

ORDINANCE NO. 2014-06

**AN ORDINANCE OF RADNOR TOWNSHIP, DELAWARE COUNTY,
PENNSYLVANIA, APPROVING A LAND LEASE AGREEMENT BETWEEN
THE TOWNSHIP OF RADNOR AND WILLOWS RADNOR, LLC**

WHEREAS, Radnor Township and Willows Radnor, LLC have negotiated and agreed upon a lease of Willows Mansion and adjacent grounds; and

WHEREAS, Willows Radnor, LLC intends to construct substantial improvements and repairs to the Willows Mansion and adjacent grounds at no cost to Radnor Township; and

WHEREAS § 3.01 of the Radnor Township Home Rule Charter permits the lease of real property by the Township for a term in excess of three years by ordinance.

NOW, THEREFORE, be it hereby *ENACTED* and *ORDAINED* that the Radnor Township Board of Commissioners hereby approves the Lease Agreement with Willows Radnor, LLC, a copy of which is attached hereto and incorporated herein.

ENACTED AND ORDAINED this 8 day of *September*, 2014.

RADNOR TOWNSHIP


By:



Name: Elaine P. Schaefer

Title: President

ATTEST:


Robert A. Zienkowski, Secretary

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") made and entered into this 21ST day of OCTOBER, 2014, by and between, the TOWNSHIP OF RADNOR, a Township of the First Class with offices at 301 Iven Avenue, Wayne, PA. 19087 ("Radnor" or the "Township") and WILLOWS RADNOR, LLC, with offices at 111 Smith School Road, Perkasie, PA 18944 ("WRL").

WHEREAS, WRL desires to use, lease, and improve the property, owned by Radnor, known as the Willows Mansion and adjacent areas to be described on a site plan prior to commencement of this Lease, a copy of which is attached hereto and incorporated herein as Exhibit "A" (hereinafter the "Property"); and

WHEREAS, WRL agrees to provide, at its sole cost and expense, significant improvements to the property as further described in Exhibit "B" (hereinafter the "WRL Improvements") consisting of two Phases as described hereafter; and

WHEREAS, after the installation of the WRL Improvements, the Property will be available for joint use of both WRL and Radnor in accordance with the conditions set forth below; and

WHEREAS, it is mutually agreed that WRL will utilize and improve the Property only for the purposes outlined in this Lease beginning on the commencement of this Lease.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, WRL and Radnor agree as follows:

A. LEASE OF PROPERTY

In consideration of the proposed improvements by WRL as set forth in this Lease, and other good and valuable consideration, Radnor leases the Property, consisting of the Willow Mansion and the adjacent areas identified on the plan attached hereto as Exhibit "A" to WRL. The adjacent areas to be leased to WRL include those areas to be improved as shown on Exhibit "A" including:

1. The existing parking and expanded parking area;
2. An improved and enhanced walkway to the mansion;
3. A terrace area and outdoor ceremony area;
4. An event structure adjacent to the mansion; and
5. The garden allee and garden area.

The terms and conditions of the lease of the Property are as set forth below.

B. TERM OF LEASE; RENT

1. The initial term of this Lease ("Initial Term") shall be for ten (10) years commencing on the Substantial Completion of the WRL Improvements as defined herein (the "Commencement Date"). "Substantial Completion" means that a certificate of occupancy has been issued for the Property and the WRL Improvements have been completed as required pursuant to this Lease. WRL shall also have the option to three (3) five year extension terms.

2. WRL shall, provided the Lease is in full force and effect and that WRL is not in default under any of the terms and conditions of the Lease at the time of notification or commencement, shall have three options to extend this Lease for additional terms of five (5) years each as of the date the extension term is to commence, on the same terms and conditions set forth in this Lease, except as modified by the terms, covenants and conditions as set forth below:

a. If WRL elects to exercise an extension option then WRL shall provide Radnor with written notice of extension, six (6) months prior to the expiration of the then term of the Lease or extension thereof. If WRL fails to provide such notice, WRL shall have no further or additional right to extend the term of the Lease.

b. The extension options are not transferrable. The parties acknowledge and agree that the foregoing extension options to extend this Lease shall be "personal" to WRL except as permitted by paragraph G.1. of this Lease. WRL shall have no further right to extend the term of the Lease.

