

Berks County Register of Wills & Clerk of Orphans' Court  
DOCKET ENTRIES

Date Printed: 01/09/2025

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**CASE NUMBER: 89100    CASE NAME: E ALBRIGHT COLLEGE**

DATE FILED	#	# Pages	DOCKET AND RELEVANT INFORMATION
12/18/2024	1	19	Petition <a href="#">Emergency Consent Petition for Approval of Albright College Endowment Fund Loan</a>
12/19/2024	2	1	Order Entered <a href="#">scheduling a hearing for December 20, 2024 (copy sent to atty. for petitioner)</a>
12/20/2024	3	1	Decree Entered
12/20/2024	4	1	Notice per Rule 4.6

**END OF CASE INFORMATION**

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**COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION**

IN RE: ALBRIGHT COLLEGE : NO. 89100  
ENDOWMENT FUND APPROVAL :  
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**EMERGENCY CONSENT PETITION FOR  
APPROVAL OF ALBRIGHT COLLEGE ENDOWMENT FUND LOAN**

TO THE HONORABLE, THE JUDGES OF THE SAID ORPHANS' COURT:

Petitioner, Albright College ("Petitioner" or "Albright"), by and through its attorneys, Saul Ewing LLP, hereby files this Emergency Consent Petition for Approval of Albright College Endowment Fund Loan seeking approval borrow up to \$25 million from its endowment funds, pursuant to Sections 5547(b), 5930, and 5976(b) of the Pennsylvania Nonprofit Corporation Law of 1988, 15 Pa.C.S. §5101 *et seq.* (the "NCL"), Section 7740.3(a) of the Pennsylvania Estates and Fiduciaries Code, 20 Pa. C.S. §101 *et. seq* ("PEF Code"), and Berks County Local Orphans' Court Rule 3.5B, and in support thereof avers as follows:

**I. INTRODUCTION**

**A. The Parties**

1. Albright College is a charitable corporation governed by the NCL, as amended, and qualified under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

**DEC 18 2024**  
Filed  
Berks Co. Register of Wills/Clerk of Orphans' Court

2. The Charitable Trusts and Organizations Division of the Office of Attorney General of the Commonwealth of Pennsylvania (“Attorney General”), as *parens patriae* for charities, is an interested party to this Petition. See *In re Pruner’s Estate*, 390 Pa. 529, 533 (1957).

**B. The Proposed Loan**

3. Due to an increasingly difficult higher education landscape, Albright faces an expected cash deficit caused by a combination of unfavorable market conditions, the pandemic, enrollment pressures, and large unanticipated capital needs.

4. Albright has positioned itself for improved metrics going forward through a new administration (President and CFO); renewed fundraising efforts (including a recent successful scholarship campaign targeting upper level students, and strengthening its advancement and donor communications and stewardship); restructuring of its academic programs and offerings in a revenue-producing manner that will reduce the dependency of the traditional tuition-driven model without compromising Albright’s mission; revamping the Admissions Department to improve admissions going forward, and reducing expenses (including reductions in force).

5. Efforts are also underway to administratively terminate, with Attorney General approval, restricted funds having values between \$25,000 and \$99,999, as part of Albright’s turnaround plan. Albright will continue to use these funds to award scholarships and for programmatic support in a manner that aligns as closely as possible to the donors’ original intentions. The total anticipated value of these collective funds is approximately \$7,000,000 as of September 30, 2024.

6. Over the course of 2024, Albright also administratively terminated funds with values under \$25,000, with Attorney General approval, for a total of \$2,005,755.

7. Albright has a total endowment, principally restricted, in the amount of \$53,148,000 (valued as of September 30, 2024).<sup>1</sup>

8. The donor-restricted funds are designated to be held permanently in endowment, with the principal held and invested, and income only (as determined by Albright's spending rule) permitted to be spent for purposes such as scholarship fund and student awards, faculty support, and other uses.

9. While the above administrative termination measures have (and will assist) in Albright's efforts to ensure its continued existence, additional measures are required. In order to address its immediate liquidity needs, Albright has proposed to take a loan from its endowment in an amount up to \$25 million to be drawn down as needed over the next two years, as outlined further below, and to repay that loan over a 20-year term, with interest. The terms were agreed upon by the Albright Board of Trustees by Resolution dated November 22, 2024. *See Exhibit A.*

10. Albright has been in communication with the Attorney General concerning its financial situation and, in connection therewith, the Attorney General has reviewed the proposed loan terms and this Petition and has evidenced its non-objection to the relief requested herein. *See Exhibit B* (for a copy of the Attorney General's Charitable Gift Clearance Certificate ("CGCC")).

