

ORDINANCE NO. 43 - 2013

AUTHORIZING THE MAYOR TO EXECUTE A TRI-PARTY LEASE AGREEMENT BETWEEN THE CITY OF READING, THE BERKS COUNTY CONSERVANCY AND ALVERNIA UNIVERSITY; A LEASE AGREEMENT BETWEEN THE CITY OF READING AND ALVERNIA UNIVERSITY AND A LEASE AGREEMENT BETWEEN THE CITY OF READING AND THE BERKS COUNTY CONSERVANCY TO PROVIDE FOR THE LEASING OF CERTAIN PORTIONS OF ANGELICA PARK, AS MORE SPECIFICALLY IDENTIFIED IN EXHIBIT "A".

WHEREAS, the City of Reading ("City") is the fee simple owner of a piece of property located in the City of Reading, Berks County, Pennsylvania, being known as "Angelica Park," having a Parcel Id, No. 18530620812266 (hereinafter referred to as "Angelica") and

WHEREAS, the Berks County Conservancy ("Conservancy") and Alvernia University ("Alvernia") wish to lease certain portions of Angelica, as more specifically set forth in Exhibit "A"; and

WHEREAS, the City wishes to lease said portions of Angelica to the Berks County Conservancy and Alvernia University; and

WHEREAS, the City, the Conservancy and Alvernia desire to set forth in writing covenants related to the leasing of certain portions of Angelica.

NOW, THEREFORE THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The Mayor is authorized to execute a tri-party lease agreement between the City of Reading, the Berks Conservancy and Alvernia University; a lease agreement between the City of Reading and the Berks County Conservancy and a lease agreement between the City of Reading and Alvernia University to provide for the leasing of certain portions of Angelica as more specifically identified in Exhibit "A".

SECTION 2: This Ordinance shall become effective in ten (10) days after its adoption and approval by the Mayor in accordance with Section 219 of the City of Reading Home Rule Charter.

Enacted Sept 23, 2013

[Handwritten Signature]

Council President

Attest:

[Handwritten Signature]
City Clerk

Submitted to Mayor:

Date: 9/24/13

Received by the Mayor's Office:

Date: 9/24/13

Approved by Mayor:

Date: 9/24/13

Vetoed by Mayor:

Date: _____

[Handwritten Signature: Michael Spencer]



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 23 day of Sept A. D. 20 13. Witness my hand and seal of the said City this 23 day of Sept, A. D. 20 13.

[Handwritten Signature]
CITY CLERK

TRI-PARTY LEASE AGREEMENT

THIS TRI-PARTY LEASE AGREEMENT (the "Agreement") is dated to be effective as of the ____ day of _____, 2013 (the "Commencement Date") by and among CITY OF READING, a third class city of the Commonwealth of Pennsylvania, having an address at 815 Washington Street, Reading, Pennsylvania 19601 (the "City"), ALVERNIA UNIVERSITY, a Pennsylvania non-profit corporation, having an address at 400 St. Bernadine Street, Reading, Pennsylvania 19607 (the "Alvernia") and BERKS COUNTY CONSERVANCY, a Pennsylvania non-profit corporation, having an address at 25 N. 11th Street, Reading Pennsylvania 19601 (the "Conservancy").

BACKGROUND

A. The City is the owner of a tract of land and the improvements erected thereon located in the City of Reading, Berks County, Pennsylvania, being known as "Angelica Park" (hereinafter referred to at times as "Angelica").

B. The Conservancy and Alvernia desire to lease a certain portion of Angelica Park as more specifically set forth in Section 1.1 below and as depicted, described and/or identified as Zones 1 and 3 on the map that is attached hereto and incorporated herein by reference as Exhibit "A" (the "Premises") from the City and the City desires to lease the Premises to the Conservancy and Alvernia in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the City and the Alvernia and the Conservancy hereby covenant and agree as follows:

ARTICLE 1

PREMISES AND TERM

Section 1.1 Grant of Lease. The City for and in consideration of the terms, covenants, and conditions herein contained, does hereby lease unto the Conservancy and

Alvernia, and the Conservancy and Alvernia do rent and lease from the City the Premises for the uses and purposes as specifically described as follows:

(a) The area identified as Zone 1 on Exhibit A together with the existing building located thereon known as the Environmental Exploration Center a/k/a the Boathouse (the "Boathouse"), which shall be used by the Conservancy and Alvernia to hold community programs and activities in furtherance of each other their respective non-profit business purposes for the general public. The Conservancy shall have the primary responsibility for programming at the Boathouse including coordinated programs with community partners such as the City, Alvernia, the Holleran Center, the Reading School District, Albright College, Nolde Forest, the County of Berks and the Berks County Intermediate Unit. In furtherance of this, the Conservancy shall be responsible for scheduled organized activities conducted at the Boathouse or the Premises pursuant hereto and to use its best efforts to prevent scheduling conflicts arising from multiple events being held simultaneously at the Boathouse and/or the Premises. Notwithstanding this, Alvernia shall have primary consideration to conduct its own programming at the Boathouse at times reasonably acceptable to the Conservancy and at no additional costs to Alvernia. Notwithstanding this, the scheduling by the Conservancy of any events/activities within Zone 1 (including the Boathouse) shall be mutually agreed upon with Alvernia. Additionally, Alvernia shall have the primary right to provide classes and other programming consistent with the Environmental Exploration and Sustainability/Conservation focus of the Center at Zone 1 upon the grant of reasonable advance notice to the Conservancy.

(b) The parking lot within Zone 3, which shall be used collectively by the City, Alvernia and the Conservancy for the parking of motor vehicles of the employees, licensees and invitees of such parties.

Section 1.2 Term. The Conservancy and Alvernia shall HAVE AND HOLD the Premises for a term commencing on the Commencement Date and expiring: (a) midnight on that date which is five (5) years from the date of this Agreement, if the Conservancy has not commenced construction of the Improvements by such date (the "Non-Construction Termination"), or (b) if the Conservancy has commenced construction of the Improvements within five (5) years from the date of this Agreement, then this Agreement shall terminate or expire on the effective date of the termination or expiration of that certain Lease Agreement between the Conservancy and the City dated of even date herewith (collectively, the "Term").

Section 1.3 Zone 1. In the event this Agreement is not terminated under Section 1.2(a), Alvernia's right to access and use any and all portions of Zone 1 as set forth in this Agreement shall be terminated and the City and Alvernia may, at that time, discuss the leasing of Zone 1 to Alvernia subject to separate agreement.

ARTICLE 2

RENT AND CONSIDERATION

Section 2.1 Rent (Monthly Utilities). In consideration of the lease of the Premises, Alvernia shall register the name of Alvernia as the responsible party for the utilities at the Boathouse and Alvernia shall pay the actual basic utility costs of the Boathouse on a monthly/quarterly basis directly to the respective utility companies as billed, provided that Alvernia shall only be responsible for the aggregate amount of the utility costs of \$3,600.00 on an annual basis. To the extent that said utility costs exceeds \$3,600.00 in the aggregate during any calendar year, the City shall reimburse Alvernia for any such excess utility costs within thirty (30) days of presentation of such excess costs by Alvernia to the City.

Section 2.2 Manner of Payment. All amounts payable under Section 2.1 of this Article, as well as all other amounts payable by Alvernia and the Conservancy to City under the

terms of this Lease, shall be paid at the address of City set forth above or at such other place as City shall from time to time designate by notice to Alvernia and the Conservancy, in lawful money of the United States.

ARTICLE 3

IMPROVEMENTS TO BE CONSTRUCTED

BY THE CONSERVANCY AND/OR ALVERNIA AT THE PREMISES

Section 3.1 Improvements by the Conservancy. The parties agree that the Conservancy shall be permitted to construct and relocate its business headquarters to Zone 1 and to erect, install and maintain appropriate signage in accordance with Article 13 below. The aforesaid improvement(s) to be constructed by the Conservancy is hereinafter referred to as the "Improvements". The Conservancy agrees to incorporate the existing Boathouse into its design for the Improvements. Drawings of the proposed Improvements will be provided to the City and Alvernia for their written consent prior to the Conservancy beginning construction/installation of the Improvements at the Premises, which consent shall not be unreasonably withheld or delayed. The Conservancy shall commence construction of the Improvements prior to expiration of the Term.

Section 3.2 Development by Alvernia. The parties agree that Alvernia shall be permitted to propose development in limited portions of the Premises identified as Zone 7 on Exhibit A pursuant to a separate Easement Agreement by and between Alvernia and the City to be executed on terms and conditions mutually agreeable to both parties and upon receipt of the prior written consent of the Conservancy, which consent shall not be unreasonably withheld or delayed.

Section 3.3 Payment for Improvements and Development. The Conservancy shall be responsible for the entire cost of the Improvements set forth in Section 3.1 above and Alvernia shall be responsible for the entire cost of any development under Section 3.2 above.

ARTICLE 4

RESPONSIBILITIES

Section 4.1 Alvernia's Responsibilities for the Premises. In addition to other costs/expenses set forth elsewhere in this Agreement, Alvernia shall have the responsibilities of providing, paying for, or obtaining the following for the Premises, at Alvernia's sole cost and expense:

- (a) Until the Non-Construction Termination or the Conservancy's commencement of construction of the Improvements, the monthly basic utility costs to the Boathouse payable either directly to the City or to the respective utility provider, as applicable, subject to the limitations set forth in Section 2.1.
- (b) Until the Non-Construction Termination or the Conservancy's commencement of the Improvements, the routine minor maintenance of the Premises and the Boathouse including, but not limited to, the trimming and care of grass/lawn areas, trees and shrubbery, janitorial service and trash removal; provided that, in the performance of said duties, Alvernia agrees to confer with the Conservancy on issues involving the maintenance of those areas of the Premises that are adjacent to the Boathouse.
- (c) A secondary role in the security and public safety duties at the Premises in conjunction with City.

- (d) After the Conservancy has commenced construction of the Improvements, Alvernia and the Conservancy will have the shared responsibilities for the parking lot and roadways set forth in Section 4.1(d) of that certain Lease Agreement between Alvernia and the City dated of even date herewith.

Section 4.2 City's Responsibilities for the Premises. In addition to other costs/expenses set forth elsewhere in this Agreement, the City shall have the responsibilities of providing, paying for, or obtaining the following for the Premises, at the City's sole cost and expense:

- (a) The primary police, fire, emergency, security and public safety duties.
- (b) Until the Non-Construction Termination or the Conservancy's commencement of the Improvements, the cost of major repairs and/or improvements to the Boathouse and/or the Premises (not including the Improvements).

Section 4.3 Conservancy's Responsibilities for the Premises. In addition to other costs/expenses set forth elsewhere in this Agreement, the Conservancy shall have the responsibilities of providing, paying for, or obtaining the following for the Premises, at the Conservancy's sole cost and expense:

- (a) The Improvements.
- (b) Landscaping around the Boathouse.
- (c) The Garden.
- (d) After the Conservancy has commenced construction of the Improvements, the Conservancy and Alvernia will have the shared responsibilities for the parking lot and roadways set forth in Section 4.1(d) of that certain Lease Agreement between Alvernia and the City dated of even date herewith.

