

BILL NO. 122-2012

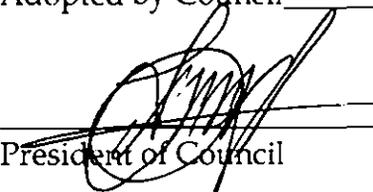
AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE A THIRD AMENDMENT TO THE REVISED AND RESTATED LEASE AGREEMENT BETWEEN THE CITY OF READING AND READING BASEBALL LP (READING PHILLIES).

THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

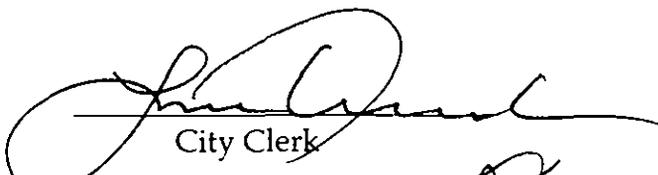
That Mayor Vaughn D. Spencer be authorized to execute the Third Amendment to the Revised and Restated Lease Agreement between the City of Reading and Reading Baseball LP (Reading Phillies) (attached as Exhibit A) on behalf of the City of Reading.

Adopted by Council Dec 10, 2012



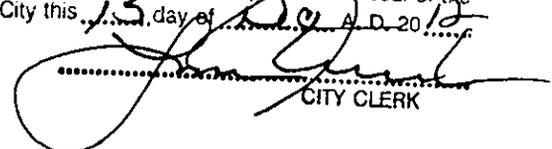
President of Council

Attest:



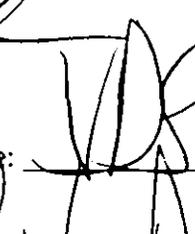
City Clerk

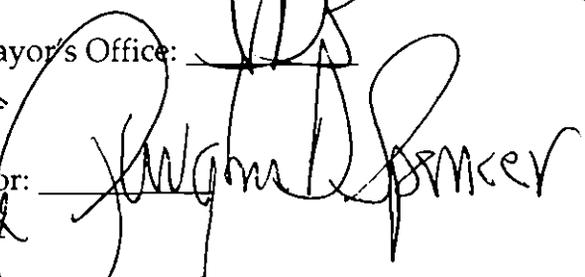
I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Resolution passed by the Council of the City of Reading, on the 10 day of Dec A. D. 20 12. Witness my hand and seal of the said City this 13 day of Dec A. D. 20 12.



CITY CLERK

Submitted to Mayor: 
Date: 12/11/12

Received by the Mayor's Office: 
Date: 12/11/12

Approved by Mayor: 
Date: 12/11/12

Vetoed by Mayor: _____
Date: _____

EXHIBIT A

THIRD AMENDMENT

TO

REVISED AND RESTATED LEASE AGREEMENT

THIS THIRD AMENDMENT TO REVISED AND RESTATED LEASE AGREEMENT ("Amendment") made as of this ____ day of _____, 2012, (the "Effective Date") between the **CITY OF READING**, a third-class city of the Commonwealth of Pennsylvania existing pursuant to the Third Class City Code, 53 P.S. §38101 et seq. and operating pursuant to the Optional Third Class City Charter Law, 53 P.S. §4104 et seq., with its principal place of business located at 815 Washington Street, Reading, Pennsylvania 19601 (the "City"); and **READING BASEBALL LP**, a Pennsylvania limited partnership (as assignee of E&J Baseball Club, Inc.), trading as the Reading Phillies Baseball Club, with its principal place of business located at P.O. Box 15050, Reading, Pennsylvania 19612 ("Reading Baseball").

RECITALS:

- A. The City and Reading Baseball entered into a certain Revised and Restated Lease Agreement dated October 25, 1999, as amended by First Amendment to Revised and Restated Lease Amendment dated August 25, 2000, and by Second Amendment to Revised and Restated Lease Amendment dated January 26, 2004, and as supplemented by Capital Improvements Financing Agreement dated January 29, 2010 (the "Capital Improvements Financing Agreement") (all of the foregoing being referred to in this Amendment collectively as the "Lease") for First Energy Stadium (f/k/a GPU Stadium or Reading Municipal Memorial Stadium) located at 1907 North Front Street, Reading, Pennsylvania (the "Stadium").
- B. The City desires to issue indebtedness (the "Fulton Financing") to refinance with Fulton Bank, National Association ("Fulton Bank") the "Loan," as that term is defined in the Capital Improvements Financing Agreement.
- C. The parties desire to extend the Term of the Lease and to amend the rental payment terms thereunder in view of the new financial obligations to be incurred by the City under the Fulton Financing, and otherwise to modify the Lease as set forth in this Amendment.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual covenants contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Reading Baseball agree as follows:

Amendment of Lease. From and after the Effective Date, Section 4.1 and Section 5.1(a) of the Lease are deleted in their entireties and replaced with the following provisions, without affecting Section 5.1(b) of the Lease, which shall remain in full force and effect without modification:

“Section 4.1. Term.

