

ORDINANCE NO. 2010-17
RADNOR TOWNSHIP

**AN ORDINANCE OF RADNOR TOWNSHIP, DELAWARE COUNTY,
PENNSYLVANIA, AMENDING THE LAND LEASE AGREEMENT DATED
MARCH 9, 2009 BETWEEN THE TOWNSHIP OF RADNOR AND THE
RADNOR CONSERVANCY**

WHEREAS, Radnor Township approved by ordinance a Land Lease Agreement dated March 9, 2009 with a term ending December 31, 2011; and

WHEREAS, the Radnor Conservancy has requested that the previously approved Agreement be extended, subject to additional terms and conditions.

NOW, THEREFORE, be it hereby *ENACTED AND ORDAINED* that the Radnor Township Board of Commissioners does hereby approve the amendment to the original March 9, 2009 Lease Agreement, a copy of which is attached hereto and incorporated herein.

ENACTED AND ORDAINED this 22nd day of March, A.D., 2010.

RADNOR TOWNSHIP

By:


Name: John Nagle
Title: President

ATTEST:


Matthew Baumann, Secretary

LEASE AGREEMENT

WHEREAS, the TOWNSHIP OF RADNOR (“Landlord”) and the RADNOR CONSERVANCY (“Tenant”) entered into a Lease on the 9th day of March, 2009 for a portion of the Willows Cottage property in order to operate a community supported agriculture (“CSA”) and other permitted uses; and

WHEREAS, Tenant has requested that Landlord extend the term and scope of the initial Lease in order to accommodate additional uses by Tenant, and Tenant’s partners, Greener Partners, a 501(c)(3) non-profit corporation, and The Friends of the Willows Cottage; and

WHEREAS, Landlord and Tenant have determined to extend the term and scope of the original Lease.

NOW, THEREFORE, Landlord and Tenant agree this 21st day of April, 2010, to the following consolidated and restated Lease incorporating the terms of the original Lease and additional terms, as follows:

Section I. PROPERTY DESCRIPTION: Landlord hereby leases to Tenant, the following described property (collectively, the “Premises”) in order to occupy and use it for the growing, distribution and sale of fruits, vegetables and other products related to sustainability practices as described in Section III:

(A) The parcel of ground outlined on the plan attached hereto as **Exhibit “A”** and made a part hereof, consisting of approximately three acres situated in Radnor Township, Delaware County, Pennsylvania, and on any other land that Landlord may designate by mutual written agreement. Tenant shall have the right to drill a well and erect deer fencing, sheds, barns and other agricultural structures on the Premises in conjunction with its permitted use (as hereinafter defined).

(B) The Willows Cottage (“Cottage”) situated near the entrance to the Willows Park and the existing outbuilding located to the rear of the Cottage, including the Garages.

(C) The portion of the Willows Park surrounding the Cottage as shown on the plan attached hereto as **Exhibit “B”**.

All Premises shall be leased to and occupied by Tenant in their “as is” condition with Landlord under no duty to alter and improve the premises in connection with Tenant’s occupancy.

Section II. GENERAL LEASE TERMS:

(A) Term. The initial term of the Lease commenced on March 9, 2009 and shall end on the 31st day of December, 2011 (“Initial Term”). Tenant shall have the option to renew the term of this Lease for one (1) two-year term upon ninety (90) days notice to Landlord. Thereafter, the Lease shall renew for additional two-year terms unless either party elects to terminate the Lease by so notifying the other party not less than ninety (90) days prior to the end

of the then current term. At the end of the Initial Term, it is the parties intent to transfer the Lease from Tenant to The Friends of the Willows Cottage ("FOWC") with respect to the non-CSA activities and to Greener Partners with respect to CSA activities. At any time prior to the end of the Initial Term, or thereafter, the FOWC may take over the Lease from Tenant upon request and approval by Landlord, it being the parties intent that the land will be leased to Greener Partners, and the building leased to FOWC at that time.

(B) Amendments. Amendments and alterations to this Lease shall be in writing and shall be signed by both Landlord and Tenant. If Tenant or FOWC secures substantial grant funding to make additional improvements to the Premises or to provide additional programs of permitted uses, Tenant may request a further extension of the Lease for additional terms mutually acceptable to Tenant, Landlord and the funding donor. Any such extensions shall be approved by a written addendum to this Lease.