Section 4.4 Compliance with Law. Neither Alvernia nor the Conservancy shall use the Premises for any purpose in violation of any federal, state or municipal law currently existing or hereinafter promulgated, governing the use and safety of the Premises, and the Alvernia and the Conservancy shall at all times ensure that its use of the Premises is within full compliance with all applicable statutes and ordinances.

Section 4.5 Permits and Licenses. Alvernia and the Conservancy shall promptly procure, maintain and comply with all permits, licenses and government authorizations required for their use of the Premises as set forth herein.

Section 4.6 No Violation of Insurance Contracts. The parties shall not use the Premises in any manner which would make void or voidable any insurance required to be carried by them or which will make it impossible for either party to obtain fire, general liability or other insurance.

Section 4.7 No Discrimination. Alvernia and the Conservancy covenant and agree that during their use of the Premises, neither will discriminate against any person or persons on the basis of race, color, creed, religion, national origin, age, veteran status and/or disability.

ARTICLE 5

INTENTIONALLY OMITTED

ARTICLE 6

GOVERNMENT APPROVALS

Section 6.1 Conservancy's Responsibility to Obtain Government Approvals. The Conservancy shall obtain any governmental approvals necessary for the construction of the Improvements at the Premises. The City will support and cooperate with the Conservancy in any efforts to gain necessary government or municipal approvals on a timely basis.

ARTICLE 7

INSURANCE

Section 7.1 Casualty Insurance. The City, Alvernia and the Conservancy shall respectively keep the Boathouse and their respective personal property thereat (if any) insured against loss, damage or destruction by fire or such other hazards as are covered by and protected under policies of insurance commonly known as "Property Insurance". Upon the occurrence of an insurable event resulting in loss, damage or destruction, the insurance of the City shall be primarily responsible and, thereafter, the insurance of Alvernia and the Conservancy shall equally share the remaining responsibility unless the insurable event resulting in loss, damage or destruction is direct cause of the negligence or misconduct of one of the parties hereto in which event the insurance for the responsible party shall be primarily responsible for the loss, damage or destruction. Upon commencement of the construction of the Improvements and while this Agreement is still in effect, the Conservancy solely shall keep the Improvements insured against loss, damage or destruction by fire or such other hazards as are covered by and protected under policies of insurance commonly known as "Property Insurance".

Section 7.2 Liability Insurance. All parties shall provide insurance for risks associated with their respective use of and responsibilities related to the Premises in an amount not less than Three Million Dollars (\$3,000,000.00) combined single limits for bodily injury/death and property damage. All parties will each, at their sole cost and expense, obtain and maintain insurance with insurance companies approved by the other for general public liability, bodily injury and property damage arising from the use of the Premises by the insuring party, its agents, employees, students, guests, spectators, participants, officials, concessionaires or others, and shall provide each other with Certificates of Insurance naming the other party as an additional insured. If the City is self-insured, the City shall provide Alvernia and the

Conservancy with proof of adequate reserves to meet the requirements of this Section. The parties shall review with each other the amount of insurance coverage every five (5) years.

Section 7.3 Additional Insureds. All parties shall each cause the other to be named as an additional insured on all such policies and provide proof that such coverage has been obtained and remains in effect during the term of this Agreement.

ARTICLE 8

INDEMNIFICATION

Section 8.1 Indemnification by City. Except to the extent arising out of the negligent acts or omissions or willful misconduct of Alvernia and/or the Conservancy, their employees, agents, contractors, and/or students, the City agrees to and does hereby indemnify and hold Alvernia and the Conservancy harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from (i) any and all damage to any person or property caused by the acts or omissions of City's agents, employees, contractors, invitees, spectators, participants, officials, concessionaires, or other persons and from any cause whatsoever by reason of the City's use, occupation and enjoyment of the Premises by the City; or (ii) the breach by City of the provisions of this Agreement.

Section 8.2 Indemnification by Alvernia. Except to the extent arising out of the negligent acts or omissions or willful misconduct of the City and/or the Conservancy, their employees, agents, contractors, invitees and/or residents, Alvernia agrees to and does hereby indemnify and hold the City and the Conservancy harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from (i) any and all damage to any person or property, caused by the acts or omissions of its agents, employees, contractors, invitees, spectators, participants, officials, concessionaires, students or other persons and from

any cause whatsoever by reason of the use, occupation and enjoyment of the Premises by the Alvernia; or (ii) the breach by Alvernia of the provisions of this Agreement.

Section 8.3 Indemnification by the Conservancy. Except to the extent arising out of the negligent acts or omissions or willful misconduct of the City and/or Alvernia, their employees, agents, contractors, invitees, members, spectators, participants, officials, concessionaires, students and/or residents or students, the Conservancy agrees to and does hereby indemnify and hold the City and Alvernia harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from (i) any and all damage to any person or property, caused by the acts or omissions of its agents, employees, contractors, invitees, spectators, participants, officials or concessionaires, or other persons and from any cause whatsoever by reason of the use, occupation and enjoyment of the Premises by the Conservancy; (ii) any penalty, damage or charge incurred or imposed by reason of its violation of law or ordinance, including, but not limited to zoning and building code ordinances; or (iii) the breach the Conservancy of the provisions of this Agreement.

Section 8.4 Indemnification not Limited by Insurance. Full compliance or failure to comply with the provisions of this Agreement relating to insurance shall in no way relieve or diminish each parties responsibilities hereunder.

Section 8.5 Survival of Termination of Agreement. These indemnifications shall survive the termination of this Agreement.

Section 8.5 Waiver of Immunity. The City hereby waives any statutory immunity and limit on its liability as between the parties hereto for claims arising pursuant to this Agreement, and specifically Articles 7 and 8, or the City's use of the Premises.

ARTICLE 9

ENVIRONMENTAL

Section 9.1 Compliance with Environmental Laws. The City, Alvernia and the Conservancy agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in, or on Zone 1.

Section 9.2 Environmental Indemnification. The City, Alvernia and the Conservancy agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at its sole cost and expense, (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) a party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Premises or activities conducted by the party thereon, unless the environmental conditions are caused by the other party provided, however, that Alvernia and the Conservancy shall have no duty to hold harmless and/or indemnify the City hereunder for anything related to any conduct, failure to act and/or the condition of the Premises that occurred or was in existence prior to the date of this Agreement.

Section 9.3 Indemnifications Survive Termination of Agreement. The indemnifications of this Article 9 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of conditions at the Premises or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Article 9 will survive the expiration or termination of this Agreement.

ARTICLE 10

CONDEMNATION

Section 10.1 Condemnation. In the event the City receives notification of any condemnation proceedings affecting the Premises, the City will promptly provide notice of the proceeding to Alvernia and the Conservancy. If a condemning authority takes all of the Premises, or a portion sufficient, in Alvernia and the Conservancy's mutual reasonable determination, to render the Premises unsuitable for use by Alvernia and the Conservancy pursuant hereto, this Agreement will terminate as of the date the title vests in the condemning authority. Alvernia and the Conservancy shall be entitled to reimbursement for any prepaid rent on a pro rata basis by either party and to the Conservancy for the fair market value of the Improvements constructed by the Conservancy at the Premises (if any) in accordance with Article 3 above.

ARTICLE 11

CASUALTY

Section 11.1 Casualty. Each party shall provide the other notice of any casualty affecting the Premises within forty-eight (48) hours of the casualty provided that said party has actual knowledge of the casualty. If any part of the Premises is damaged by fire or other casualty so as to render the Premises unsuitable, in Alvernia and the Conservancy's reasonable determination, then Alvernia and the Conservancy may terminate this Agreement by providing

written notice to the City, which termination will be effective as of the date of such damage or destruction. Upon such termination, Alvernia and the Conservancy shall be entitled to reimbursement for any prepaid rent on a pro rata basis by either party and for the fair market value of the Improvements constructed by the Conservancy at the Premises (if any) in accordance with Article 3 above.

ARTICLE 12

DEFAULT AND RIGHT TO CURE

Section 12.1 Default by Alvernia and/or the Conservancy. The following will be deemed a default by Alvernia and/or the Conservancy and a breach of this Agreement: (i) non-payment of rent if such rent remains unpaid for more than fifteen (15) days after receipt of written notice from City of such failure to pay; or (ii) either parties failure to perform any other term or condition under this Agreement within thirty (30) days after receipt of written notice from City specifying the failure. No such failure, however, will be deemed to exist if Alvernia and/or the Conservancy has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Alvernia and/or the Conservancy. If Alvernia and/or the Conservancy remains in default beyond any applicable cure period, the City will have the right to exercise any and all rights and remedies available to it under law and equity, including but not limited to termination.

Section 12.2 Default by City. The following will be deemed a default by the City and a breach of this Agreement: the City's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within thirty (30) days after receipt of written notice from Alvernia and/or the Conservancy specifying the failure. No such failure, however, will be deemed to exist if the City has commenced to cure the default within such period and provided

such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of the City. If the City remains in default beyond any applicable cure period, Alvernia and the Conservancy will have the right to exercise any and all rights available to it under law and equity, including but not limited to termination, provided that if the construction of the Improvements has commenced, City shall reimburse the Alvernia and/or the Conservancy for the fair market value of the Improvements.

ARTICLE 13

SIGNS

Section 13.1 General Signage. Subject to applicable ordinances and Section 13.2 below, signage shall be installed by the Conservancy at Angelica which shall identify the Premises as being owned by the City of Reading but also the business headquarters of the Conservancy.

Section 13.2 Conservancy's Signs. The Conservancy shall be permitted to erect and install signs identifying the Conservancy at the Boathouse and at the entrance to the Premises on Route 10 and within Zone 10 at the Premises. Additionally, the Conservancy shall be permitted to erect and install signs for an agreed upon number of reserved parking spaces (not more than 12) identifying reservation for the Conservancy within the parking lot at Zone 3 of the Premises upon receipt of the prior written consent of Alvernia and the City, which consent shall not be unreasonably withheld.

ARTICLE 14

ASSIGNMENT

Section 14.1 Assignment. No party hereto may assign or otherwise transfer its interest in this Agreement without first obtaining the written consent of the other party, which consent may not be unreasonably withheld .

ARTICLE 15

ENTIRE AGREEMENT

Section 15.1 Entire Agreement. This Agreement contains and sets forth the entire agreement and understanding between the parties hereto and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between said parties other than as herein expressly referenced or set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party hereto, unless reduced to writing and signed by the City, Alvernia and the Conservancy. This Agreement shall be binding on the parties hereto, and their respective successors and assigns.

ARTICLE 16

NOTICES

Section 16.1 Notices. Notices given pursuant to this Agreement shall be in writing, shall be given by actual delivery or by mailing the same to the party entitled thereto at the address set forth below or at such other address as any party may designate in writing to any other party pursuant to the provisions of this Article. Notices given by mail shall be sent by United States mail, certified or registered, return receipt requested, or by recognized overnight courier. Notices shall be deemed to be received on the date of actual receipt. Notices shall be served or mailed to the following addresses, subject to change as provided above:

If to City:	City of Reading 815 Washington Street Reading, PA 19601 Attn: Managing Director
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With a copy to:	Charles D. Younger, Esquire City Solicitor 815 Washington Street Reading, PA 19601
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If to Alvernia:	Alvernia University
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400 Saint Bernadine Street
Reading, PA 19607-1799
Attention: Douglas F. Smith, Vice President

With a copy to: Heidi B. Masano, Esquire
Masano ♦ Bradley, I.L.P.
1100 Berkshire Boulevard, Suite 201
Wyomissing, PA 19610

If to Conservancy: Berks County Conservancy
25 North 11th Street
Reading, PA 19601
Attention: Kimberly J. Murphy, President

With a copy to: Christopher J. Hartman, Esquire
Hartman Shurr
1100 Berkshire Boulevard, Suite 301
Wyomissing, PA 19610

ARTICLE 17

SEVERABILITY

Section 17.1 Severability. If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein.