The Term of this Lease commenced on January 1, 2000, and shall expire on December 31, 2027; provided, however, that: (a) Reading Baseball shall have an option, at its election, to extend the Term of this Lease for an additional term of five (5) years, which such extension option shall be automatically deemed to have been exercised by Reading Baseball unless Reading Baseball provides to the City written notice on or before September 15, 2027, stating that it does not elect to exercise such extension option; and (b) if such extension has been exercised or is deemed to have been exercised as aforesaid, Reading Baseball shall have the further option, at its election, to extend the Term of this Lease for a second additional term of five (5) years, which such extension option shall be automatically deemed to have been exercised by Reading Baseball unless Reading Baseball provides to the City written notice on or before September 15, 2032, stating that it does not elect to exercise such second extension option. During each of such extension options (if exercised or deemed to have been exercised as aforesaid) all terms and conditions of this Lease shall be the same as set forth herein except that the rent for the extension terms shall be as set forth as provided in Section 5.1 below, and in no event shall Reading Baseball have the right to extend the Term of the Lease beyond December 31, 2037, except upon the mutual agreement of Reading Baseball and the City.

Section 5.1 Rental Payments.

(a) For calendar year 2012, Reading Baseball has previously paid to the City (or to Fulton Bank on behalf of the City) all rent under the Lease and all sums payable pursuant to the Capital Improvements Financing Agreement for that calendar year. With respect to each calendar year commencing with 2013 and extending through and including the end of the Term (as the Term may be extended pursuant to Section 4.1 above), Reading Baseball shall pay the City annual rent in a single annual installment, which shall be paid on May 1 of each calendar year in the amounts set forth on Schedule A attached to this Amendment.”

Capital Improvements Financing Agreement is Superseded. This Amendment shall supersede and replace in its entirety the Capital Improvements Financing Agreement, the terms of which shall be of no further force and effect. In particular, the parties agree that no further sums shall be payable by Reading Baseball pursuant to the Capital Improvements Financing Agreement.

Improvements to the Stadium. In connection with any capital improvements and equipment that are erected or installed by Reading Baseball at the Stadium during the Term of this Lease and which become the property of the City upon installation, the City acknowledges that the acquisition and installation thereof are made for the benefit of the City as landlord, and the City agrees to provide to Reading Baseball the taxpayer ID number of the City and authorizes Reading Baseball to utilize such taxpayer ID number to obtain the benefit of the City's exemption from sales and use taxes applicable to the cost thereof.

Titles of Sections. The section titles used in this Amendment are for convenience and reference only, shall not constitute a part of this Amendment, and shall not affect the meaning, construction, or effect of this Amendment or the Lease.

Definitions. Unless otherwise set forth in this Amendment, all capitalized terms shall have the same meaning ascribed to them in the Lease.

Interpretation. All other terms, covenants and conditions of the Lease shall remain unchanged and shall continue in full force and effect except as such terms, covenants and conditions have been expressly amended or modified by this Amendment, and this Amendment shall, by this reference, constitute a part of the Lease.

Successors and Assigns. This Amendment and the terms, covenants and conditions herein contained shall inure to the benefit of and be binding upon the City and its successors and assigns, and Reading Baseball and its permitted successors and assigns.

Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument.

Governing Law. This Amendment and all questions relating to its validity, interpretation, performance and enforcement, shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without reference to conflict of law principles.

IN WITNESS WHEREOF, the City and Reading Baseball, intending to be legally bound, have executed this Amendment under seal as of the date first above written.

CITY OF READING

By: _____

Approved as to form and
Legality

Attest:

City Solicitor:

City Clerk:

READING BASEBALL LP

By Reading Baseball GP, LLC

By: _____

Name:

Title:

Schedule A --Required Annual Rental Payments

<u>Calendar Year</u>	<u>Annual Rental</u>
2013	\$300,000
2014	\$300,000
2015	\$300,000
2016	\$300,000
2017	\$300,000
2018	\$300,000
2019	\$300,000
2020	\$325,000
2021	\$350,000
2022	\$350,000
2023	\$350,000
2024	\$325,000
2025	\$325,000
2026	\$300,000
2027	\$300,000
2028*	\$10,000
2029*	\$10,000
2030*	\$10,000
2031*	\$10,000
2032*	\$10,000
2033*	\$10,000
2034*	\$10,000
2035*	\$10,000
2036*	\$10,000
2037*	\$10,000

*If Reading Baseball extends, or is deemed to have extended, the Term through this calendar year as permitted in Section 4.1