

Drafted by	Legal Specialist
Sponsored by/Referred by	Councilor Sterner/Daubert
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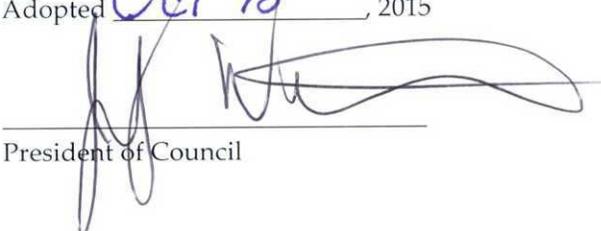
**BILL NO. 53 2015**  
**AN ORDINANCE**

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH THE "READING'S CHRISTMAS ON THE MOUNTAIN" ORGANIZATION TO OPERATE THE HILLSIDE HOLIDAY LIGHT DISPLAY AT HILLSIDE PLAYGROUND**

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

**SECTION 1:** Authorizing the execution of a lease agreement with "Reading's Christmas on the Mountain" organization to operate the Hillside Holiday Light Display at Hillside Playground as attached in Exhibit A.

**SECTION 2.** This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

Adopted Oct 12, 2015  
  
 \_\_\_\_\_  
 President of Council

Attest:

  
 \_\_\_\_\_  
 City Clerk

Submitted to Mayor: 

Date: 10/13/15

Received by the Mayor's Office: 

Date: 10/13/15

Approved by Mayor: 

Date: 10/14/15

Vetoed by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

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 Ordinance passed by the Council of the City of Reading, on the 12 day of Oct, A. D. 20 15. Witness my hand and seal of the said City this 14 day of Oct, A. D. 20 15.  
  
 \_\_\_\_\_  
 CITY CLERK

## EXHIBIT A

### LEASE AGREEMENT

THIS LEASE AGREEMENT (“**Agreement**”), dated as of the \_\_\_\_ day of October, 2015 (the “**Effective Date**”), is entered into by the CITY OF READING, a municipal corporation organized, established and existing under the laws of the Commonwealth of Pennsylvania, having an address at 815 Washington Street, Reading, Pennsylvania 19601 (hereinafter referred to as “**Landlord**”), and READING’S CHRISTMAS ON THE MOUNTAIN, LLC a Pennsylvania LLC formed for the purposes of philanthropic endeavors in the Reading area, having a mailing address of P.O. Box \_\_\_\_ (hereinafter referred to as “**Tenant**”). Landlord and Tenant are sometimes collectively referred to hereinafter as the “**Parties**,” and each individually, as a “**Party**.”

### BACKGROUND

Landlord owns or controls Hillside Playground a certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, making up a park and playground located on the East side of the 400 block of North 14<sup>th</sup> Street, City of Reading, County of Berks, Commonwealth of Pennsylvania, together with the building, fields, and improvements situated thereon, all of which is commonly referred to as Hilltop Playground (collectively, the “**Property**”). Tenant is using the Property as a site for a holiday display to serve and entertain the people of the City of Reading and neighboring areas and the incorporation of additional equipment to facilitate the annual event commonly referred to as Christmas on the Mountain (hereinafter, the “**Event**”). Tenant desires to lease from Landlord, and Landlord desires to grant to Tenant, the right to use the Property in accordance with the terms of this Agreement.

The Parties, intending to be legally bound, agree as follows:

1. **LEASE OF PREMISES.** Landlord agrees to lease to Tenant the Property as described follows: (i) the pavilion, the attached building, and any sheds or storage units (ii) the lawn area running alongside the four hundred block of North 14<sup>th</sup> Street facing the Property, (iii) locations of ingress and egress, including stairs, driveways and ramps to the Property, and (iv) any and all fields, including but not limited to baseball fields and basketball courts, associated with the park and connected with the Property.
2. **PERMITTED USE.**
  - a) Tenant may use the Property for any lawful purpose including the preparation, development, erection, and operation of the Event (collectively, the “**Permitted Use**”).
  - b) Tenant agrees to comply with all applicable federal, state and local laws, rules, statutes and regulations, relating to the use of the Property.