3. WRL shall pay Radnor base annual rent during each year of the Term (including the Initial Term and any renewals) in the amount of Eighty One Thousand Dollars (\$81,000), payable in equal monthly installments of Six Thousand Seven Hundred Fifty Dollars (\$6,750). Rental Payments shall commence in the first month in which a certificate of occupancy is issued for the Property.

4. In addition to the base annual rent set forth above, during each Lease Year of the Term, when applicable, WRL shall pay to Radnor an additional sum equal to 3.5% of all gross revenue in excess of One Million Five Hundred Thousand Dollars (\$1,500,000) realized by WRL during such Lease Year period (the "Percentage Rent"). Percentage Rent shall be payable on or before the thirty (30) business days following the end of each Lease Year during the Term and, within sixty (60) days at the end of the Term. "Lease Year" shall have the following meaning: the first "Lease Year" shall mean that period commencing on the Commencement Date and ending on the following December 31st. Thereafter, "Lease Year" shall mean each successive twelve (12) month period during the Term or portion thereof.

5. In order to confirm the Percentage Rent, the Township shall have the right, annually, to audit the financial statements and accounts of WRL to confirm gross revenue. In the event that WRL has submitted inaccurate financial information, the Township Board of Commissioners shall have the right to assess interest and penalties in accordance with Chapter 266 of the Radnor Code utilized for business privilege tax audits.

C. WRL RIGHTS AND OBLIGATIONS

1. WRL will construct, at its sole cost and expense, the WRL Improvements in accordance with Section H of this Lease. The WRL improvements shall consist of two phases and each phase shall be subject to a separate construction agreement between the parties which will establish sufficient financial security to guarantee timely completion of the improvements. The proposed phases and improvements are set forth on Exhibit "B", attached hereto and incorporated herein.

2. WRL shall have full use of Property for its proposed events subject to the following Township Use:

a. Weekday use (Monday-Thursday). The Township shall have ten (10) uses per year for no charge. Additionally, Township, the Radnor School District and Township sponsored organizations shall have fifteen (15) uses per year at a flat rate of \$250.

b. Weekend (Friday, Saturday, Sunday) off-peak uses (January – March). The Township shall have three (3) uses per year at no charge during off-peak weekends. Additionally, Township, the Radnor School District, and Township sponsored organizations shall have six (6) uses per year at a flat rate of \$500.00.

c. Peak Season (April – December). The Township shall have up to four (4) weekend events during peak season subject to notice in advance at no charge.

d. The parties shall establish an annual schedule of WRL, Township, resident and Township sponsored non-profit use on or before January 30th of each year. Thereafter, Township sponsored events or Township use shall be subject to the permitted scheduled uses of WRL. As of the date of execution of this lease the current annual Township events are as follows:

Fall Harvest/Halloween---first and second Sunday in early October

Holiday at the Willows---first and second Sunday in December

Mystery Dinner Theatre---last Friday or Saturday in January

Valentine's Dance---first and second Friday in February

e. The Township shall be provided a 10% discount on all Township or Township sponsored rentals and/or catering for up to five (5) peak and five (5) non-peak events per year. The Township discount shall be based upon the published prices by WRL for similar rental or catering events.

3. WRL shall be responsible for any and all costs and expenses related to maintenance, repair, upkeep and improvement of the Property including but not limited to roof, building exterior, HVAC and adjacent leased areas for WRL as shown on Exhibit "A". Additionally, WRL shall be responsible for any capital repairs, replacements or improvements to the Property unless as a result of the willful misconduct of the Township.

4. WRL shall provide space for Wayne Art Center educational and exhibition uses and for other Township authorized non-profit uses, and WRL shall provide for any necessary improvements related to these uses. All such non-profit users shall be pre-approved by the Township Board of Commissioners.

5. WRL may not utilize the Property for lawful activities other than as set forth in this Lease and the Property shall not be utilized for events such as carnivals, flea markets, dog/horse shows or like activities without the prior written consent of Radnor.

6. WRL shall be responsible at all times and in all circumstances to control the use of the facilities to insure compliance with the terms of this Lease and any rules, regulations or ordinances of Radnor.

7. All utility bills for all uses of the Property shall be borne by WRL unless otherwise agreed by the parties.

8. WRL shall install stormwater management facilities as required by the statutes, ordinances and regulations of Radnor and the Commonwealth of Pennsylvania.