ARTICLE 18

APPLICABLE LAW

Section 18.1 Applicable Law. The validity, interpretation, construction, performance, and enforcement of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their successors and permitted assigns. The situs of this Agreement shall be Berks County, Pennsylvania and, subject to Article 19 below, if a dispute arises as a result of this transaction, the parties hereby submit to the jurisdiction of the Court of Common Pleas of Berks County. The parties agree that Berks County presents the most convenient forum for both

parties. The parties consent to the personal jurisdiction and venue of the Court of Common Pleas of Berks County and the parties waive all objections based upon improper jurisdiction, venue, or forum non-conveniens. The parties intend and agree that a party in breach of this Agreement shall bear the burden and obligation of any and all costs and expenses, including reasonable counsel fees, incurred by the other party, if the other party is successful in any litigation in endeavoring to protect and enforce his or her rights under this Agreement. Failure of either party to insist upon strict performance of any of the terms of this Agreement shall in no way affect the right of such party to enforce those terms in the future.

ARTICLE 19

MEDIATION

Section 19.1 Mediation. Notwithstanding the provision of Article 18 set forth above, any disputes between City, Alvernia and/or the Conservancy shall first be submitted to mediation through the Berks County Bar Association Civil Dispute Resolution Program, said mediation to be held by a mediator appointed from the list of qualified mediators determined by the Berks County Bar Association.

ARTICLE 20

RELATIONSHIP OF THE PARTIES

Section 20.1 Relationship of the Parties. It is the intention of the parties to create a nonexclusive Lease Agreement pursuant to which the Alvernia, the Conservancy and City shall use the Premises in accordance with the terms of this Agreement. Nothing herein shall be construed to constitute the parties hereto as partners or joint ventures or to render either party liable for the debts or obligations of the other party.

ARTICLE 21

SURRENDER

Section 21.1 Surrender. Upon termination of this Agreement, Alvernia and the Conservancy shall peaceably surrender the Premises to City in a condition and repair similar to the condition and repair of the Premises on the Commencement Date, subject to the construction set forth in Article 3, reasonable wear and tear and damage by casualty excepted.

ARTICLE 22

MEMORANDUM OF LEASE

Section 22.1 Memorandum of Lease. In order for Alvernia and the Conservancy to obtain a policy of leasehold title insurance, the parties agree that concurrently with the execution of this Agreement they shall execute a memorandum of lease to be recorded in the office of the Recorder of Deeds of Berks County, Pennsylvania setting forth: (i) the names of the parties in this Lease Agreement; (ii) the term of this Lease; and (iii) the location of the Premises subject to the Lease.

ARTICLE 23

ALVERNIA AND THE CONSERVANCY'S RIGHT OF FIRST REFUSAL

Section 23.1 Right of First Refusal. The parties hereby acknowledge and agree that nothing in this Agreement shall be construed to supersede, limit or otherwise nullify the rights of first refusal to purchase granted by the City to both Alvernia and the Conservancy in separate lease agreements of even date herewith for certain portions of Angelica.

ARTICLE 24

MEDIA ACKNOWLEDGMENT

Section 24.1 Media. The parties hereto agree that any and all media acknowledgement of the Boathouse and/or the Premises resulting from activities conducted pursuant to this Agreement or otherwise shall recognize the City, Alvernia and the Conservancy regardless of the primary party sponsoring the activity or event.

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

WITNESS:

ALVERNIA:

ALVERNIA UNIVERSITY

By: _____

Name: Douglas F. Smith

Title: Vice President

WITNESS:

CONSERVANCY:

BERKS COUNTY CONSERVANCY

By: _____

Name: Kimberly J. Murphy

Title: President

CITY:

CITY OF READING

Attest: _____

Chief Clerk

By: _____

Name: _____

Title: _____

EXHIBIT "A"

PREMISES

CITY:

CITY OF READING

Attest:

Chief Clerk

By:

Name:

Title:

EXHIBIT "A"

PREMISES

LEASE AGREEMENT

THIS AGREEMENT OF LEASE (the "Agreement") is dated to be effective as of the ____ day of September, 2013 (the "Commencement Date") by and between CITY OF READING, a third class city of the Commonwealth of Pennsylvania, having an address at 815 Washington Street, Reading, Pennsylvania 19601 (the "Lessor") and ALVERNIA UNIVERSITY, a Pennsylvania non-profit corporation, having an address at 400 St. Bernadine Street, Reading, Pennsylvania 19607 (the "Lessee")

BACKGROUND

C. The Lessor is the owner of a tract of land and the improvements erected thereon located in the City of Reading, Berks County, Pennsylvania, being known as "Angelica Park" (hereinafter referred to at times as "Angelica").

D. The Lessee desires to lease certain portions of Angelica Park as more specifically depicted, described and/or identified in Section 1.1 below and on the map that is attached hereto and made a part hereof by reference as Exhibit "A" (the "Premises") from the Lessor and the Lessor desires to lease the Premises to the Lessee in accordance with the terms and conditions set forth herein.

E. The Lessor is also willing to grant to the Lessee an option to purchase and a right of first refusal on the Premises and Angelica as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Lessor and the Lessee hereby covenant and agree as follows:

ARTICLE 1

PREMISES AND TERM

Section 1.1 Grant of Lease. The Lessor for and in consideration of the terms, covenants, and conditions herein contained, does hereby lease unto the Lessee, and the Lessee does rent and lease from the Lessor the Premises for the uses and purposes as specifically described as follows:

(a) The entire portion of the Premises identified as Zone 3 on Exhibit A shall be used for active, passive and open recreation space from dawn to dusk for the general public including, but not limited to, residents of the Lessors, visitors to Angelica and the students, employees, licensees and invitees of the Lessee.

(b) That certain portion of the Premises within Zone 7 on Exhibit A, which is land that establishes an approximate one hundred (100) foot setback from St. Bernadine Street and which shall be used improve, beautify and enhance the St. Bernadine Street corridor.

(c) The entire portions of the Premises identified as Zones 3 and 4 on Exhibit A shall be used by the Lessee to erect, install, operate and maintain appropriate signage in accordance with Article 13 below and other lighting fixtures/improvements.

(d) The entire portion of the Premises identified as Zone 8 on Exhibit A may be used by the Lessee, at its discretion and without any duty/obligation owed to Lessor, to erect, install, operate and maintain appropriate lighting fixtures/improvements.

Section 1.2 Term. The Lessee shall HAVE AND HOLD the Premises for a term of fifty (50) years commencing on the Commencement Date and expiring at midnight on _____, 2063 (the "Term"). As of the fortieth ("40th") anniversary of the Commencement Date, the parties agree to commence negotiations for renewal of this Agreement or a new Lease for the Premises upon terms and conditions mutually agreeable to both the Lessor and Lessee.

ARTICLE 2

RENT AND CONSIDERATION

Section 2.1 Rent. In consideration of the lease of the Premises, Lessee shall pay to Lessor on the Commencement Date the sum of One Dollar (\$1.00) for each year of the Term. As additional rent, Lessee shall be responsible, at its sole cost and expense, for the maintenance expenses set forth in Section 5.1 below.

Section 2.2 Manner of Payment. All amounts payable under Section 2.1 of this Article, as well as all other amounts payable by Lessee to Lessor under the terms of this Lease, shall be paid at the address of Lessor set forth above or at such other place as Lessor shall from time to time designate by notice to Lessee, in lawful money of the United States.

Section 2.3 SILOT (Service In Lieu Of Taxes) Credit. In consideration for the assumption by the Lessee of the maintenance costs and expenses set forth in Section 5.1 below, the Lessor agrees to provide the Lessee with an annual SILOT credit in the amount of said annual maintenance costs and expenses.

ARTICLE 3

IMPROVEMENTS TO BE CONSTRUCTED BY LESSEE AT THE PREMISES

Section 3.1 Improvements by Lessee. The parties agree that the Lessee shall be permitted to construct/install signage, lighting, fencing, fixtures, improvements and such other capital projects as may be proposed by the Lessee from time to time at the Premises. The aforesaid improvements to be constructed by Lessee are hereinafter collectively referred to as the "Improvements". Drawings of the proposed Improvements will be provided to both the Lessor and the Berks County Conservancy for their written consent prior to the Lessee beginning

construction/installation of the Improvements at the Premises, which consent shall not be unreasonably withheld or delayed.

Section 3.2 Payment for Improvements. Lessee shall be responsible for the entire cost of the Improvements.

Section 3.3 Disc Golf Course in Zone 3. The Lessee agrees to maintain the disc golf course in Zone 3, provided, however, that the locations of the tees and greens therefor shall be subject to relocation by the Lessee upon receipt of the prior consent of the Lessor.

ARTICLE 4

RESPONSIBILITIES OF LESSEE AND LESSOR

Section 4.1 Lessee's Responsibilities for the Premises. In addition to other costs/expenses set forth elsewhere in this Agreement, the Lessee shall have the responsibilities of providing, paying for, or obtaining the following for the Premises, at the Lessee's sole cost and expense:

- (e) The Improvements.
- (f) The maintenance of the Premises as detailed in Section 5.1 below. In the performance of said duties, the Lessee agrees to confer with the Berks County Conservancy on issues involving the maintenance of those areas of the Premises in Zone 3 that are within fifty (50) feet of the boundary lines separating Zone 3 from Zones 1, 2, 7 and 9 (which are subject to a separate lease agreement between the Lessor and the Berks County Conservancy).
- (g) A secondary role in the security and public safety duties at Angelica in conjunction with Lessor.

- (h) In the event that the parties hereto mutually agree that major repairs, improvements, upgrades, and/or repaving of the parking lot and roadway(s) in Zone 3 of the Premises (excluding the roadway set forth in Section 4.2(a) below and not including the Improvements) located within Angelica are necessary, the Lessee and the Berks County Conservancy shall each pay fifty percent (50%) of such costs. If the parties are unable to mutually agree on the need and extent of such repairs, etc., said dispute shall be resolved in accordance with Section 19.1 hereunder. For purposes of this section, "major" shall refer to costs in excess of the collective amount of Ten Thousand Dollars (\$10,000.00).

Section 4.2 Lessor's Responsibilities for the Premises. In addition to other costs/expenses set forth elsewhere in this Agreement, the Lessor shall have the responsibilities of providing, paying for, or obtaining the following for the Premises, at the Lessor's sole cost and expense:

- (a) The ownership, control, repair and maintenance responsibilities for St. Bernadine Street as the public roadway through Angelica Park to Route 10, which Lessor shall maintain as public road for the Term.
- (b) The primary police, fire, emergency, security and public safety duties at Angelica including the enforcement of all laws, codes and ordinances.