(C) No Partnership Created. This Lease shall not be deemed to give rise to a partnership relation and neither party shall have authority to obligate the other without written consent, except as specifically provided in this Lease.

(D) Transfer of Property. If Landlord should sell or otherwise transfer title to the Premises, such action will be done subject to the provisions of this Lease.

(E) Sale of Excess Crops. Tenant agrees to designate at least one (1) day per month on which it will sell at the Cottage excess crops on a first-come, first-served basis to Radnor Township residents who are not members of the aforementioned CSA Program.

(F) Rents Derived From the Use of the Premises. Landlord agrees that all rents derived by Tenant from any of the permitted uses shall be accounted for in a separate township fund designated solely for improvements to and maintenance or operation of leased Premises. The parties shall jointly prepare on an annual basis an accounting of all rents derived by Tenant from the permitted uses.

(G) Notwithstanding the foregoing, FOWC and Greener Partners shall receive all funds for all programs they provide pursuant to their management agreement with Tenant, including the CSA Program, summer camps, seasonal markets and the like.

(H) Services Provided to Non-Radnor Residents. Landlord agrees that Tenant may offer any of the services included herein as permitted uses to non-residents of Radnor Township provided that (i) the rates charged the Radnor residents are lower than the rates charged to non-residents for such services; and/or (ii) if enrollment for such services is limited, Radnor residents are permitted to apply for such services in advance of non-residents.

Section III. PERMITTED USES: Subject to compliance with the Radnor Township Zoning Code as set forth in the Radnor Township Code of Ordinances, the following uses of the Premises are permitted by Tenant, Tenant's partners, Greener Partners and The Friends of the Willows Cottage but that any rents paid by other organizations shall go into the separate township fund designated solely for improvements to and maintenance or operation of the Premises permitted under this Lease.

(A) Tenant shall use the Premises for growing fruits, vegetables and other crops for sale or distribution to members of a CSA Program to be established by Tenant and/or its Manager (as hereinafter defined), as well as for programs to be offered to children and adults.

(B) Tenant may use (i) the Cottage for the distribution of produce to members of the CSA as well as the educational programs to be provided by Tenant, or the Manager retained by Tenant, to operate the CSA; and (ii) the outbuilding for storage.

(C) Residential use of the existing apartment in the Cottage, as well as a portion of the second floor of the Cottage for a farmer/caretaker employed to cultivate crops for the CSA, and for any intern assistants employed to cultivate crops and/or to provide educational programs offered by Tenant for the Premises; provided, however, that Landlord shall have the right to perform a criminal background check on any residential Tenant prior to living in the Cottage.

(D) Educational programming and activities, including programs and activities related to sustainability awareness and practices.

(E) Exhibits and activities focusing on the community farm, sustainable practices and "green" principles.

(F) Events and fund-raising activities relating to any of the permitted uses.

(G) The sale to members of the CSA, as well as to the general public, of produce and other products which are normally offered to members of a community supported agricultural program such as meats, cheeses, honey, fruits and complementary/educational items such as cookbooks and produce tote bags. In the sale of any non-CSA products offered for sale for fundraising purposes, preference shall be given to products produced in Radnor Township or provided by Radnor Township businesses.

(H) Use of the Willows Mansion parking lot and the grounds located within the Willows Park for uses ancillary to any Permitted Use provided that Tenant complies with Landlord's policies with regard to reserving use of the Willows Park facilities.

(I) Unless prohibited by Landlord, which prohibition shall be reasonable, the sale of any products related to the community farm, sustainable practices or "green" principles provided that (i) the proceeds from such sale are used for the maintenance and/or operation of the Premises offered by Tenant at the Premises (Tenant shall provide an annual accounting to Landlord as to how such proceeds have been applied), or (ii) the vendor provides services or programming related to any Permitted Use.

(J) Tenant shall have the right to plant demonstration gardens and native species on the portion of the Premises shown on *Exhibit "B"* at locations to be approved by Landlord's Director of Parks and Recreation. Tenant shall also have the right to place benches and structures such as pagodas on the foregoing portion of the Premises, provided that Landlord shall have the right to approve the construction or placement of any structures.

In exercising any of the Permitted Uses, Tenant acknowledges and agrees that it shall at all times comply with applicable laws, ordinances and statutes, including, but not limited to, any ordinances of the Township pertaining to the sale of produce or products at the Premises.

