bonds for the purpose of making contributions towards the cost of the Capital Work have been issued, upon Tenant's compliance with State purchase or State bidding requirements, (including prevailing wage requirements) but only to the extent (if any) required by law, and submission of invoices to Landlord for such Capital Work as described below. If by January 1, 2016 Landlord is unable (despite exercising its efforts to do so in the manner described above) so to make the \$7,000,000 Borrowed Contribution available to Tenant for the purpose of making contributions towards the cost of the Capital Work, then Landlord diligently and in good faith shall use commercially reasonable efforts to make funds in that same amount available from other sources as soon as is possible for such purpose.
- (c) Incremental Browns Income Taxes. Landlord will obtain from the City's Taxing Authority the amounts received by the Taxing Authority which are attributable to Tenant's activities as described above. The amounts received by the Taxing Authority will include any adjustments made for refunds or other credits as determined by the Taxing Authority. The amounts received will be obtained on a quarterly basis and Landlord will then calculate the Incremental Browns Income Taxes received and submit such funds directly to Tenant no later than ninety (90) days after the end of each calendar quarter.
- (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.
- (ii) If there shall be no Incremental Browns Income Taxes for a particular quarter based upon the foregoing calculation, then Landlord will submit no funds to Tenant that quarter.
- (iii) Landlord will perform an annual reconciliation with the fourth quarter report to reconcile (A) the total municipal income tax received which is attributable to Tenant's activities as described above for the entire calendar year with (B) the total Base Amount. Landlord and Tenant reasonably shall agree upon any adjustments needed so to reconcile the Incremental Browns Income Taxes. If it is so determined that the Incremental Browns Income Tax for the entire calendar year is less than the amount which Tenant so received in the previous calendar quarters of such year, then Tenant will reimburse Landlord for any such overpayments made to it for such prior quarters within thirty (30) days of the determination of the reconciliation amount. If it is so determined that the Incremental Browns Income Tax for the entire calendar year is more than the amount which Tenant so received in the previous calendar quarters of such year, then Landlord will submit directly to Tenant the amount of any such

underpayment within thirty (30) days of the determination of the reconciliation amount.

To receive amounts from the 2014 Contribution and from the Borrowed Contribution, Tenant will submit a request for payment or reimbursement for Capital Work costs paid since the execution of this Amendment, in compliance with State purchase or State bidding requirements (including prevailing wage requirements) but only to the extent (if any) required by law, and submission of invoices received by Tenant to Landlord for such Capital Work, which amounts shall be paid to Tenant within thirty (30) days following each such submission. With respect to the Incremental Browns Income Taxes, Tenant will submit to Landlord a written certification of Capital Work made during each year to the Project, and paid since the execution of this Amendment, regardless of the funds used to pay for such Capital Work, within sixty (60) days of the calendar year so that Landlord may document such capital assets for its annual audit and to determine compliance with Section 7 hereof. Notwithstanding the foregoing, Tenant still shall be entitled to receive contributions for Capital Work done in a prior calendar year even if it makes submission for the same in the manner described above more than sixty (60) days following the end of such calendar year.

Landlord covenants and agrees to cause all of the Dedicated Funds to be made available in the manner described above for contributions to the Capital Work (with all of Tenant's agreements made in this Amendment being expressly contingent upon Landlord fully performing, and Tenant being entitled to exercise all rights and remedies available under the Lease, at law or in equity for any breach by Landlord of, the foregoing covenant and agreement). Landlord further covenants and agrees to take all measures necessary to preserve the current share of income tax revenues to which Landlord currently is entitled, including by defending against any legal challenge to such arrangement, and not to agree to receive any lesser share thereof. The foregoing covenants and agreements by Landlord shall cover, without limitation, any challenge by any party other than Tenant to Landlord's authority to make or to perform its agreements under this Amendment, or any failure by Landlord actually to make any portion of the Dedicated Funds available as described herein. Tenant shall not have any liability whatsoever to Landlord for any shortfall in any projected amount of Incremental Browns Income Taxes, including but not limited to any resulting from Tenant's failure to increase as is projected the overall amount of taxable income which it pays to its players, coaches, and administrative and/or corporate personnel. In the event that Landlord shall default under, and as a result thereof Tenant is entitled to terminate, the Lease, then as an element of Tenant's damages for Landlord's breach Tenant shall be entitled to collect from Landlord any costs of Capital Work for which Tenant shall not have been fully reimbursed as provided in this Amendment

5. **No Discriminatory Taxes.** Any new or increased municipal income taxes imposed by Landlord on Tenant's business and/or on compensation paid to or earned by Tenant's employees, unless levied equally upon all businesses and/or individuals in a nondiscretionary and non-discriminatory manner, shall be deemed to constitute a breach of the Lease by Landlord.