Section 4.3 Compliance with Law. The Lessee shall not use the Premises for any purpose in violation of any federal, state or municipal law currently existing or hereinafter promulgated, governing the use and safety of the Premises, and the Lessee shall at all times

ensure that its use of the Premises is within full compliance with all applicable statutes and ordinances.

Section 4.4 Permits and Licenses. The Lessee shall promptly procure, maintain and comply with all permits, licenses and government authorizations required for its use of the Premises as set forth herein.

Section 4.5 No Violation of Insurance Contracts. The Lessee and Lessor shall not use the Premises in any manner which would make void or voidable any insurance required to be carried by the Lessor or the Lessee or which will make it impossible for either party to obtain fire, general liability or other insurance.

Section 4.6 No Discrimination. The Lessee covenants and agrees that during its use of the Premises, it will not discriminate against any person or persons on the basis of race, color, creed, religion, national origin, age, veteran status and/or disability.

Section 4.7 No Change in Use of Angelica. During the Term, Lessor will neither change the zoning classification of Angelica from its classification existing as of the Commencement Date nor permit the character or use of Angelica to developed or used in any manner not permitted by said zoning regulations.

ARTICLE 5

PAYMENT OF EXPENSES

Section 5.1 Lessee's Obligations. The Lessee shall have the responsibility for maintenance of the Premises, and the payment of all costs related thereto, and for the payment of utilities at the Premises, including, but not limited to, trimming and care of grass/lawn areas, trees and shrubbery and trash removal at the Premises.

Section 5.2 Maintenance Standards. Lessee's Maintenance shall be performed in accordance with the Lessee's general standards of maintenance and repair.

Section 5.3 Taxes. In the event that the Pennsylvania Department of Revenue, the City of Reading, the Reading School District and/or any other governmental authority or taxing body determines that this Agreement is subject to realty transfer tax under the provisions of Pennsylvania Realty Transfer Tax, as amended, and, as a result thereof, imposes or assesses realty transfer tax on the transaction contemplated by this Agreement, the Lessor shall not collect and shall forever waive and exonerate the entire portion of the realty transfer tax (currently 4%) that would otherwise be imposed upon the transaction contemplated by this Agreement. In consideration therefor, the Lessee shall pay the remaining portion of the realty transfer tax imposed upon the transaction contemplated by this Agreement that is due to the Pennsylvania Department of Revenue but not otherwise exempt or excluded because of the status of the Lessor as a political subdivision under the Pennsylvania Realty Transfer Tax, as amended, and its applicable regulations.

ARTICLE 6

GOVERNMENT APPROVALS

Section 6.1 Lessee's Responsibility to Obtain Government Approvals. The Lessee shall obtain any governmental approvals necessary for the construction of the Improvements at the Premises. The Lessor will support and cooperate with the Lessee in any efforts to gain necessary governmental, municipal or other local, state or federal agency approvals, including by confirming or affirming Lessee's standing to obtain such approvals.

ARTICLE 7

INSURANCE

Section 7.1 Casualty Insurance. The Lessee shall keep the Improvements hereinafter constructed at the Premises and any buildings/improvements currently existing at the Premises (if any) to be insured against loss, damage or destruction by fire or such other hazards as are covered by and protected under policies of insurance commonly known as "Property Insurance".

Section 7.2 Liability Insurance. Lessor and the Lessee shall provide insurance for risks associated with their respective use of and responsibilities related to the Premises in an amount not less than Three Million Dollars (\$3,000,000.00) combined single limits for bodily injury/death and property damage. The Lessor and the Lessee, will each, at their sole cost and expense, obtain and maintain insurance with insurance companies approved by the other for general public liability, bodily injury and property damage arising from the use of the Premises by the insuring party, its agents, employees, students, guests, spectators, participants, officials, concessionaires, officers, licensees, invitees or others, and shall provide each other with Certificates of Insurance naming the other party as an additional insured. If the Lessor is self-insured, the Lessor shall provide Lessee with proof of adequate reserves to meet the requirements of this Section. The parties shall review with each other the amount of insurance coverage every five (5) years.

Section 7.3 Additional Insureds. The Lessor and the Lessee shall each cause the other to be named as an additional insured on all such policies and provide proof that such coverage has been obtained and remains in effect during the term of this Agreement.

ARTICLE 8

INDEMNIFICATION

Section 8.1 Indemnification by Lessor. Except to the extent arising out of the negligent acts or omissions or willful misconduct of the Lessee, its employees, agents,

contractors, and/or students, the Lessor agrees to and does hereby indemnify and hold the Lessee harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from (i) any and all damage to any person or property, caused by the acts or omissions of its agents, employees, contractors, invitees, spectators, participants, officials, concessionaires, or other persons and from any cause whatsoever by reason of the use, occupation and enjoyment of the Premises by the Lessor; or (ii) the breach by Lessor of the provisions of this Agreement.

Section 8.2 Indemnification by Lessee. Except to the extent arising out of the negligent acts or omissions or willful misconduct of the Lessor, its employees, agents, contractors, invitees and/or residents, the Lessee agrees to and does hereby indemnify and hold the Lessor harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from (i) any and all damage to any person or property, caused by the acts or omissions of its agents, employees, contractors, invitees, spectators, participants, officials, concessionaires, or other persons and from any cause whatsoever by reason of the use, occupation and enjoyment of the Premises by the Lessee; (ii) any penalty, damage or charge incurred or imposed by reason of any violation of law or ordinance, including, but not limited to zoning and building code ordinances, by Lessee; or (iii) the breach by Lessee of the provisions of this Agreement.

Section 8.3 Indemnification not Limited by Insurance. Full compliance or failure to comply with the provisions of this Agreement relating to insurance shall in no way relieve or diminish the Lessor's or Lessee's responsibilities hereunder.

Section 8.4 Survival of Termination of Agreement. These indemnifications of the Lessor and the Lessee shall survive the termination of this Agreement.

Section 8.5 Waiver of Immunity. Lessor hereby waives any statutory immunity and limit on its liability as between the Lessor and the Lessee for claims arising pursuant to this Agreement, and specifically Articles 7 and 8, or the Lessor's use of the Premises or the use of the Premises by Lessor's agents, employees, contractors, invitees, spectators, participants, officials, residents or concessionaires.

ARTICLE 9

ENVIRONMENTAL

Section 9.1 Compliance with Environmental Laws. Lessor and Lessee agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in, or on the Premises.

Section 9.2 Environmental Indemnification. Lessor and Lessee agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at its sole cost and expense, (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) a party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Premises or

activities conducted by the party thereon, unless the environmental conditions are caused by the other party provided, however, that the Lessee shall have no duty to hold harmless and/or indemnify the Lessor hereunder for anything related to any conduct, failure to act and/or the condition of the Premises that occurred or was in existence prior to the date of this Agreement.

Section 9.3 Indemnifications Survive Termination of Agreement. The indemnifications of this Article 9 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of conditions at the Premises or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Article 9 will survive the expiration or termination of this Agreement.

ARTICLE 10

CONDEMNATION

Section 10.1 Condemnation. In the event Lessor receives notification of any condemnation proceedings affecting the Premises, Lessor will promptly provide notice of the proceeding to Lessee. If a condemning authority takes all of the Premises, or a portion sufficient, in Lessee's reasonable determination, to render the Premises unsuitable for Lessee, this Agreement will terminate as of the date the title vests in the condemning authority. Lessee shall be entitled to reimbursement for any prepaid rent on a pro rata basis and for the undepreciated value of the Improvements constructed by Lessee at the Premises in accordance with Article 3 above.

ARTICLE 11

CASUALTY

Section 11.1 Casualty. Each party shall provide the other notice of any casualty affecting the Premises within forty-eight (48) hours of the casualty. If any part of the Premises is

damaged by fire or other casualty so as to render the Premises unsuitable, in Lessee's reasonable determination, then Lessee may terminate this Agreement by providing written notice to the Lessor, which termination will be effective as of the date of such damage or destruction. Upon such termination, Lessee shall be entitled to reimbursement for any prepaid rent on a pro rata basis and for the undepreciated value of the Improvements constructed by Lessee at the Premises in accordance with Article 3 above.

ARTICLE 12

DEFAULT AND RIGHT TO CURE

Section 12.1 Default by Lessee. The following will be deemed a default by Lessee and a breach of this Agreement: (i) non-payment of rent if such rent remains unpaid for more than fifteen (15) days after receipt of written notice from Lessor of such failure to pay; or (ii) Lessee's failure to perform any other term or condition under this Agreement within thirty (30) days after receipt of written notice from Lessor specifying the failure. No such failure, however, will be deemed to exist if Lessee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Lessee. If Lessee remains in default beyond any applicable cure period, Lessor agrees to promptly inform Berks County Conservancy and Berks County Conservancy shall have a period of not less than thirty (30) days from such notice to negotiate an assignment of this Agreement to the Berks County Conservancy and, upon expiration of such assignment option, to exercise any and all rights and remedies available to it under law and equity, including but not limited to termination of this Agreement.

Section 12.2 Default by Lessor. The following will be deemed a default by Lessor and a breach of this Agreement: Lessor's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within thirty (30) days after receipt of written notice from Lessee specifying the failure. No such failure, however, will be deemed to exist if Lessor has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Lessor. If Lessor remains in default beyond any applicable cure period, Lessee will have the right to exercise any and all rights available to it under law and equity, including but not limited to termination and Lessor shall reimburse the Lessee for the fair market value of the Improvements.

ARTICLE 13

SIGNS

Section 13.1 General Signage. Subject to applicable ordinances, signage shall be installed by the Lessee which shall identify and promote the Premises as being a public park that is open to the public and owned by the City of Reading but also a part of the main campus of Alvernia University. Alvernia also agrees to display and promote on its official website that Angelica is a public park owned by the City of Reading and open to the public.

Section 13.2 Lessee's Signs. The Lessee shall be permitted to display banners from the light poles and fences installed at the Premises to identify the property as part of the main campus of Alvernia University.

ARTICLE 14

ASSIGNMENT

Section 14.1 Assignment. At any time during the Term, Lessee may elect to assign this Agreement and all Lessee's right, title, interest, duties and obligations hereunder to a third party, subject, however, to Lessor's approval, which approval shall not be unreasonably withheld. In the event Lessor approves Lessee's assignment of this Agreement to a third party, Lessee shall have no further responsibility or obligation to Lessor, whatsoever. Lessor may not assign this Agreement to any third party without the prior written consent of Lessee.. Any such assignment by the Lessee shall include its right of first refusal set forth in Article 23 below.

ARTICLE 15

ENTIRE AGREEMENT

Section 15.1 Entire Agreement. This Agreement contains and sets forth the entire agreement and understanding between the parties hereto and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between said parties other than as herein expressly referenced or set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party hereto, unless reduced to writing and signed by Lessor and Lessee. This Agreement shall be binding on the parties hereto, and their respective successors and assigns.