- c) Tenant will have the right to make reasonable modifications, alterations, replacements, upgrades, and expansions to the Property in order to insure that the Event complies with all applicable federal, state, and local laws, rules, statutes, and regulations.
- d) Tenant shall make use of any predetermined Landlord equipment at its election, but Landlord equipment shall at all times remain Landlord's property and shall not be removed from service by Landlord. Landlord shall be responsible for replacement and/or repair of Landlord equipment damaged as a result of Landlord's negligence or neglect.

**3. TERM.**

- a) The initial lease term will be from August 1, 2015 through January 31, 2016 (collectively referred to as the "**Initial Term**"). The Initial Term shall automatically renew for the following periods:
  - August 1, 2016 through January 31, 2017;
  - August 1, 2017 through January 31, 2018;
  - August 1, 2018 through January 31, 2019;
  - August 1, 2019 through January 31, 2020;
  - August 1, 2020 through January 31, 2021;
  - August 1, 2021 through January 31, 2022;
  - August 1, 2022 through January 31, 2023;
  - August 1, 2023 through January 31, 2024; and
  - August 1, 2024 through January 31, 2025 (each, hereinafter "**Annual Terms**").
- b) Unless Landlord has given Tenant written notice of its desire to terminate this Agreement at least one calendar year prior to the end of the current term but not before the expiration of the Initial Term, this Agreement shall continue in force and effect, upon the same covenants, terms and conditions, for an additional term of one (1) year (each, hereinafter, an "**Additional Term**").
- c) The Initial Term, the Annual Terms and any Additional Terms are collectively referred to as the Term ("**Term**").

**4. FEES.**

- a) Landlord leases the Property from August through January to Tenant for \$1.00 annually, payable within thirty (30) days of the Effective Date or the anniversary thereof.
- b) If this Agreement is not terminated before January 31, 2019, Landlord agrees to transfer all title to property used by the Landlord in previous Christmas events at the Property to Tenant at that time for the sum of one dollar (\$1.00). Any property so transferred shall be disposed of, or utilized, in any manner as it may please the Tenant.
- c) Tenant agrees that at the termination of this Lease, any assets held by Tenant having been received as a donation in furtherance of the Event, shall be donated to the Reading High School JROTC.
- d) The provisions of the foregoing sentence shall survive the termination of this Agreement.

**5. APPROVALS; LEASE CONTINGENCIES.** Notwithstanding the foregoing or anything to the contrary set forth herein, Landlord hereby agrees that this Agreement and Tenant's ability to use the Property are expressly contingent upon the suitability of the Property for Tenant's Permitted Use and Tenant's ability to obtain and maintain all administrative licenses, permits, approvals or anything deemed necessary or appropriate by Tenant for its use of the Property, and Landlord agrees not to unreasonably withhold the same from Tenant. As of the Effective Date, Tenant shall have the right to enter upon the Property to inspect, survey, test, evaluate, assess, measure and/or appraise the Property including, without limitation, the Property, and/or to perform such other due diligence as Tenant deems

necessary in its sole discretion, all at Tenant's expense, for the purpose of determining the suitability and feasibility of the Premises for Tenant's intended use thereof.

6. **TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

- a) by Tenant, upon sixty (60) days prior written notice to Landlord for any reason or no reason at all;
- b) by Tenant, upon written notice to Landlord, if Tenant is unable to obtain or maintain, any required approval(s) or the issuance of a license or permit by any agency or other governmental authority necessary or appropriate for the operation of the Event, now or hereafter intended by Tenant; or if Tenant determines at any time in its sole discretion that the cost of obtaining or maintaining any of the foregoing is commercially unreasonable.

7. **INSURANCE.** During the Term, Tenant, at its sole cost and expense, shall obtain and maintain the following insurance: (i) Commercial general liability insurance with a minimum limit of liability of One Million Dollars (\$1,000,000.00) combined single limit for bodily injury or death/property damage arising out of any single occurrence. The coverage afforded by Tenant's commercial general liability insurance shall apply to Landlord as an additional insured, but only with respect to Landlord's liability arising out of its interest in the Property. Landlord shall insure the Building against fire and other casualty for at least the full replacement value thereof. Notwithstanding anything to the contrary set forth in this Agreement, the Parties hereby confirm that the provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement.