11. Albright accordingly seeks to obtain a Decree of approval from this Honorable Court to borrow from its endowment funds, beginning January 1, 2025.

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<sup>1</sup> The total endowment value includes the \$7,211,000 in restricted funds between \$25,000 and \$99,999 referenced in above Paragraph 5 that Albright is seeking to administratively terminate with Attorney General approval.

## **II. PROPOSED ACTIONS**

### **A. Need for Loan From Endowment**

12. Albright needs the ability to borrow up to \$25 million from its endowment to ensure its continued existence, which loan is a critical and integral component of its financial turnaround plan. As a result, Albright seeks approval from this Court to take a loan from its endowment.

13. The emergent nature of this Petition is to prevent irreversible harm – the risk of closure – because without this loan, Albright may lack basic operational funds as early as January 1, 2025.

14. Albright has approximately \$50 million in debt to several financial institutions. This, coupled with a net asset decline of more than \$46 million from 2022 to 2024, required Albright to take significant measures to lower its deficit.

15. Albright cannot secure a bank loan on favorable terms due to its current financial statements and existing debt. The financing quotes Albright has received range from 10% to 25% interest, which would not allow Albright to recover financially, especially considering the existing \$17 million loan with a variable interest rate.

16. Albright has taken steps to mitigate its financial position, including eliminating low-enrolled academic programs and departments, reducing staff and faculty numbers, changing enrollment procedures, and selling nonessential assets, among other similar measures.

17. Despite these steps, Albright still faces a deficit that endangers the institution's existence and ability to serve students. Albright proposes to borrow up to \$25 million from its endowment over a two-year period to sustain its operations and stabilize its financial position.

### **B. Loan Terms**

18. The Albright Board of Trustees passed a Resolution on November 22, 2024, agreeing to the following loan terms to sustain operations, pay down high-interest debt, and

execute Albright's enrollment strategy, which is designed to stabilize and strengthen the institution's financial position. *See Exhibit A.*

19. The proposed loan would be structured with:

(a) A variable interest rate tied to the ninety-day average Secured Overnight Financing Rate ("SOFR") (approximately 5% as of November 22, 2024), reset quarterly, with a 3% floor,

(b) A twenty-year amortization schedule, and

(c) Interest-only payments for the first five years, followed by interest and principal payments through the remaining term of the loan.

20. While the primary purpose of the loan, as outlined in the Resolution, is to provide "working capital to sustain operations and execute Albright College's enrollment strategy", additional uses include:

(a) "operational needs";

(b) "allowing for bridge financing for the Library renovation project in order to reopen the Library"; and

(c) "debt refinancing", including paying down the \$17 million loan, which in addition to achieving interest rate savings should facilitate the release of some of the collateral backstopping that loan.

21. Further, Albright does not intend to drawn down the full \$25 million immediately. Rather, the Board will monitor and approve any draw down on the loan, with quarterly reports of usage provided to the Attorney General, allowing for complete transparency and oversight throughout the term of the loan.

22. Finally, the Resolution states that, if Albright “ceases to exist, any uncollateralized property is provided as collateral to the endowment loan.” **Exhibit A.** The currently uncollateralized property that will guarantee the loan includes: all free-standing homes, the David Chrystal Property (a 6-acre lot), the Radio Station Building, and Kelchner Field.

23. As noted above, the Attorney General has received notice of this Petition, and has evidenced its consent to the relief requested herein, through a Letter of No Objection. *See Exhibit B.*

### **III. JURISDICTION, VENUE AND LEGAL AUTHORITY**

24. This Court has the authority to approve of the loan from Albright endowment funds and to render a decision thereon pursuant to Pennsylvania law.

#### **A. Jurisdiction**

25. Charitable organizations operating in the Commonwealth of Pennsylvania are subject to supervision by the Court of Common Pleas, Orphans’ Court Division, and by the Office of the Attorney General, as *parens patriae*, as acknowledged by the Pennsylvania Supreme Court. *See In re Pruner’s Estate*, 390 Pa. at 533.