ARTICLE 16

NOTICES

Section 16.1 Notices. Notices given pursuant to this Agreement shall be in writing, shall be given by actual delivery or by mailing the same to the party entitled thereto at the address set forth below or at such other address as any party may designate in writing to any other party pursuant to the provisions of this Article. Notices given by mail shall be sent by United States mail, certified or registered, return receipt requested, or by recognized overnight

courier. Notices shall be deemed to be received on the date of actual receipt. Notices shall be served or mailed to the following addresses, subject to change as provided above:

If to Lessor:	City of Reading 815 Washington Street Reading, PA 19601 Attn: Managing Director
With a copy to:	Charles D. Younger, Esquire City Solicitor 815 Washington Street Reading, PA 19601
If to Lessee:	Alvernia University 400 Saint Bernadine Street Reading, PA 19607-1799 Attention: Douglas F. Smith, Vice President
With a copy to:	Heidi B. Masano, Esquire Masano ♦ Bradley, LLP 1100 Berkshire Boulevard, Suite 201 Wyomissing, PA 19610

ARTICLE 17

SEVERABILITY

Section 17.1 Severability. If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein.

ARTICLE 18

APPLICABLE LAW

Section 18.1 Applicable Law. The validity, interpretation, construction, performance, and enforcement of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their successors and permitted assigns. The situs of this Agreement shall be

Berks County, Pennsylvania and, subject to Article 19 below, if a dispute arises as a result of this transaction, the parties hereby submit to the jurisdiction of the Court of Common Pleas of Berks County. The parties agree that Berks County presents the most convenient forum for both parties. The parties consent to the personal jurisdiction and venue of the Court of Common Pleas of Berks County and the parties waive all objections based upon improper jurisdiction, venue, or forum non-conveniens. The parties intend and agree that a party in breach of this Agreement shall bear the burden and obligation of any and all costs and expenses, including reasonable counsel fees, incurred by the other party, if the other party is successful in any litigation in endeavoring to protect and enforce his or her rights under this Agreement. Failure of either party to insist upon strict performance of any of the terms of this Agreement shall in no way affect the right of such party to enforce those terms in the future.

ARTICLE 19

MEDIATION

Section 19.1 Mediation. Notwithstanding the provision of Article 18 set forth above, any disputes between Lessor and Lessee shall first be submitted to mediation through the Berks County Bar Association Civil Dispute Resolution Program, said mediation to be held by a mediator appointed from the list of qualified mediators determined by the Berks County Bar Association.

ARTICLE 20

RELATIONSHIP OF THE PARTIES

Section 20.1 Relationship of the Parties. It is the intention of the parties to create a nonexclusive Lease Agreement pursuant to which the Lessee and Lessor shall use the Premises in accordance with the terms of this Agreement. Nothing herein shall be construed to constitute

the parties hereto as partners or joint ventures or to render either party liable for the debts or obligations of the other party.

ARTICLE 21

SURRENDER

Section 21.1 Surrender. Upon termination of this Agreement, Lessee shall peaceably surrender the Premises to Lessor in a condition and repair similar to the condition and repair of the Premises on the Commencement Date, subject to the construction set forth in Article 3, reasonable wear and tear and damage by casualty excepted.

ARTICLE 22

MEMORANDUM OF LEASE

Section 22.1 Memorandum of Lease. In order for Lessee to obtain a policy of leasehold title insurance, the parties agree that concurrently with the execution of this Agreement they shall execute a memorandum of lease to be recorded in the office of the Recorder of Deeds of Berks County, Pennsylvania setting forth: (i) the names of the parties in this Lease Agreement; (ii) the term of this Lease; (iii) the location of the Premises subject to the Lease; and (iv) the Lessee's option to purchase and right of first refusal to purchase the Premises.

ARTICLE 23

LESSEE'S RIGHT OF FIRST REFUSAL

Section 23.1 Lessee's Right of First Refusal. If, at any time during the Term, Lessor desires to list for sale, sell or shall receive a bona fide offer from any third party to purchase Angelica or any portion of Angelica, including, without limitation, the Premises (the "Proposed Sale"), Lessee shall have a Right of First Refusal as follows:

(a) Lessor shall give Lessee notice in writing of the Proposed Sale, which notice shall include the price, terms and conditions of the Proposed Sale ("Lessor's Notice"). Included with Lessor's Notice shall be such information as shall reasonably enable Lessee to establish all of the terms of the offer and that the offer is bona fide, including (without limitation) a true and correct copy of the letter of intent or agreement of sale, if any. If the Right of First Refusal arises because the Lessor desires to sell (and not because of receipt of a bona fide offer to purchase from a third party), the purchase price in the Lessor's Notice shall be based on a "then current" market valuation/appraisal of Angelica, as determined by a mutually acceptable and certified real estate appraiser in an appraisal report.

(b) Upon receipt of the Lessor's Notice, the Lessee shall have a period of seventy-five (75) days to exercise the Right of First Refusal to purchase Angelica. Lessee understands and acknowledges that Berks County Conservancy has an identical Right of First Refusal in the Berks County Conservancy Lease. In the event that Berks County Conservancy also elects to purchase Angelica, Lessee's (and Berks County Conservancy's) Right of First Refusal will be reduced to the right to purchase the Premises, for the Lessee, and the right to purchase the remaining portions of Angelica not including the Premises and not including the areas that are the subject of the Tri-Party Agreement, for Berks County Conservancy. Lessee and Berks County Conservancy will have a further forty-five (45) days to prepare and agree to a Declaration of Condominium providing for two (2) units corresponding to those portions of Angelica that are leased solely to each party, with common elements or areas being those portions of Angelica that are shared between Lessee and Angelica as set forth in the Tri-Party Agreement. In

the event Lessee and Berks County Conservancy are able to agree to an acceptable Declaration of Condominium within the said forty-five (45) day period, then Lessee and Berks County Conservancy will, within thirty (30) days from the end of the forty-five (45) day period, purchase the respective condominium units of Angelica and Lessee will record the Declaration of Condominium that has been agreed to between them. In the event Lessee does not elect to purchase Angelica, Lessor may sell the same to Berks County Conservancy, if Berks County Conservancy has elected to purchase Angelica, or to such third party with whom Lessor agrees to sell Angelica. In the event of a sale of Angelica to Berks County Conservancy or a third party, this Agreement will continue in full force and effect.

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

WITNESS:

LESSEE:

ALVERNIA UNIVERSITY

By: _____

Name: Douglas F. Smith

Title: Vice President

LESSOR:

CITY OF READING

Attest: _____

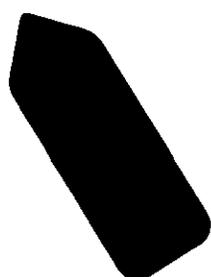
Chief Clerk

By: _____

Name: _____

Title: _____

LEASE AGREEMENT



THIS AGREEMENT OF LEASE (the "Agreement") is dated to be effective as of the ____ day of _____, 2013 (the "Commencement Date") by and between CITY OF READING, a third class city of the Commonwealth of Pennsylvania, having an address at 815 Washington Street, Reading, Pennsylvania 19601 (the "Lessor") and BERKS COUNTY CONSERVANCY, a Pennsylvania non-profit corporation, having an address at 25 N. 11th Street, Reading, Pennsylvania 19601 (the "Lessee").

BACKGROUND

F. The Lessor is the owner of a tract of land and the improvements erected thereon located in the City of Reading, Berks County, Pennsylvania, being known as "Angelica Park," having Parcel Id. No. 18530620812266 (hereinafter referred to at times as "Angelica").

G. The Lessee desires to lease certain portions of Angelica as more specifically depicted, described and/or identified in Section 1.1 below and on the map that is attached hereto and made a part hereof as **Exhibit A** from the Lessor and the Lessor desires to lease the Premises (as defined herein) to the Lessee in accordance with the terms and conditions set forth herein.

H. The Lessor is also willing to grant to the Lessee an option to purchase and a right of first refusal on the Premises and Angelica as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Lessor and the Lessee hereby covenant and agree as follows:

ARTICLE 1

PREMISES AND TERM

Section 1.1 Grant of Lease; Permitted Use. The Lessor for and in consideration of the terms, covenants, and conditions herein contained, does hereby lease unto the Lessee, and the Lessee does rent and lease from the Lessor the areas identified on Exhibit A as Zones 1, 2, 6, 7

and 9; excepting, however, that portion of Zone 7 that has been leased to Alvernia University as set forth in that certain Lease Agreement between the Lessor and Alvernia University dated of even date herewith (the "Alvernia Lease") (the "Premises"). Lessee will use the Premises for programming as set forth more specifically in Section 1.1(a) of that certain Tri-Party Agreement between Lessor, Lessee and Alvernia University dated of even date herewith (the "Tri-Party Agreement") and for active, passive and open recreation space from dawn to dusk for the general public including, but not limited to, residents of the Lessors, visitors to Angelica and the employees, licensees and invitees of the Lessee. Notwithstanding anything contained or construed herein to the contrary, and with the exception of the Improvements (as defined herein) it is the intention of the parties hereto that the general public will have access to all portions of Angelica, subject to Lessor's rules and regulations governing access to and use of Angelica. Lessee shall have sole authority to determine access to and use of the Improvements by all persons, including the general public.

Section 1.2 Term. The Lessee shall HAVE AND HOLD the Premises for the lesser of: (a) ninety-nine (99) years commencing on the Commencement Date and expiring at midnight on the day immediately preceding the ninety-ninth (99th) anniversary of the Commencement Date, (b) until the expiration or termination of the Tri-Party Agreement, as set forth in Section 1.2 of the Tri-Party Agreement, or (c) the termination of this Agreement as permitted under Section 1.3, below (the "Term").

Section 1.3 Termination.

(a) **Lessor's Right to Terminate Between Years 30 and 50.** After the thirtieth (30th) anniversary of the Commencement Date, but before the fiftieth (50th) anniversary of the Commencement Date (the "First Termination Period"), Lessor may elect to terminate this

Agreement for any or no reason; provided, however, that Lessor has first provided Lessee with the Termination Notice (as defined herein). In the event Lessor elects to terminate this Agreement during the First Termination Period, Lessor will pay to Lessee an amount equal to the Termination Payment (as defined herein) increased by twenty percent (20%). Payment of such amount will be upon the terms and conditions set forth in Section 1.3(f), below. Lessor will also reimburse Lessee for its reasonable moving expenses.

(b) **Lessor's Right to Terminate after Year 50.** After the fiftieth (50th) anniversary of the Commencement Date (the "Second Termination Period"), Lessor may elect to terminate this Agreement for any or no reason; provided, however, that Lessor has first provided Lessee with the Termination Notice. In the event Lessor elects to terminate this Agreement during the Second Termination Period, Lessor will pay to Lessee the Termination Payment. Lessor will also reimburse Lessee for its reasonable moving expenses.

(c) **Termination of Lease by Expiration of Term.** Upon the termination of this Agreement by expiration of the Term after the end of the ninety-ninth (99th) year from the Commencement Date, Lessor is not obligated to pay Lessee the Termination Payment or any other payment for the value of the Improvements.

(d) **Lessee's Right to Terminate.** Lessee may elect, at any time during the Term, to terminate this Agreement for any or no reason. Except as set forth in Section 12.2, below (Lessor's default), in the event Lessee elects to terminate this Agreement, the Improvements (excluding all personal property and trade fixtures therein located) will become the sole and exclusive property of Lessor, without payment to Lessee by Lessor.