8. **INTERFERENCE.**

- a) From and after the date of this Agreement, Landlord shall not grant or convey a lease, license or any other right to any third party for the use of the Property during the Term, if such use could adversely affect or interfere with the Event, the operations of Tenant, or the rights of Tenant under this Agreement. Landlord shall notify Tenant in writing prior to granting any third party the right to enter and/or conduct activities on the Property.
- b) Landlord shall not use, nor shall Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property in any way that could interfere with the Event, the operations of Tenant, or the rights of Tenant under this Agreement. Notwithstanding the foregoing, Landlord may enter the property at any time to resolve an emergency that threatens the life or safety of anyone, or to maintain or repair damage to the Property, provided that such maintenance is done as a time and in a manner that presents the least amount of interference of the Event as is reasonable under the circumstances.
- c) This Section 8 shall survive the expiration or earlier termination of this Agreement.

9. **INDEMNIFICATION.**

- a) Tenant hereby agrees to indemnify, defend and hold Landlord harmless from and against any and all physical injury claims and associated costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the use, maintenance, repair, operation or removal of the equipment used in the Event, or for any actions or participation during the Event, except to the extent any such injury, loss, damage, or liability is attributable to the negligent or intentional act or omission of Landlord, its employees, agents, or independent contractors.
- b) Landlord hereby agrees to indemnify, defend, and hold Tenant harmless from and against any and all physical injury claims and associated costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord or its employees, agents, or independent contractors or Landlord's breach of any provision

of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

c) This Section 9 shall survive the expiration or earlier termination of this Agreement.

**10. ACCESS.** At all times throughout the Term, and at no additional charge to Tenant, Tenant and its employees, agents, volunteers, and subcontractors, shall have full, free, and uninterrupted access to the Property twenty-four (24) hours per day, seven (7) days per week, for purposes of installing, maintaining, operating, and repairing the Event and any utilities serving the Property.

**11. REMOVAL/RESTORATION.** All portions of the equipment used in the Event brought onto the Property by Tenant will at all times be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. All portions of the equipment purchased by the Tenant for the price set forth above shall remain Tenant's personal property. Any equipment constructed, erected, or placed on the Property by Tenant will become, or be considered affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed on the Premises by Tenant will at all times be and remain the property of Tenant and may be removed by Tenant at any time during the Term. In any event, within ninety (90) days of the termination of this Agreement, Tenant shall remove all of Tenant's personal property from the Premises and Tenant shall, to the extent practical and economically reasonable, restore the Property to its condition at the commencement of this Agreement, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted.

**12. MAINTENANCE/UTILITIES.** Landlord shall keep and maintain the Property in good condition, reasonable wear and tear and damage from the elements or casualty excepted. Landlord shall maintain and repair the Property (including, without limitation, the Building and all common areas) and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

**13. DEFAULT AND RIGHT TO CURE.** The following will be deemed a default by the Parties and a breach of this Agreement: (i) failure to perform any term, condition or breach of any warranty or covenant under this Agreement within five (5) days after receipt of written notice from the other Party specifying the failure. No such failure will be deemed to exist if the respective Party has commenced to cure the default within the prescribed cure period and provided that the efforts are prosecuted to completion with reasonable diligence. If the Party remains in default beyond the applicable cure period, the other shall have the right to exercise any and all rights available to it hereunder, under law or in equity.

**14. ASSIGNMENT/SUBLEASE.** Upon a written request to, and approval from the Landlord, the Tenant shall have the right to assign this Agreement. Upon notification to Landlord of any such assignment, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement.