9. WRL shall not use, generate, store, treat, dispose of, or otherwise introduce into, on or about the Property any hazardous substances, as defined by any Federal, State or Township law or ordinance.

10. WRL shall not use the Property or permit the Property to be used in any manner that results in damage to the Property or constitutes a nuisance. WRL shall not use the Property or permit the Property to be used for any illegal purpose. WRL, at its own expense, will comply, and will cause its contractors and invitees to comply, with all applicable Federal, state, county or township laws, ordinances, rules, or regulations.

11. WRL shall maintain the Improvements and adjacent areas as shown on Exhibit "A" throughout the Initial Term of the Lease and any extensions of the Initial Term and WRL shall take reasonable precautions to keep it free from waste or debris.

12. If WRL holds over and wrongfully continues in possession of the Property after expiration of the term of this Lease or any extension of the Initial Term, WRL will be deemed to be

occupying the Property at sufferance from month-to-month tenancy, without limitation on any of Radnor's right or remedies thereunder subject to all of the terms and conditions of this Lease.

D. RADNOR RIGHTS AND OBLIGATIONS

Radnor shall provide police patrols through the Property as deemed necessary by the Radnor Township Superintendent of Police. WRL shall provide security as it deems necessary for its own events and WRL sponsored events.

E. INSURANCE/INDEMNIFICATION

1. To the fullest extent permitted by law, WRL agrees to defend, indemnify, pay on behalf of, and save harmless Radnor, its elected and appointment officials, agents, employees, and authorized volunteers against any and all claims, liability, demands, suits or loss, including attorneys fees and all other costs connected therewith, arising out of or connected to the WRL use or occupancy of the Property so long as this Lease remains in effect, and thereafter until the expiration of all time periods within which a claim may be made, unless such damage or loss is the result of the willful and gross negligence of Radnor, or their elected or appointed officials, consultants, agents or employees.

2. WRL shall purchase and maintain throughout the term of this Lease, or its use or occupancy of the Property, commercial general liability insurance or its equivalent with minimal amounts of: \$1,000,000.00 – each occurrence, \$1,000,000.00 – personal injury, \$2,000,000.00 - general aggregate; and \$1,000,000.00 - products/completed operations aggregate.

The commercial general liability insurance or its equivalent shall include coverage for all of the following:

- a. Liability arising from premises and operations;
- b. Liability arising from products and completed operations;

- c. Contractual liability including protection for WRL from bodily injury and property damage claims arising out of liability assumed under this Lease;
- d. Liability arising from the explosion, collapse, or underground hazards.

3. Radnor and Radnor's elected and appointed officials, officers, agents, employees and authorized volunteers shall be named as additional insureds on this commercial general liability insurance policy as respects Willow's use or occupancy of the Property. The following manuscript wording must be utilized on the additional insured endorsement issued by the general liability insurer and shown on the insurance certificate submitted by WRL to evidence its purchase of commercial general liability insurance:

This policy is amended to include as additional insureds Radnor Township and the Township's elected and appointed officials, officers, agents, employees and authorized volunteers, but only for liability arising out of your operations on, at or adjacent to premises of the Township, "your product" or "your work".

4. For all automobiles owned by WRL, WRL shall purchase and maintain throughout the term of this Lease or its use or occupancy of the Property, business auto liability insurance or its equivalent with a minimum limit of \$1,000,000.00 per accident and including coverage for liability arising out of the ownership, maintenance or use of any auto and or automobile contractual liability.

5. For all WRL employees, the WRL shall purchase and maintain throughout the term of this Lease or its use or occupancy of the Property workers compensation insurance or its equivalent with statutory benefits as required by any state or Federal law, including standard "other states" coverage, and employers liability insurance or its equivalent with minimum limits of: \$100,000.00 – each accident for bodily injury by accident; \$100,000.00 – each employee for bodily injury by disease; and \$500,000.00 – policy limit for bodily injury by disease.

6. To the fullest extent permitted by law, the WRL and its employees, officials, volunteers, agents and representatives waive any right of recovery against Radnor and their elected and appointed officials, officers, volunteers, consultants, agents and employees for any and all claims, liability, loss, damage, costs or expense (including attorneys' fees) arising out of the WRL use or occupancy of the Property or arising out of WRL operations on, at or adjacent to any property owned by Radnor. Such waiver shall apply regardless of the cause of origin of the loss or damage, including the negligence of Radnor, unless such damage or loss is the result of the willful and gross negligence of Radnor, or their elected or appointed officials, consultants, agents or employees. WRL shall advise its insurers of the foregoing and such waiver shall be provided under the Willow's commercial property and liability insurance policies and the Willow's workers compensation insurance policy, if any.