(e) **Termination Notice.** Before Lessor may exercise its right to terminate this Agreement under Subsections (a) or (b), above, or Lessee under Subsection (d), above,

Lessor or Lessee, whichever is applicable, must first give the other not less than five (5) years' prior notice of its intention to terminate this Agreement (the "Termination Notice"). The Termination Notice must follow the notice requirements set forth in Section 16.1, below.

(f) **Termination Payment.** The "Termination Payment" is an amount equal to the fair market value of the Improvements (not including the rest of the Premises), determined not more than three (3) months before the actual termination date. The fair market value of the Improvements will be determined by a mutually acceptable real estate appraiser licensed by the Pennsylvania State Board of Certified Real Estate Appraisers, certified to appraise both residential and non-residential real property. In the event Lessor and Lessee cannot agree upon a mutually acceptable appraiser, both Lessor and Lessee will obtain their own appraisals, at their own cost, and the fair market value will be the average of both appraisals. In conducting the appraisal, the appraiser or appraisers will disregard the fact that the Improvements are located on property zoned by Lessor as a preservation district. Instead, the appraiser or appraisers will conduct the appraisals as though the Improvements were located on property zoned to permit commercial office space on a lot with the minimum necessary area, minimum necessary road frontage and any other minimum necessary condition met. The Termination Payment must be made to Lessee on the date the termination of this Agreement becomes effective in United States Currency or other form of immediately available funds reasonably acceptable to Lessee.

ARTICLE 2

RENT AND CONSIDERATION

Section 2.1 Rent. In consideration of the lease of the Premises, Lessee shall pay to Lessor on the Commencement Date the sum of One Dollar (\$1.00). On the first anniversary of

the Commencement Date and continuing on the same day each consecutive year thereafter during the Term, Lessee will pay to Lessor the amount of One Dollar (\$1.00).

Section 2.2 Manner of Payment. All amounts payable under Section 2.1 of this Article, as well as all other amounts payable by Lessee to Lessor under the terms of this Lease, shall be paid, in lawful money of the United States, to Lessor at the address set forth above or at such other place as Lessor shall from time to time designate by written notice to Lessee.

Section 2.3 Additional Consideration. In the event Lessee constructs its new headquarters on the Premises as permitted by this Lease and the Tri-Party Agreement, and after Lessee has received a Certificate of Occupancy or other similar approval to enable Lessee to use the Premises as its permanent, full-time headquarters, then, as further consideration for this Lease, Lessee will promptly transfer all of its rights in and to its leasehold interests to the property known and numbered as 25 North 11th Street, in the City of Reading, including the Lessee's leasehold improvements upon such property.

ARTICLE 3

IMPROVEMENTS TO BE CONSTRUCTED BY LESSEE AT THE PREMISES

Section 3.1 Improvements by Lessee. Lessee will be permitted to construct a new headquarters on the Premises, as set forth in Section 3.1 of the Tri-Party Agreement (the "Improvements"). Lessor understands and acknowledges that as of the date hereof, the existing improvement located on the Premises that is commonly known, and hereinafter referred to, as the "Boathouse" is afflicted with a constant, overwhelming and malodorous aroma, the source of which is yet undetermined. In the event such smell is not remediated by Lessor promptly after the complete execution of this Agreement, and/or Lessee determines that such smell cannot be easily or economically remediated, then Lessee will have the option of demolishing the

Boathouse when it constructs the Improvements. In the event Lessee elects to demolish the Boathouse, Lessee will not be responsible to replace the same. As used hereinafter, and unless expressly indicated otherwise, "Improvements" shall mean the Improvements and the Boathouse, if the Boathouse is not demolished. Except as expressly set forth herein, Lessee shall solely own the Improvements and all personal property, trade fixtures and fixtures located thereupon and therein.

Section 3.2 Payment for Improvements. Lessee shall be responsible for the entire cost of the Improvements and, if applicable, for the costs of demolishing the Boathouse.

ARTICLE 4

RESPONSIBILITIES AND COVENANTS OF LESSEE AND LESSOR

Section 4.1 Lessee's Responsibilities for the Premises. In addition to other costs and expenses set forth elsewhere in this Agreement that are expressly made the responsibility of Lessee, Lessee shall have the responsibility of providing, paying for, or obtaining the following for the Premises, during the Term, at the Lessee's sole cost and expense:

- (i) The Improvements.
- (j) Subject to the Tri-Party Agreement, the maintenance of the Premises as detailed in Section 5.1 below. In the performance of said duties, the Lessee agrees to confer with Alvernia University on issues involving the maintenance of those areas in close proximity to the portions of Angelica that are subject to a separate lease agreement between the Lessor and Alvernia University.
- (k) The maintenance and management of the "wetlands" in that portion of the Premises identified in Zone 2 on Exhibit A in accordance with the

Angelica Management Plan as developed by the Environmental Management Committee effective as of March of 2013, as amended, modified, replaced or otherwise changed; provided, however, that Lessee's obligations thereunder shall not be unreasonably or materially increased in any such amendment, modification or replacement. A copy of said Angelica Management Plan is attached hereto and made a part hereof as **Exhibit B**.

- (l) In the event that the Lessor, Lessee and Alvernia mutually agree that major repairs, improvements, upgrades, and/or repaving of the parking lot and roadways (excluding the roadway set forth in Section 4.2(a), below and not including the Improvements) located within Angelica are necessary, the Lessee and Alvernia shall each pay fifty percent (50%) of such costs; provided, however that any parking lots or roadways that service a portion or portions of Angelica that are exclusively leased to either Lessee or Alvernia shall be the full responsibility of such. If the parties are unable to mutually agree on the need and extent of such repairs, etc., said dispute shall be resolved in accordance with Section 19.1 hereunder. For purposes of this section, "major" shall refer to costs in excess of the collective amount of Ten Thousand Dollars (\$10,000.00).
- (m) Subject to the Tri-Party Agreement, the programming and scheduling of programs at the Boathouse.

Section 4.2 Lessor's Responsibilities for the Premises. In addition to other costs and expenses set forth elsewhere in this Agreement that are expressly made the responsibility of

Lessor, Lessor shall have the responsibility of providing, paying for, or obtaining the following for the Premises, at the Lessor's sole cost and expense:

- (a) The ownership, control, repair and maintenance responsibilities for St. Bernadine Street as the public roadway through Angelica to Route 10, which Lessor shall maintain as public road for the Term.
- (b) The primary police, fire, emergency, security and public safety duties at Angelica including the enforcement of all laws, codes and ordinances.
- (c) Lessor is responsible to remediate the mechanical and other defects in the Boathouse that are existing as of the date of this Agreement, including, without limitation, the malodorous aroma mentioned above, and certain defects with the HVAC and alarm systems.

Section 4.3 Compliance with Law. The Lessee shall not use the Premises for any purpose in violation of any federal, state or municipal law currently existing or hereinafter promulgated, governing the use and safety of the Premises, and the Lessee shall at all times ensure that its use of the Premises is within full compliance with all applicable statutes and ordinances.

Section 4.4 Permits and Licenses. The Lessee shall promptly procure, maintain and comply with all permits, licenses and government authorizations required for its use of the Premises as set forth herein.

Section 4.5 No Violation of Insurance Contracts. The Lessee and Lessor shall not use the Premises in any manner which would make void or voidable any insurance required to be carried by the Lessor or the Lessee or which will make it impossible for either party to obtain fire, general liability or other insurance.

Section 4.6 No Discrimination. The Lessee covenants and agrees that during its use of the Premises, it will not discriminate against any person or persons on the basis of race, color, creed, religion, national origin, age, veteran status and/or disability.

Section 4.7 No Change in Use of Angelica. During the Term, Lessor will neither change the zoning classification of Angelica from its classification existing as of the Commencement Date nor permit the character or use of Angelica to be developed or used in any manner not permitted by said zoning regulations.

ARTICLE 5

REPAIR, REPLACEMENT AND MAINTENANCE; UTILITIES; SERVICES

Section 5.1 Lessee's Obligations. Subject to the Tri-Party Agreement, Section 4.2, above, and Section 5.3, below, the Lessee shall have the responsibility for the repair, replacement and maintenance of the Improvements, and the payment of all costs and expenses related thereto, including, without limitation, the roof, walls, windows, doors, foundation, HVAC, plumbing, electrical and other systems located within the Improvements. Lessee shall maintain the Premises, including, but not limited to, trimming and care of grass/lawn areas, trees and shrubbery (limited to those located within grass/lawn areas) and trash removal at the Premises. Lessee will be solely responsible for payment of Lessee's usage of all utility services to the Improvements, including, without limitation, electric service, water service, sewer service and gas service. Lessee will be responsible for all other desired services to the Improvements, including phone, internet and janitorial services.

Section 5.2 Lessee's Maintenance Standards. Lessee's maintenance of the Premises shall be performed in a good, workmanlike manner and condition. Lessor's repair, replacement

and maintenance of the Improvements will be to that standard acceptable to Lessee, in Lessee's sole discretion.

ARTICLE 6

GOVERNMENTAL APPROVALS

Section 6.1 Lessee's Responsibility to Obtain Government Approvals. The Lessee shall obtain any governmental approvals necessary for the construction of the Improvements at the Premises. The Lessor will support and cooperate with the Lessee in any efforts to gain necessary governmental, municipal or other local, state or federal agency approvals on a timely basis, including by confirming or affirming Lessee's standing to obtain such approvals.

ARTICLE 7

INSURANCE

Section 7.1 Casualty Insurance. The Lessee shall keep the Improvements insured against loss, damage or destruction by fire or such other hazards as are covered by and protected under policies of insurance commonly known as "Extended Coverage Insurance".

Section 7.2 Liability Insurance. Lessor and the Lessee shall provide insurance for risks associated with their respective use of and responsibilities related to the Premises in an amount not less than Three Million Dollars (\$3,000,000.00) combined single limits for bodily injury/death and property damage. The Lessor and the Lessee, will each, at their sole cost and expense, obtain and maintain insurance with insurance companies licensed to do business in the Commonwealth of Pennsylvania for general public liability, bodily injury and property damage arising from the use of the Premises by the insuring party, its agents, employees, officers, licensees and invitees. If the Lessor is self-insured, the Lessor shall provide Lessee with proof of

adequate reserves to meet the requirements of this Section. The parties shall review with each other the amount of insurance coverage every five (5) years.

Section 7.3 Additional Insureds. The Lessor and the Lessee shall each cause the other to be named as an additional insured on all such policies and provide proof that such coverage has been obtained and remains in effect during the term of this Agreement.

ARTICLE 8

INDEMNIFICATION

Section 8.1 Indemnification by Lessor. Except to the extent arising out of the negligent acts or omissions or willful misconduct of the Lessee, its directors, officers, employees, agents, licensees or invitees, the Lessor agrees to and does hereby indemnify and hold the Lessee harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from: (a) any and all damage to any person or property, caused by the acts or omissions of its officers, agents, employees, licensees or invitees (which shall include persons who visit Angelica for recreational or other purposes unrelated to Lessee's activities), or (b) the breach by Lessor of the provisions of this Agreement.