**15. NOTICES AND REPORTING.** No later than April 30 following each annual Event, the Tenant agrees to provide a copy of its annual tax return. All notices, requests, demands and communications hereunder shall be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices shall be addressed to the Parties as follows:

If to Tenant:                      Reading's Christmas on the Mountain, LLC

c/o Tim Profit, Member  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_

If to Landlord: City of Reading  
Attn: Managing Director  
815 Washington Street  
Reading, PA 19601

With a copy to: City of Reading  
Attn: Solicitor  
815 Washington Street  
Reading, PA 19601

Either Party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other Party as provided for herein.

**16. CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord shall provide notice of the proceeding to Tenant within forty-eight (48) hours of Landlord's notification. If a condemning authority takes all of the Property, or a portion of the Property sufficient, in Tenant's sole determination, to render the Property unsuitable for Tenant, this Agreement will terminate as of the date title to the Property vests in the condemning authority. In such event, the Tenant's obligations hereunder shall terminate along with this Agreement.

**17. CASUALTY.** The Parties shall provide notice to each other of any casualty affecting the Property of which a Party becomes aware, within forty-eight (48) hours of the casualty. If any part of the Property is damaged by fire or other casualty so as to render the Property unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such damage or destruction. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof.

**18. TAXES.** Landlord will be responsible for payment of all taxes levied upon the lands, improvements and other property of Landlord.

**19. SALE OF PROPERTY.** If Landlord, at any time during the Term, decides to sell to a purchaser other than Tenant, or to subdivide or rezone any of the Property, or all or any part of the Property, Landlord shall promptly notify Tenant in writing, and such sale, subdivision or rezoning will be subject to this Agreement and Tenant's rights hereunder. The provisions of this Section 19 will in no way limit or impair the obligations of Landlord under Section 8 above.

**20. MISCELLANEOUS.**

- a) **Amendment/Waiver.** This Agreement cannot be amended, modified, or revised unless done in writing and signed by an authorized agent of Landlord and an authorized agent of Tenant. No provision of this Agreement may be waived except in a writing signed by both Parties.
- b) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being expressly made a part hereof, constitute the entire agreement of the Parties hereto and supersede all

prior offers, negotiations, and agreements with respect to the subject matter of this Agreement.

- c) **Governing Law.** This Agreement will be governed by the laws of the Commonwealth of Pennsylvania, without regard to conflicts of law.
- d) **Interpretation.** Unless otherwise specified herein, the following rules of construction and interpretation shall apply to this Agreement: (1) captions are for purposes of convenience and reference only and shall in no way define or limit the construction of the terms and conditions hereof; (2) use of the term "including" will be interpreted to mean "including but not limited to"; (3) whenever a Party's consent is required under this Agreement, except as otherwise stated in the Agreement or as the same may be duplicative, such consent shall not be unreasonably withheld, conditioned or delayed; (4) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement as if set forth in full herein; (5) use of the terms "termination" or "expiration" are interchangeable; (6) any reference to a default will take into consideration any applicable notice, grace and cure periods; and (7) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity of any term or provision of this Agreement, the ambiguity will not be resolved on the basis of which Party drafted the Agreement.
- e) **No Electronic Signature/No Option.** The submission of this Agreement to any Party for examination or consideration will not constitute an offer, reservation of, or option for the Property based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery of it by both Landlord and Tenant.
- f) **Severability.** If any term or condition of this Agreement is found to be unenforceable, the remaining terms and conditions will remain binding upon the Parties as though said unenforceable provisions were not contained herein. However, if the invalid, illegal or unenforceable provisions materially affect this Agreement, then this Agreement may be terminated by either Party on ten (10) business days prior written notice to the other Party hereto.
- g) **Survival.** All indemnity provisions contained herein will survive the expiration or earlier termination of this Agreement.

**IN WITNESS WHEREOF**, the Parties have caused this Lease Agreement to be duly executed and effective as of the date first written above.

**"LANDLORD"**

CITY OF READING

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**"TENANT"**

THE CHRISTMAS ON THE MOUNTAIN ORGANIZATION

By: \_\_\_\_\_  
Timothy J. Profit, Member

Attest as to all:

\_\_\_\_\_  
City of Reading Clerk