26. The Orphans’ Court has jurisdiction over Albright and its assets, pursuant to Section 711(21) of the PEF Code, which provides, in relevant part:

the jurisdiction of the court of common pleas over the following shall be exercised through its orphans’ court division:

\* \* \*

(21) Nonprofit corporations. The administration and proper application of funds awarded by an orphans’ court or an orphans’ court division to a nonprofit corporation heretofore or hereafter organized under the laws of the Commonwealth of Pennsylvania for a charitable purpose at the direction of the orphans’ court or orphans’ court division or at the direction of a settlor or testator of a trust or estate, jurisdiction of which is exercised through the orphans’ court division except as the administrative, presiding or

president judge of such division disclaims the exercise of future jurisdiction thereof.

20 Pa. C.S.A § 711(21).

27. Further, the Pennsylvania Rules of Judicial Administration provide, in relevant part, that:

the Orphans' Court Division shall hear and determine the administration and proper application of property committed to charitable purposes held or controlled by any domestic or foreign nonprofit corporation and all matters arising under Title 15 of the Pennsylvania Consolidated Statutes where is drawn in question the application, interpretation or enforcement of any law regulating the affairs of nonprofit corporations holding or controlling any property committed to charitable purposes. . . .

201 Pa. Code § 2156.

**B. Venue**

28. Section 726 of the PEF Code provides, in relevant part, that “in exercising the jurisdiction of the court over the property or affairs of a domestic or foreign nonprofit corporation, the venue shall be in the county where the registered office of the corporation is located . . . or, in the absence of a registered office within this Commonwealth, in a county where any property held or controlled by the nonprofit corporation is located.” 20 Pa. C.S.A. § 726.

29. Accordingly, venue of this Petition is proper in Berks County, Pennsylvania, because the Albright Land is located in Berks County, Pennsylvania.

**C. Legal Authority**

30. “No money, no mission.” The members of the Albright community whom donors intended to benefit from the endowed funds, through scholarships to Albright’s students, support of Albright faculty and their research, and support for instructional materials and Albright’s library facilities, as examples, cannot benefit without a fully operating college.



31. Pursuant to the NCI addressing the management of gifts received "in trust," Albright may not, without a court order, enter into a transaction governed by NCL Chapter 59, relating to fundamental changes, or otherwise that diverts from its intended purposes property that has been donated, granted or devised for charitable purposes. 15 Pa C.S.A. Section 5547(b).

32. The proposed loan is not an enumerated fundamental change under the NCL's Chapter 59 (that is, it is not an amendment of articles, sale, merger, or dissolution).

33. A decision to borrow from endowment funds is an investment decision which, like all investment decisions, is evaluated in terms of the Prudent Investor Rule.

34. Although no Pennsylvania law requires a nonprofit corporation to seek advance court approval of an investment decision related to its endowed assets, Albright has elected to do so in order to respect the purposes for which restricted funds were donated.

35. Because the proposed loan requires a use of assets with respect to which Albright has investment responsibility, Albright seeks approval to borrow from its endowment fund, and a release from any requirement, expressed or implied, by donors of its restricted funds, that no such funds be spent or borrowed. Because the economic conditions Albright now faces are very different from those prevailing at the time the funds were created, adherence to any such restrictions, expressed or implied, is likely to deprive Albright and its students of the benefits the donors of those funds intended them to enjoy.

36. Alternatively, to the extent the Court considers the proposed loan a diversion of charitable assets pursuant to NCL 5547(b) that requires an order from this Court pursuant to PEF Code Section 7740.3, Albright asks the Court to issue such order because without the loan, the restricted charitable purposes for which funds were donated to Albright will become impracticable without a fully operating college.

37. Section 5547(b) of the NCL provides that “[p]roperty committed to charitable purposes shall not, [. . .], be diverted from the objects to which it was donated, granted or devised, unless and until the board of directors or other body obtains from the court an order under 20 Pa. C.S. Ch. 77 Subch. D (relating to trusts) specifying the disposition of the property.” 15 Pa. C.S.A. § 5547(b).

38. Similarly, Section 314(c) of the Associations Code, 15 Pa. C.S.A. § 101 *et. seq.* provides that:

Property held for a charitable purpose under the laws of this Commonwealth by a domestic or foreign association immediately before a transaction under this chapter becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised or otherwise transferred unless, to the extent required by or pursuant to the laws of this Commonwealth concerning *cy pres* or other laws dealing with non-diversion of charitable assets, the domestic or foreign association obtains an appropriate order of a court of competent jurisdiction specifying the disposition of the property.