Section 8.2 Indemnification by Lessee. Except to the extent arising out of the negligent acts or omissions or willful misconduct of the Lessor, its officers, agents, employees, licensees and invitees (which shall include persons who visit Angelica for recreational or other purposes unrelated to Lessee's activities), the Lessee agrees to and does hereby indemnify and hold the Lessor harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from: (a) any and all damage to any person or property, caused by the acts or omissions of Lessee's directors, officers, agents, employees, licensees and invitees, (b) any penalty, damage or charge incurred or imposed by reason of Lessee's violation

of law or ordinance, including, but not limited to zoning and building code ordinances; or (c) the breach by Lessee of the provisions of this Agreement.

Section 8.3 Indemnification not Limited by Insurance. Full compliance or failure to comply with the provisions of this Agreement relating to insurance shall in no way relieve or diminish the Lessor's or Lessee's responsibilities hereunder.

Section 8.4 Survival of Termination of Agreement. These indemnifications of the Lessor and the Lessee shall survive the termination of this Agreement.

Section 8.5 Waiver of Immunity. Lessor hereby waives any statutory immunity and limit on its liability as between the Lessor and the Lessee for claims arising pursuant to this Agreement.

ARTICLE 9

ENVIRONMENTAL

Section 9.1 Compliance with Environmental Laws. Lessor and Lessee agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in, or on the Premises.

Section 9.2 Environmental Indemnification. Lessor and Lessee agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at its sole cost and expense, (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) a party's failure to comply with any

environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Premises or activities conducted by the party thereon, unless the environmental conditions are caused by the other party; provided, however, that the Lessee shall have no duty to hold harmless and/or indemnify the Lessor hereunder for anything related to any conduct, failure to act and/or the condition of the Premises that occurred or was in existence prior to the date of this Agreement.

Section 9.3 Indemnifications Survive Termination of Agreement. The indemnifications of this Article 9 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of conditions at the Premises or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Article 9 will survive the expiration or termination of this Agreement.

ARTICLE 10

CONDEMNATION

Section 10.1 Condemnation. In the event Lessor receives notification of any condemnation proceedings affecting the Premises, Lessor will promptly provide notice of the proceeding to Lessee. If a condemning authority takes all of the Premises, or a portion sufficient, in Lessee's reasonable determination, to render the Premises unsuitable for Lessee, this Agreement will terminate as of the date the title vests in the condemning authority. Except as set forth below, Lessor is entitled to all sums paid by the condemning authority for the Premises, but Lessor must pay Lessee for the fair market value of the improvements, calculated as set forth in

Section 1.3(f), above. Lessee is permitted to recover from the condemning authority reimbursement for its moving expenses and other similar expenses incurred by Lessee because of the condemnation of the Premises.

ARTICLE 11

CASUALTY

Section 11.1 Casualty. Each party shall provide the other notice of any casualty affecting the Premises within forty-eight (48) hours of the casualty provided that said party has actual knowledge of the casualty. Lessee is solely entitled to all insurance proceeds for casualty damage to the Improvements.

ARTICLE 12

DEFAULT AND RIGHT TO CURE

Section 12.1 Default by Lessee. The following will be deemed a default by Lessee and a breach of this Agreement: (i) non-payment of rent if such rent remains unpaid for more than fifteen (15) days after receipt of written notice from Lessor of such failure to pay; or (ii) Lessee's failure to perform any other term or condition under this Agreement within thirty (30) days after receipt of written notice from Lessor specifying the failure. No such failure, however, will be deemed to exist if Lessee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Lessee. If Lessee remains in default beyond any applicable cure period, Lessor agrees to promptly inform Alvernia

and Alvernia and Lessor shall have a period of not less than thirty (30) days from such notice to negotiate an assignment of this Agreement to Alvernia. Thereafter, provided this Agreement Lessor will have the option of terminating this Agreement, assigning this Agreement to Alvernia University or obtaining such other remedy at law or in equity as may be available to Lessor.

Section 12.2 Default by Lessor. The following will be deemed a default by Lessor and a breach of this Agreement: Lessor's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within thirty (30) days after receipt of written notice from Lessee specifying the failure. No such failure, however, will be deemed to exist if Lessor has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Lessor. If Lessor remains in default beyond any applicable cure period, the Lessee will have the right to exercise any and all rights available to it under law and equity, including but not limited to termination of this Agreement. In the event Lessee elects to terminate this Agreement, Lessor will pay to Lessee the Termination Payment, increased by twenty percent (20%).

Section 12.3 Alvernia Default. In the event Alvernia University defaults under the Alvernia Lease and Lessor would otherwise have the ability to terminate the Alvernia Lease, Lessor will, instead of terminating the Alvernia Lease, permit Lessee, at its option, to take an assignment of the Alvernia Lease, or to enter into a new lease with Lessor for the property that is the subject of the Alvernia Lease on terms identical to those contained in the Alvernia Lease, with the term adjusted so that Lessee's term for such property does not exceed the original term of the Alvernia Lease.

ARTICLE 13

SIGNS

Section 13.1 General Signage. Subject to applicable ordinances, the Lessee may install that signage permitted under the Tri-Party Agreement at the Premises including, but not limited to, Section 13.2 of the Tri-Party Agreement.

ARTICLE 14

ASSIGNMENT

Section 14.1 Assignment. At any time during the Term, Lessee may elect to assign this Agreement and all Lessee's right, title, interest, duties and obligations hereunder to a third party, subject, however, to Lessor's approval, which approval shall not be unreasonably withheld. In the event Lessor approves Lessee's assignment of this Agreement to a third party, Lessee shall have no further responsibility or obligation to Lessor, whatsoever. Lessor may not assign this Agreement to any third party without the prior written consent of Lessee.

ARTICLE 15

ENTIRE AGREEMENT

Section 15.1 Entire Agreement. This Agreement and the Tri-Party Agreement contains and sets forth the entire agreement and understanding between the parties hereto and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between said parties other than as herein expressly referenced or set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party hereto, unless reduced to writing and signed by Lessor and Lessee. This Agreement shall be binding on the parties hereto, and their respective successors and assigns.

ARTICLE 16

NOTICES

Section 16.1 Notices. Notices given pursuant to this Agreement shall be in writing, shall be given by actual delivery or by mailing the same to the party entitled thereto at the address set forth below or at such other address as any party may designate in writing to any other party pursuant to the provisions of this Article. Notices given by mail shall be sent by United States mail, certified or registered, return receipt requested, or by recognized overnight courier. Notices shall be deemed to be received on the date of actual receipt. Notices shall be served or mailed to the following addresses, subject to change as provided above:

If to Lessor:	City of Reading 815 Washington Street Reading, PA 19601 Attn: Managing Director
With a copy to:	Charles D. Younger, Esquire City Solicitor 815 Washington Street Reading, PA 19601
If to Conservancy:	Berks County Conservancy 25 N. 11 th Street Reading, PA 19601 Attention: Kimberly J. Murphy, President
With a copy to:	Christopher J. Hartman, Esquire Hartman Shurr 1100 Berkshire Boulevard, Suite 300 Wyomissing, PA 19610

ARTICLE 17

SEVERABILITY

Section 17.1 Severability. If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein.

ARTICLE 18

APPLICABLE LAW

Section 18.1 Applicable Law. The validity, interpretation, construction, performance, and enforcement of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their successors and permitted assigns. The situs of this Agreement shall be Berks County, Pennsylvania and, subject to Article 19 below, if a dispute arises as a result of this transaction, the parties hereby submit to the jurisdiction of the Court of Common Pleas of Berks County. The parties agree that Berks County presents the most convenient forum for both parties. The parties consent to the personal jurisdiction and venue of the Court of Common Pleas of Berks County and the parties waive all objections based upon improper jurisdiction, venue, or forum non-conveniens. The parties intend and agree that a party in breach of this Agreement shall bear the burden and obligation of any and all costs and expenses, including reasonable counsel fees, incurred by the other party, if the other party is successful in any litigation in endeavoring to protect and enforce his or her rights under this Agreement. Failure of either party to insist upon strict performance of any of the terms of this Agreement shall in no way affect the right of such party to enforce those terms in the future.

ARTICLE 19

MEDIATION

Section 19.1 Mediation. Notwithstanding the provision of Article 18 set forth above, any disputes between Lessor and Lessee shall first be submitted to mediation through the Berks County Bar Association Civil Dispute Resolution Program, said mediation to be held by a mediator appointed from the list of qualified mediators determined by the Berks County Bar Association.

ARTICLE 20

RELATIONSHIP OF THE PARTIES

Section 20.1 Relationship of the Parties. It is the intention of the parties to create a nonexclusive Lease Agreement pursuant to which the Lessee and Lessor shall use the Premises in accordance with Section 1.1 and the other terms of this Agreement. Nothing herein shall be construed to constitute the parties hereto as partners or joint ventures or to render either party liable for the debts or obligations of the other party.

ARTICLE 21

SURRENDER

Section 21.1 Surrender. Upon termination of this Agreement, Lessee shall peaceably surrender the Premises to Lessor in a condition and repair similar to the condition and repair of the Premises on the Commencement Date, reasonable wear and tear and damage by casualty excepted.

ARTICLE 22

MEMORANDUM OF LEASE

Section 22.1 Memorandum of Lease. The parties agree that concurrently with the execution of this Agreement they shall execute a memorandum of lease to be recorded in the office of the Recorder of Deeds of Berks County, Pennsylvania setting forth: (i) the names of the

parties in this Lease Agreement; (ii) the term of this Lease; (iii) the location of the Premises subject to the Lease; (iv) the Lessee's option to purchase and right of first refusal to purchase the Premises and such other terms or items of information as the parties deem necessary.

ARTICLE 23

LESSEE'S RIGHT OF FIRST REFUSAL and OPTION TO PURCHASE

Section 23.1 Lessee's Right of First Refusal. If, at any time during the Term, Lessor desires to list for sale, sell or shall receive a bona fide offer from any third party to purchase Angelica or any portion of Angelica, including, without limitation, the Premises (the "Proposed Sale"), Lessee shall have a Right of First Refusal as follows:

(a) Lessor shall give Lessee notice in writing of the Proposed Sale, which notice shall include the price, terms and conditions of the Proposed Sale ("Lessor's Notice"). Included with Lessor's Notice shall be such information as shall reasonably enable Lessee to establish all of the terms of the offer and that the offer is bona fide, including (without limitation) a true and correct copy of the letter of intent or agreement of sale, if any. If the Right of First Refusal arises because the Lessor desires to sell (and not because of receipt of a bona fide offer to purchase from a third party), the purchase price in the Lessor's Notice shall be based on a "then current" market valuation/appraisal of Angelica, as determined by a mutually acceptable and certified real estate appraiser in an appraisal report.

(b) Upon receipt of the Lessor's Notice, the Lessee shall have a period of seventy-five (75) days to exercise the Right of First Refusal to purchase Angelica. Lessee understands and acknowledges that Alvernia University has an identical Right of First Refusal in the Alvernia Lease. In the event that Alvernia University also elects to

purchase Angelica, Lessee's (and Alvernia's) Right of First Refusal will be reduced to the right to purchase the Premises, for the Lessee, and the right to purchase the remaining portions of Angelica not including the Premises and not including the areas that are the subject of the Tri-Party Agreement, for Alvernia University. Lessee and Alvernia University will have a further forty-five (45) days to prepare and agree to a Declaration of Condominium providing for two (2) units corresponding to those portions of Angelica that are leased solely to each party, with common elements or areas being those portions of Angelica that are shared between Lessee and Angelica as set forth in the Tri-Party Agreement. In the event Lessee and Alvernia University are able to agree to an acceptable Declaration of Condominium within the said forty-five (45) day period, then Lessee and Alvernia University will, within thirty (30) days from the end of the forty-five (45) day period, purchase Angelica as tenants in common, each owning fifty percent (50%). Promptly after such purchase, Lessee and Alvernia University will record the Declaration of Condominium that has been agreed to between them. In the event Lessee does not elect to purchase Angelica, Lessor may sell the same to Alvernia University, if Alvernia University has elected to purchase Angelica, or to such third party with whom Lessor agrees to sell Angelica. In the event of a sale of Angelica to Alvernia University or a third party, this Agreement will continue in full force and effect.