7. WRL and its employees, officials, volunteers and agents shall be solely responsible for any loss or damage to property of WRL or its invitees, employees, officials, volunteers, agents and representatives ("Invitees") while such Invitees are on, at or adjacent to the Property.

F. DEFAULT

1. If WRL fails to comply with any term, provision, or covenant of this Lease, and does not cure the failure within a period of thirty (30) days after written notice from Radnor of the failure, WRL shall be in default of this Lease; provided, however, if such default is not cured within such 30-day period, and if WRL commences such cure within such period and diligently prosecutes such cure to completion, the time to cure shall be extended for the period reasonably required to effect such cure. Failure by the Township to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default. Landlord shall

have the right to declare any such default at any time and take action as may be lawful or authorized under this Lease.

2. On the occurrence of any event of default, and the failure of WRL to cure such default as provided above, Radnor shall have, in addition to all other rights and remedies available to it by law or equity or by any other provisions of this Lease, the option to terminate this Lease on at least sixty (60) days' notice to WRL and, on the date specified in said notice, this Lease and all rights of WRL hereunder shall expire and terminate. WRL shall thereupon quit and surrender possession of the Property to Radnor and WRL shall remain liable to Radnor under all other terms of this Lease.

3. In the event that WRL goes out of business or abandons or ceases its operations for a period of three months or more, such cessation of operations shall constitute a default under this Lease.

G. MISCELLANEOUS

1. WRL may not assign this Lease or sublease, or encumber any portion of the leased Property without the prior written consent of the Radnor Township Board of Commissioners, which consent shall not be unreasonably withheld, conditioned or delayed. In the event that WRL requires the sublet on all or any portion of the property or assigns this Lease to any corporation or other entity which directly or indirectly, is controlled by it or under common control with WRL (a "related party"), WRL shall provide written notice to the Radnor Township Board of Commissioners for its consent. In the event of a merger, consolidation, or reorganization of WRL's structure, WRL shall provide written notice to Radnor for its consent and shall be subject to approval by the Radnor Township Board of Commissioners. Any attempted assignment, sublease, or other transfer in violation of the provisions of this Lease shall at the option of Radnor, be void.

2. Radnor or its authorized representative shall have the right at any time to enter on the premises for inspection purposes.

3. The Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. All obligations of the parties created by this Lease are performable in Delaware County, Pennsylvania.

4. In the event any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect any other provision of the Lease, and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been included in the Lease.

5. This Lease constitutes the only agreement between Radnor and WRL with regard to the Property, and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Lease.

6. No amendment, modification, or alteration of the terms of this Lease shall be binding unless in writing, dated subsequent to the date of this Lease, and duly executed by Radnor and WRL.

7. Radnor and WRL agree to submit to arbitration under the Pennsylvania Uniform Arbitration Act any controversy or claim arising out of or relating to this contract or a breach of this contract. Radnor and WRL further agree that they will faithfully observe this Lease and that they will abide by and perform any award rendered by an arbitrator, and that a judgment of the court having jurisdiction may be entered on the award. All arbitration hearings and all judicial proceedings to enforce any of the provisions of this Lease shall take place in Delaware County. The costs and expenses of arbitration, including the fees of the arbitrator, shall be borne by the losing party or in such proportions as the arbitrator shall determine.

8. WRL shall be responsible for any increase in real estate taxes assessed by either the County or School District as a result of this lease or the WRL improvements. Additionally, WRL shall be responsible to pay any Business Privilege or Mercantile taxes assessed by Radnor Township as a result of this lease and the business activities of WRL.

H. WRL IMPROVEMENTS.

1. WRL Improvement Plans. WRL's improvement specifications and plans for the Property shall be prepared by WRL's licensed architect. The WRL improvement plans will be prepared in sufficient detail to permit WRL or Radnor to construct the WRL Improvements and shall include a site plan establishing the limits of WRL's responsibility as to maintenance and repair. The improvement plans shall be prepared in accordance with applicable laws and code requirements and shall be incorporated into a separate construction agreement as described C. 1 of this Lease. Radnor shall not unreasonably withhold, condition or delay its approval of the WRL improvement plans. Upon approval by Radnor, the WRL improvement plans shall become final and shall not be changed without further approval by the Radnor Township Board of Commissioners, which shall not be unreasonably withheld, conditioned or delayed (as finally approved, the "Improvement Plans").