15 Pa. C.S.A. § 5550.

39. Section 7740.3(a) of the PEF Code provides as follows in regard to the *cy pres* doctrine for charitable trusts:

(a) General rule – Except as otherwise provided in subsection (b), if a particular charitable purpose becomes unlawful, impracticable or wasteful:

- (1) the trust does not fail, in whole or in part;
- (2) the trust property does not revert to the settlor or the settlor’s successors in interest; and
- (3) the court shall apply *cy pres* to fulfill as nearly as possible the settlor’s charitable intention, whether it be general or specific.

20 Pa. C.S.A. § 7740.3(a).

#### IV. CONCLUSION

40. Pursuant to the aforementioned statutes, Albright seeks an Order from this Honorable Court approving of the loan from Albright's endowment funds on the terms outlined herein, which will help ensure Albright's continued existence and ability to serve students into the future, consistent with Albright's mission.


41. While Albright believes no additional notice is required, as the Attorney General has been provided with notice and has consented to the relief requested,<sup>2</sup> if the Court were to so order, Albright would be amenable to publishing notice of this Petition in the Berks County Law Journal for one week following such an order.

**WHEREFORE**, Albright College respectfully requests that this Honorable Court enter a Decree in the form attached hereto approving the loan from Albright's endowment funds.

Respectfully submitted,

SAUL EWING LLP

Dated: December 17, 2024

By:   
Courtney D. Schultz, Esquire, PA ID 306479  
Mary G. Hutchings, Esquire, PA ID 336119  
1500 Market Street, Centre Square West  
Philadelphia, PA 19102  
(215) 972-7717  
[Courtney.schultz@saul.com](mailto:Courtney.schultz@saul.com)  
[Mary.hutchings@saul.com](mailto:Mary.hutchings@saul.com)  
*Attorneys for Petitioner Albright College*

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<sup>2</sup> The Attorney General was served with a copy of the Petition pursuant to O.C. Rule 4.4 and has evidenced its consent through the "CGCC" attached as **Exhibit B**, thus no notice to plead is required pursuant to O.C. Rule 3.5(c)(3).

**VERIFICATION**

I, Debra M. Townsley, Ph.D., hereby certify that I am the Interim President of Albright College; that I am authorized to execute this Verification on Albright College's behalf; and that the statements made in the foregoing Petition are true and correct to the best of my knowledge, information and belief.

I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

ALBRIGHT COLLEGE

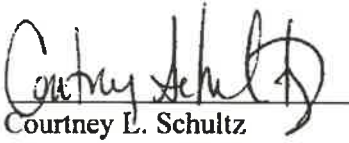
By: Debra M. Townsley  
Debra M. Townsley, Ph.D.  
Interim President

Date: December 4, 2024

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that requires filing confidential information and documents differently than non-confidential information and documents.

Submitted by:



Courtney L. Schultz  
Attorney No. 306479

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COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA ORPHANS'  
COURT DIVISION

IN RE: ALBRIGHT COLLEGE  
ENDOWMENT FUND APPROVAL

: NO. 89100  
:  
:

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**DECREE**

AND NOW, this \_\_\_\_\_ day of December, 2024, upon consideration of the  
Emergency Consent Petition for Approval of Albright College Endowment Fund Loan, and any  
responses thereto, it is hereby ORDERED and DECREED that:

1. This Court has jurisdiction over the within Petition and the Petitioner pursuant to 15 Pa. C.S.A. §§ 514(c), 5547(b), 5550, 5930, and 5976(b); 20 Pa. C.S.A. §§ 711(21); and Rule 2156 of the Pennsylvania Rules of Judicial Administration, 201 Pa. Code. § 2156;
2. Pursuant to Section 726 of the PEF Code, 20 Pa. C.S.A. § 726, venue of the within Petition is proper in Berks County, Pennsylvania where the Albright campus is situate;
3. The loan from Albright endowment funds is approved pursuant to the terms, as outlined in Paragraphs 19 and 20 of the Petition, as being consistent with this Court's authority pursuant to 20 Pa. C.S.A. § 7740.3, and is therefore also consistent with 15 Pa. C.S.A. §§ 314(c), 5547(b), 5930, and 5976(b); and
4. The Petition is therefore hereby GRANTED and the Albright endowment fund loan, as described in said Petition and as further described in the Resolution, is hereby approved.

BY THE COURT:

\_\_\_\_\_  
, J.