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

WITNESS:

LESSEE:

BERKS COUNTY CONSERVANCY

By: _____
Name: Kimberly J. Murphy
Title: President

LESSOR:
CITY OF READING

Attest: _____
Chief Clerk

By: _____
Name: _____
Title: _____

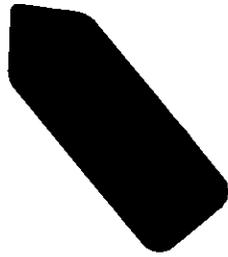


EXHIBIT A

PREMISES

EXHIBIT B

ANGELICA MANAGEMENT PLAN
ANGELICA CREEK PARK , MANAGEMENT PLAN
Angelica Environmental Management Committee
February, 2010

- I. Background – The Environmental Management Committee description : “ will consult with the managing entity on all aspects of land and ecosystem management activity at Angelica Creek Park. Specific management activities will include , but may not be limited to 1) trail maintenance, 2) conveyance of environmental information to the public, 3) invasive species management, 4)mowing schedules, 5) modifications of environmental design within the restored area(i.e. adaptive design management), and 6) maintenance of a biological inventory designed to document species occurrences and activities at the Park. The above described management activities will cover the restored meadows, floodplain wetlands, and pond, trails, forested areas, and other park grounds. The Committee will also work with the managing entity to develop a long-term management plan for the site to be approved by the managing entity. The management plan should begin with the 5 yr plan drafted by AD Marble & Company. “ (see A.D Marble Maintenance Plan , attached)

- II. Property Description - Aerial Map, attached

- III Management Goals and Objectives –
 - A. Real Estate Aspects
 1. Agreements - Sewer Line ROW (Zone 6, in entirety; within Zones 3 and 2, creek crossing); Alvernia U. (Zones 4 and 8) ; RAWA has 99 yr. lease with City of Reading for maintenance of facilities (Zone 5)
 2. Neighbor Relations – relatively isolated from residential ; no inholdings
 3. Off Site issues - stormwater quality entering wetland, needs stormwater education for contributing businesses and neighborhoods; adjacent automotive junkyard has potential impact, needs investigation
 4. School District - Reading School District
 5. Property Taxes – N/A
 6. Municipality – City of Reading and Cumru Township
 7. Municipal Zoning – compatible
 8. Title Report – N/A
 9. Environmental Assessment, Phase I – N/A
 10. Insurance - yes

B. Management Zones by use – see attached Zones map

Zone 1 – Building and envelope

1. Management considerations and objectives - develop a design for the Environmental Education Center utilizing green principles and phased construction ; and develop a plan for fundraising to cover construction and a management fund for long term operation ; oversight by Facilities/Building Construction Committee, not the Environmental Management Committee
2. Management actions – enact the plan

Zone 2 – Wetland Park and Riparian Areas -

1. Management considerations and objectives – short term : manage the Wetland Park according to Maintenance Plan through 2012 to satisfy the “consent decree” terms ; define the limits of the “consent decree”; long term : manage the entire Angelica Creek Park, including the Wetland Park and Riparian Areas as wildlife habitat with low impact visitation and education
2. Management Actions – reduce invasive species and supplant with native vegetation ; maintain and repair green infrastructure (trail sections and one stretch of streambank are compromised) ; finish this Management Plan and seek endorsement by managing entity

Zone 3 – Open Areas in Park (primarily lawn)

1. Management considerations and objectives - maintain open areas, lawn , and trails for associated activities; reduce mowing and fossil fuel inputs by identifying areas which should be returned to nature due to impracticality of maintenance (steep, wet,) or non-necessity (buffer areas)
2. Management Actions – No mowing of riparian buffer as delineated by newly planted trees. Identify other areas for reducing maintenance costs and then curtail mowing.

Zone 4 – Athletic Fields and Courts

1. Management considerations and objectives – maintain fields and courts and their envelopes for active recreation
2. Management Actions – continue maintenance regime, with Alvernia University responsibility ; create visual screen and buffer by planting native trees between wetland park and athletic fields and courts

Zone 5 – RAWA (Reading Area Water Authority) water tower and access road to it

1. Management considerations and objectives – maintain water tower and access road
2. Management Actions – continue maintenance regime

Zone 6 – Angelica Creek Trail, Sewer ROW (right of way)

1. Management considerations and objectives – keep trail open by maintaining the sewerline ROW
2. Management Actions - continue maintenance regime, Cumru Twp Public Works charged with maintenance of line ; investigate Trail Ambassador Program and Alvernia U volunteer programs for additional trail maintenance and enhancement

Zone 7 - Conservation woodlands and riparian area

1. Management considerations and objectives – establish as natural/conservation area with minimal, if any , maintenance necessities
2. Management Actions - investigate stream clean-up from past transgressions; investigate impacts of neighboring junkyard; investigate for invasive species; get this Management Plan endorsed with Environmental Management Committee oversight for this Zone 7.

Zone 8 – Bernadine Street Corridor

1. Management considerations and objectives – improve and enhance St Bernadine St. which serves as the gateway corridor to Alvernia University.
2. Management Actions – road and side of road will be kept clear of debris and lawn will be kept mowed up to the road berm. Any trash receptacles will be emptied on a regular basis. Alvernia University is providing maintenance for this zone.

IV Workload and Funds

1. Work Plan, 2010 – see Management Actions above
2. Management Fund and Annual Stipend – none
3. Work Plan Project budgets and Responsibilities -
 - Zone 1 – Building and Envelope- Budget , Responsibility – Angelica Facilities/Building Construction Committee and Executive Committee
 - Zone 2 – Wetland Park and Riparian Areas – Budget : current, \$5,000, based on consent decree- Reading Sewer Dept., maintenance ; assistance

from Angelica Environmental Management Committee for invasive species control and educational signage components; pursue grants to enact Management Actions

- Zone 3 – Open Areas in Park (primarily lawn) - Projected Budget: approx. \$9,200 (1 day /week /52 weeks X \$160./day plus 10% administration); Responsibility – Parks Department
 - Zone 4 - Athletic Fields and Courts - internal Alvernia U. budget
 - Zone 5 – RAWA owned water tower and access road - internal RAWA budget
 - Zone 6 – Angelica Creek Trail , Sewer ROW - internal Cumru Township budget for sewer line only
 - Zone 7 - Conservation Woodlands and Riparian Areas - Budget – none ; Responsibility - Environmental Management Committee
4. Projected Annual Operating Budget for Zones 2,3,7 - to be determined . Not including Building and Envelope , athletic fields and court (Alvernia U) , nor water tank and access road (RAWA) , nor Cumru Twp. sewer line maintenance

V. Communication

- Zone 1 - Building and Envelope - Facilities/Building Construction Committee, Charlie Jones (Public Works Director), Chair(610-655-6236 ; charles.jones@readingpa.org)
- Zone 2 – a) Wetland Park – Public Works-Utilities , Deb Hoag (610-655-6258; Deborah.hoag@readingpa.org)
b) Riparian Area, outside consent decree - Angelica Environmental Management Committee, David Osgood , Albright College (610- 921- 7726 ; dosgood@alb.edu)
- Zone 3 - Open Areas - Public Works-Operations, Kyle Zeiber (610-655-6027 ; kyle.zeiber@readingpa.org)
- Zone 4 - Athletic Fields and Courts – , Alvernia University, Buildings and Grounds, Douglas F. Smith, VP for Finance and Administration (610) 796-5600, doug.smith@alvernia.edu & Mike Laws (610) 796 8239 ; michael.laws@alvernia.edu
- Zone 5 - RAWA water tower and access road – RAWA, Dean Miller (610-655-6252 ; dean.miller@readingpa.org)
- Zone 6 - Angelica Creek Trail - Cumru Township Public Works, Bob McNichols (610-777-1343 ; roads@cumrutownship.com)

- Zone 7 – Conservation Woodlands and Riparian Areas - Angelica Environmental Management Committee, David Osgood, Albright College (610- 921 - 7726) ; dosgood@alb.edu)

VI. Monitoring/Reporting/Stakeholder Communication

1. Annual Report form – to be determined but to include management actions taken on the management activities outlined in the Angelica Environmental Committee Description. Minutes of Environmental Management Committee will be shared with the Angelica Park Executive Committee.

2. ^aMonitoring agenda will include:

- A. *Vegetation Survey* (Continue monitoring of vegetation plots established by AD Marble & Company. Sampling locations and methods are outlined in the 2008 Monitoring Plan by AD Marble & Company. Visual inspection of woody plantings will also be conducted annually)
- B. *Macroinvertebrate Sampling* (Sample 3 distinct riffle habitats once in May/June and once in Sept/Oct within the restoration reach of Angelica Creek. A Surber sampler should be used for consistent area of sampling between years. All taxa will be identified to family and standard indices will be derived - e.g. Hilsenhoff, EPT index)
- C. *Water Table monitoring* (continuous measurements of water table level in wells will be made from one location in each of the two wetlands and at least one location along the riparian zone)
- D. *Trail and Structure condition* (annual visual inspection of trails and structures (inlets/outlets, bridges/boardwalks) for signs of erosion, condition of surface material, and structural wear and tear)
- E. *Riparian Zone condition* (annual visual inspection of riparian zone for excess erosion or sedimentation)
- F. *Invasive Species monitoring* (monitor locations of invasive species control, catalog a subset of control locations for density and patch expansion - where applicable)
- G. *Monitor bird boxes* (visually inspect bird boxes for signs of habitation and catalog use by species)

^aThis monitoring is proposed as a continuation of the monitoring protocol by AD Marble & Company conducted from 2007-2012.

3. Stakeholder Communication will include:

- A. an email list serve for all the stakeholders which will be used to keep everyone informed of activity planned for the site and to facilitate asking questions among the group. The list serve will be maintained through Albright College.
- B. There will be a regular annual meeting between the Environmental Management Committee and all stakeholders of the management zones. This meeting will be held in Feb/March at the Fire Center and will also include a site visit. The primary objective of the meeting will be to establish a work plan for the year, discuss the plan for grant-seeking for the year, and to wrap-up any unfinished business from the previous year. The Chair of the Environmental Management Committee will be responsible for setting and conducting the meeting.

VII. Acknowledgements – Kyle Zeiber, David Osgood, Alicia Sprow, Larry Lloyd,
Xavier Riva , Deborah Hoag, Charlie Jones

VIII. Appendices/References

- Aerial photo map
- Management Zones map
- Copy of consent decree with boundaries
- Maintenance Plan, A.D. Marble & Company

EXHIBIT "A"

PREMISES