Section IV. AMOUNT OF RENT, TIME OF PAYMENT:

(A) Tenant shall pay to Landlord a total annual cash rent of One Dollar (\$1.00) for the Premises, payable in advance.

(B) Any rent which Tenant charges for the residential or non-residential use of the Premises shall be paid into a separate township fund designated solely for the improvements to or maintenance and operation of the leased Premises.

Section V. LANDLORD'S OBLIGATIONS:

(A) Landlord agrees that motorized vehicles may access the Premises through the existing driveway entrance located on Darby-Paoli Road or through another location approved in advance by the Director of Parks and Recreation. Tenant agrees that any pedestrian traffic accessing the Premises shall come through the Willows Park or as otherwise determined through consultation with the Director of Parks and Recreation.

(B) Tenant intends to install a solar-powered motor for the well required to provide water for crops grown on the Premises, subject to the issuance of any applicable permits by the Township. Prior to installation of the solar panels, Landlord agrees that Tenant may use either an emergency generator or an electrical extension from the Willows Mansion to power the well; provided, however, that Tenant shall at all times be responsible for payment of any electricity, water and other utility charges related to the CSA.

(C) Continue to maintain all roadways abutting the Premises and all parking lots located on the Premises.

(D) Continue to maintain all sewer and other utility lines up to the point where such utility lines enter the interior of the Cottage.

(E) Continue to provide trash removal in accordance with Landlord's trash removal policies. Landlord shall also pick up all recyclables at the Cottage.

Section VI. TENANT'S OBLIGATIONS:

(A) Follow environmentally-friendly farming practices that are generally recommended for and that are best adapted to this type of land, and for this locality unless other practices are agreed upon between parties.

(B) Furnish all labor, power, machinery and moveable equipment, and all related operation and maintenance expenses to operate the Premises. Tenant acknowledges that Landlord shall have no obligation to provide (i) any improvements required for the permitted use, or (ii) any funding for the operation of the CSA or any other permitted uses.

(C) Furnish all labor for minor repair and the minor improvement of fences and other site maintenance. The buildings, fences and other improvements on the Premises are to be kept in good repair and condition, ordinary wear and depreciation excepted, to the reasonable satisfaction of Landlord's Director of Public Works. Tenant will not be responsible for landscaping maintenance outside of the Premises.

(D) Store all farm hand tools and small equipment safely either inside the fenced farm area or inside the existing outbuilding or any storage shed erected by Tenant.

(E) Not store or dispose of motor vehicles, tractors, fuel or chemicals on the Premises.

(F) Apply for and obtain any and all necessary permits from Township, County, State and Federal governmental agencies, and from any other regulatory bodies related to the operation of the CSA or other permitted uses.

(G) Maintain in a condition that is acceptable to the Director of Parks and Recreation, the Cottage and the land adjacent to it that is used for the CSA or other permitted uses pursuant to Section III herein.

(H) Neither assign this Lease to any person or persons, nor sublet any part of the real estate for any purpose without the written consent of Landlord. Notwithstanding the above, Tenant shall have the right to retain any entity expert in the management of similar farms (the "**Manager**") to perform any of Tenant's rights or obligations hereunder, all without the prior consent of Landlord. Tenant agrees to advise Landlord of the identity of any such Manager.

(I) Pay all utilities, including, but not limited to, electric, water, sewer, and cable for the Premises.

(J) Keep all walkways in and around the Premises free and clear of ice and snow.

Section VII. RIGHTS AND PRIVILEGES:

(A) Landlord, or anyone designed by it, shall have the right of entry at any mutually convenient time to inspect the Premises.

(B) Any improvements constructed on the farm portion of the Premises shall remain the property of Tenant. At the request of Landlord, Tenant agrees to remove all such improvements (with the exception of the well which Tenant agrees to cap) and to return the farm portion of the Premises to its existing condition as open space upon termination of this Lease.

(C) All permanent fixtures and/or structural improvements on the Premises shall remain the property of Landlord upon termination of this Lease.

(D) Tenant shall have the right to make interior alterations to the Premises provided that Landlord shall pre-approve all structural alterations to the Cottage or building additions to the Cottage. Tenant shall have the right to relocate the outbuilding presently located to the rear of the Cottage to a new location on the Premises provided that Landlord shall have the right to

approve the location selected by Tenant. All alterations or proposed construction shall meet applicable Building Code requirements.