6. **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 herein for the costs of the Capital Work (including, without limitation, the Borrowed Contribution in the amount of \$7,000,000 actually being made available to Tenant for such purpose by January 1, 2016), 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 2028 NFL football season.

7. **Carry Forward or Unused Funds Received.** Tenant may carry forward any unused Dedicated Funds received as part of this Amendment to future years for future contributions towards Capital Work. At the conclusion of the Lease term, any Dedicated Funds contributed by Landlord for costs of Capital Work that have not been spent by Tenant on Capital Work prior to such date shall be returned to Landlord. For the avoidance of doubt, Tenant may receive the Dedicated Funds (or any portion thereof) in the manner described herein for contributions to the costs of Capital Work which costs may have been incurred by Tenant prior to the date on which such Dedicated Funds actually become available for such purpose hereunder.

8. **Tenant's Additional Charitable and Community Activities.** In further 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 herein for the costs of the Capital Work (including, without limitation, the Borrowed Contribution in the amount of \$7,000,000 actually being made available to Tenant for such purpose by January 1, 2016), Tenant agrees to perform those additional charitable and community activities described on **Exhibit A** attached hereto, in accordance with the terms thereof.

9. **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 hereinbefore expressly amended, 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.

10. **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.

11. **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.

12. **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.

13. **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

14. **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.

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: _____

Name: Cyril Kleem

Title: Mayor

And: _____

Name: Dana J. Kavander

Title: Director of Finance

Approved as to Form:

James N. Walters, III
Director of Law

TENANT:

**CLEVELAND BROWNS FOOTBALL
COMPANY LLC**

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) ss.
COUNTY OF CUYAHOGA)

On this ____ day of June, 2015, before me, a Notary Public in and for said County and State, personally appeared The Honorable Cyril Kleem, the Mayor, and Dana J. Kavander, 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 June , 2015, 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]

EXHIBIT A

In connection with the Amendment, Tenant agrees to provide Landlord with the benefits outlined below during the remaining term of the Lease. Landlord and Tenant acknowledge and agree that the below benefits are material terms of the Amendment, and that, while Tenant will use good faith efforts to provide such benefits, the unavailability or failure to provide any of the benefits shall not constitute a breach of the material provisions of the Amendment or the Lease.

1. **Field House Usage.** Tenant will make the field house at the training facility available to Landlord for use in connection with various non-profit or public, community sports activities (i.e. football camps) for 15 days each year.
2. **Equipment Donation.** Tenant will provide Landlord with certain office and athletic training equipment that Tenant elects to donate (if any), provided that Landlord recognizes that it will not be entitled to receive any certain amount or be the sole recipient of such equipment. Landlord must use any equipment for civic or public purposes or donate the equipment to a charitable or non-profit organization.
3. **Ticket Donation.** From time to time during the Term, Tenant will provide Landlord with tickets to Cleveland Browns events or games, which Landlord will donate to Berea-area charities and non-profit organizations; provided that Landlord recognizes that it will not be entitled to receive any certain amount of such tickets.
4. **NFL Programs.** Tenant will cooperate Landlord, at its reasonable request, to facilitate connections between Landlord and the National Football League to explore potential NFL grant and community programs; provided that Tenant will have no responsibility for ensuring that Landlord is awarded or selected for any NFL grant(s) or program(s).
5. **Appearances.** Each year during the remaining term, Tenant will make available a Cleveland Browns player, alumni or coach (as determined by Tenant) to make an appearance at one of Landlord's public youth sports programs or at other civic event. The date and time of the appearance will be subject to the approval of Tenant and to the availability of the individual making the appearance.
6. **Public Football Event.** Tenant will make open to the public at least two (2) Cleveland Browns' practices or football-related events taking place at the Project.
7. **Public Safety Participation.** Once a year, Tenant will either include a reasonable number of representatives from Landlord's police department in a public safety training program or host in cooperation with Landlord a public safety education program.
8. **Fundraiser.** Annually, Tenant will make available the training facility for use in connection with a fundraising event in support of the Berea Youth Sports Commission/Lou Groza football. Tenant's contribution to the fundraiser will not exceed \$5,000 of goods and services, excluding the value of the venue.

9. **Gameday Experience.** Tenant will provide the Berea Youth Sports Commission/Lou Groza football with a game day experience to one (1) Cleveland Browns game each season. The experience will include admission tickets and a unique game day experience to be determined by Tenant.
10. **Video Support.** Tenant will produce three (3) videos on behalf of Landlord. The videos will promote the City of Berea and be approximately five (5) minutes in length.

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 during the year 2015 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.

Director of Finance
City of Berea, Ohio