2. Construction of Improvements. WRL intends to make improvements to the Property as set forth on Exhibit "B" and subject to the execution of a separate construction agreement between WRL and the Township. WRL will have plans for improvements to the Property designed and approved in accordance with Section H.1. (the "WRL Improvements") and constructed in accordance with Section H.3.

3. Completion by WRL. WRL shall complete the WRL Improvements to the Property in accordance with the Improvement Plans and applicable provisions of the Lease, including but not limited to the provision of insurance and filing of mechanic lien waivers (if permitted by law).

4. Construction Standards. All construction shall be done in a good and workmanlike manner and shall comply at the time of completion with all applicable laws and requirements of the governmental authorities having jurisdiction. As built construction documents (but only for WRL Improvements for which a building permit is required) and as built floor plans (hard copy or CAD) shall be provided to Radnor at substantial completion of the work.

5. WRL Improvement Costs. WRL shall pay the costs, expenses and fees incurred for the construction of the WRL Improvements, including without limitation (i) the cost charged by the general contractor and all subcontractors for performing such construction, (ii) construction permit fees, (iii) mechanical and structural engineering fees, and (iv) other hard costs of construction (together, the "WRL Improvement Costs").

6. Alterations and Improvements. In addition to the construction of WRL Improvements, WRL, at WRL's expense, shall have the right, upon obtaining the consent of the Radnor Township Board of Commissioners, to remodel, redecorate, and make additions, improvements and replacements to all or any part of the Property from time to time as WRL may seem desirable, provided the same are made with a workmanlike manner and utilizing good quality materials. WRL shall have the right to replace and install personal property, trade fixtures, equipment and other temporary installations in and upon the Property and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, (hereinafter "Trade Equipment") whether a replacement or installed on the Property by WRL shall remain owned by WRL, free and clear of any claim by Radnor. WRL shall have the right to

remove such Trade Equipment at any time during the term of the lease provided that WRL shall repair, at WRL's expense, all damage to the leased premises, caused by such removal. In the event that this lease is terminated for any reason, and WRL does not remove such Trade Equipment within 30 days, such equipment shall become part of the Property and shall be owned by Township at no cost.

7. In the event that WRL is unable to obtain construction financing within one year of execution of this Lease to complete the improvements as set forth in Exhibit "B", this Lease shall be immediately terminated provided that WRL and Radnor shall have a mutual option to extend the financing period for an additional six months. Radnor's option to approve an extension shall not be unreasonably withheld, delayed or conditioned.

I. EARLY ACCESS.

WRL and its authorized agents, employees and contractors shall, on or after the execution date of this Lease and delivery to Radnor of evidence of insurance required pursuant to Section E of this Lease, but prior to the Commencement Date, have the right, at WRL's own risk, expense and responsibility, to access the Property for purposes of completing the WRL Improvements. During such period, WRL shall abide by the terms and conditions of this Lease as if the Term of this Lease had already commenced, and shall pay all utility costs, however, WRL shall have no obligation to pay the Rent or any portion thereof until the Commencement Date or such earlier date as WRL commences business operations at the Property. Prior to such early access, however, WRL and the Township shall execute the construction agreement for the Phase 1 improvements described in C. 1 of this lease.

J. MISCELLANEOUS.

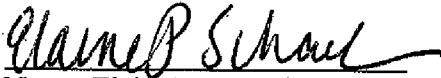
1. WRL intends to perform substantial outdoor improvements including landscaping and a farm-to-table garden operation on the Property. All pesticides and herbicides utilized on-site by WRL shall be in accordance with best management practices or otherwise preapproved by the Township. Additionally, no outside adjacent improvements by WRL shall unreasonably interfere with the existing community based gardening operation adjacent to the leased Property.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have hereunto set their hands and seals the day and year first above written.

TOWNSHIP OF RADNOR

WILLOWS RADNOR, LLC

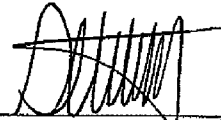
By:



Name: Elaine P. Schaefer

Title: President

By:



Name: Glenn Stevens

Title: President