Section VIII. ENFORCEMENT OF AGREEMENT AND ARBITRATION:

(A) Failure of either Landlord or Tenant to comply with the agreement set forth in this Lease shall make it liable for damages to the other party. Any claim by either party for such damages shall be presented in writing to the other party at least fifteen (15) days before the termination of this Lease. Notwithstanding anything in this Lease to the contrary, no member, officer or director of Tenant shall have any personal liability with respect to any provisions of this Lease or the Premises.

(B) The provisions of this Lease shall be binding on the successors and assigns of the parties hereto.

Section IX. FINANCIAL STATEMENTS: Tenant agrees to submit to Landlord annual income statements and balance sheets for the operation of the CSA within ninety (90) days after the end of each annual growing season.

Section X. LIABILITY INSURANCE INDEMNITY; RATIFICATION:

(A) Tenant shall provide and maintain a comprehensive policy of liability insurance with respect to the Premises. Landlord shall be named as an additional insured. The liability insurance policy shall protect Landlord and Tenant against any liability which arises from an occurrence on or about the Premises, or which arises from any of the claims indicated in Paragraph (B)(1) below against which Tenant is required to indemnify Landlord. The policy is to be written by a good and solvent insurance company reasonably satisfactory to Landlord. The coverage limits of the policy shall be at least Two Million Dollars (\$2,000,000) with respect to any person or occurrence as to personal injury and at least One Million Dollars (\$1,000,000) as to property damage. Landlord may, at any time, increase Tenant's policy coverage limits based upon a current property appraisal of the Premises.

(B) Indemnity.

(1) Tenant shall defend, indemnify and hold harmless Landlord and its officers, directors, elected or appointed officials, employees, servants and/or agents against and from all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims and demands of every kind or nature, including reasonable counsel fees, by or on behalf of any person, entity or governmental authority whatsoever arising out of (a) any failure by Tenant to perform any of the agreements, terms, covenants or conditions of this Lease on Tenant's part to be performed, (b) any accident, injury or damage that happens in, about or outside the Premises caused by a willful or negligent act or omission of Tenant, its agents, servants or employees, or (c) Tenant's failure to comply with any laws, ordinances, requirements, orders, directions, rules or regulations of any Federal, State, County or municipal governmental authority, or agreement of record affecting the Premises.

(2) Landlord shall defend, indemnify and hold harmless Tenant against and from all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties,

claims and demands of every kind or nature, including reasonable counsel fees, by or on behalf of any person, entity or governmental authority whatsoever arising out of (a) any failure by Landlord to perform any of the agreements, terms, covenants or conditions of this Lease on Landlord's part to be performed, (b) any accident, injury or damage that happens in, about or outside the Premises caused by the willful or negligent act or omission of Landlord, its agents, servants or employees, or (c) Landlord's failure to comply with any laws, ordinances, requirements, orders, directions, rules or regulations of any Federal, State, County or municipal governmental authority, or agreement of record affecting the Premises.

(C) Ratification. Landlord and Tenant each hereby reaffirms its rights and obligations under the original Lease as modified by this restated Lease. In the event of a conflict or ambiguity between the Lease and this restated Lease, the terms and provisions of this restated Lease shall control. Landlord and Tenant each represents and warrants to the other that (i) the execution and delivery of this restated Lease has been fully authorized by all necessary corporate action, (ii) each person signing this restated Lease has the requisite authority to do so and the authority and power to bind the party on whose behalf he/she has signed, and (iii) to the best of its knowledge and belief, this restated Lease is valid, binding and legally enforceable in accordance with its terms.

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.

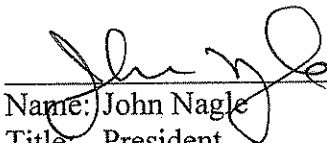
LANDLORD:

RADNOR TOWNSHIP

ATTEST:


Name: Matthew Baumann
Title: Township Secretary

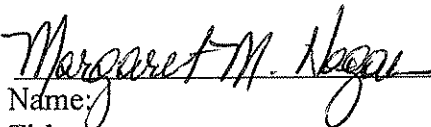
By:


Name: John Nagle
Title: President

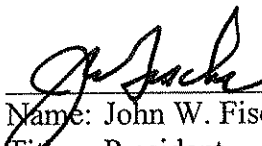
TENANT:

RADNOR CONSERVANCY

ATTEST:

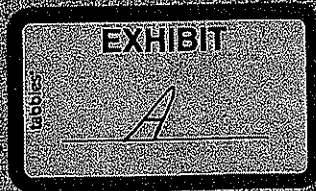

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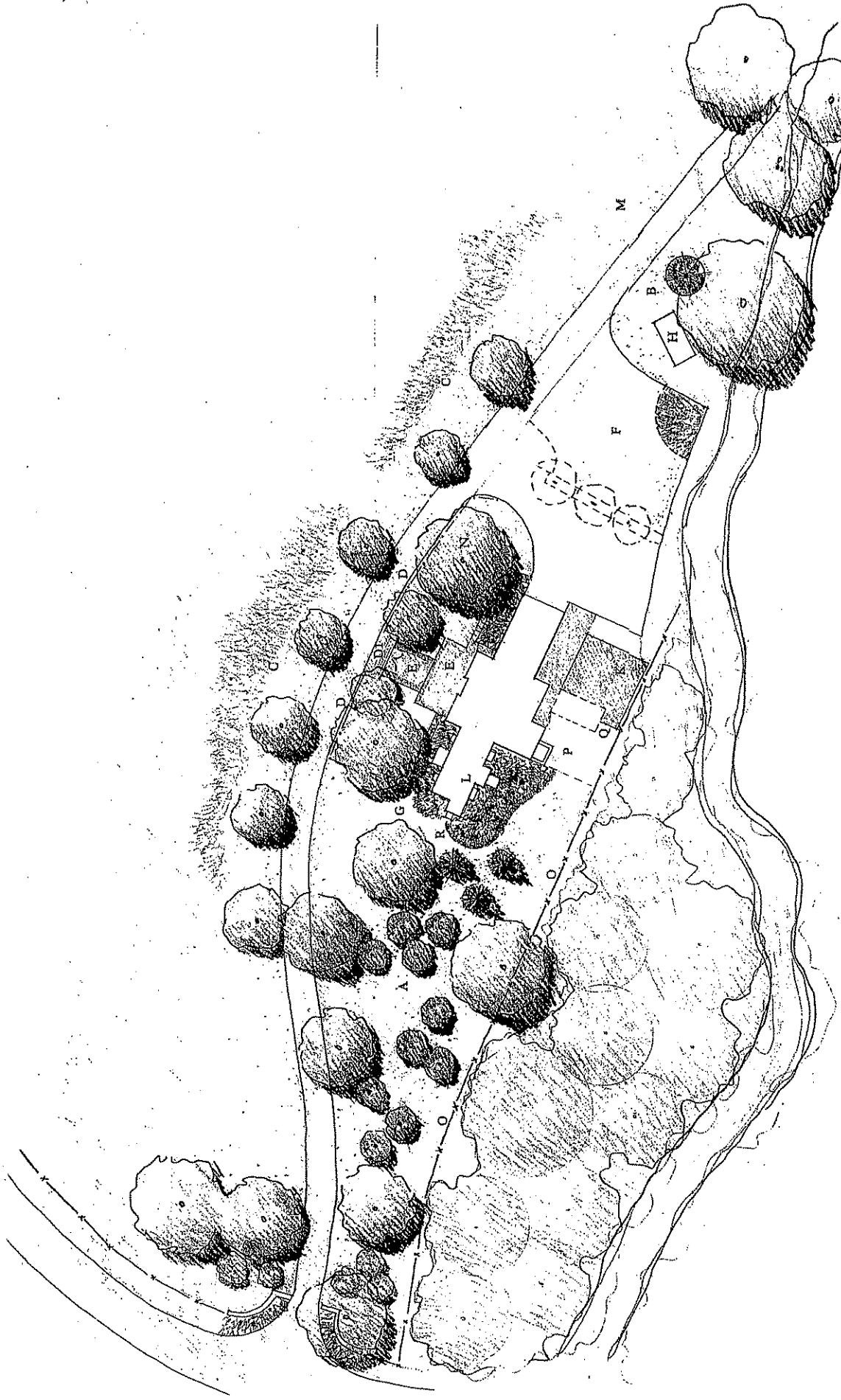
By:


Name: John W. Fischer
Title: President

Proposed CSA Area

WINDY MEADOWS





JONATHAN ALDERSON
Landscape Architects Inc.

Concept Master Plan
for the
Willows Cottage
Radnor Township, PA

May 2009
0 20 40 60

tabbott

EXHIBIT

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