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**COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA ORPHANS'  
COURT DIVISION**

IN RE: ALBRIGHT COLLEGE  
ENDOWMENT FUND APPROVAL

: NO. 89100  
:  
:

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**SCHEDULING ORDER**

AND NOW, this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, with regards to the foregoing  
Emergency Consent Petition, it is ordered that a hearing is scheduled for \_\_\_\_\_, 20\_\_\_, at  
\_\_\_\_\_. The hearing will take place at the Berks County Courthouse, Orphans' Court, 633  
Court Street, Second Floor, Courtroom \_\_\_\_\_, Reading, Pennsylvania 19601.

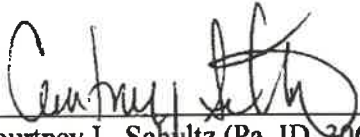
BY THE COURT:

\_\_\_\_\_  
J.

**Certificate of Service**

I, Courtney L. Schultz, hereby certify that on this <sup>12</sup>17<sup>th</sup> day of December, 2024, I caused a true and correct copy of the aforementioned Petition to be served upon the following via email:

David Dembe, Esq.  
Senior Deputy Attorney General  
Charitable Trusts and Organizations Section  
Pennsylvania Office of Attorney General  
1600 Arch Street, Ste. 300  
Philadelphia, PA 19103  
(215) 560-3448  
[ddembe@attorneygeneral.gov](mailto:ddembe@attorneygeneral.gov)  
*As Parens Patriae*

  
\_\_\_\_\_  
Courtney L. Schultz (Pa. ID. 306479)



# **EXHIBIT A**

## MOTION

### **Resolution Recommending Request for Endowment Loan Authorization**

**WHEREAS**, the College seeks approval from the Pennsylvania Attorney General for Albright College to borrow up to \$25 million from its endowment over a two-year period. The loan would be structured with:

- A variable interest rate tied to the 90-day average SOFR (approximately 5% as of today), reset quarterly, with a 3% floor.
- A 20-year amortization schedule.
- Interest-only payments for the first five years, followed by interest and principal payments through the remaining term of the loan.

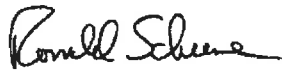
These terms are designed to provide the financial flexibility needed for Albright College to implement its strategic enrollment initiatives while maintaining legal compliance and safeguarding the endowment.

**WHEREAS**, the primary purpose of this loan is to provide working capital to sustain operations and execute Albright College's enrollment strategy, which is designed to stabilize and strengthen the institution's financial position. Additional uses include:

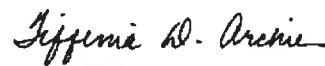
- Operational Needs: Providing a runway to implement a comprehensive enrollment strategy, including targeted recruitment, better yield management, and the introduction of new, in-demand majors.
- Allowing for bridge financing for the Library renovation project in order to reopen the Library.
- Debt Refinancing: Paying down higher-interest debt, such as a \$17 million line of credit with an 8% interest rate, to generate immediate interest cost savings and enhance financial flexibility.

**WHEREAS**, the usage of the loan monies will be monitored with approval of the Board of Trustees and quarterly reports of usage to the Attorney General. If the college ceases to exist, the uncollateralized property is provided as collateral to the endowment loan.

**ADOPTED** this 22<sup>nd</sup> day of November 2024, by the Albright College Board of Trustees.



**Ronald Scheese '83**  
Chair  
Board of Trustees



**Tiffenia D. Archie, Ph.D. '92**  
Secretary  
Board of Trustees



# EXHIBIT B

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**ORPHANS' COURT DIVISION**

**COURT OF COMMON PLEAS OF BERKS COUNTY**

**IN THE MATTER OF ALBRIGHT COLLEGE ENDOWMENT FUND APPROVAL**

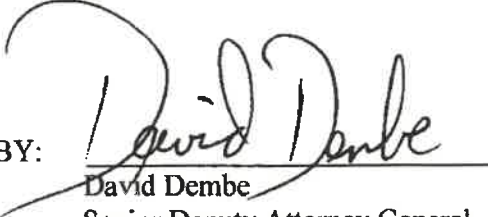
O. C. No. 89100

**CHARITABLE GIFT CLEARANCE CERTIFICATE**

Receipt of Notice is acknowledged by the Attorney General of the Commonwealth of Pennsylvania, acting as *parens patriae* in the above-entitled case, of certain gifts to charity as set forth in said Notice.

This is to certify that the Attorney General has no objection to the relief sought, based upon the facts contained in the Notice. In the event of any change of the facts set forth in the Notice, this office should be immediately notified.

MICHELLE A. HENRY  
ATTORNEY GENERAL

BY:   
David Dembe  
Senior Deputy Attorney General

DATED: December 17, 2024

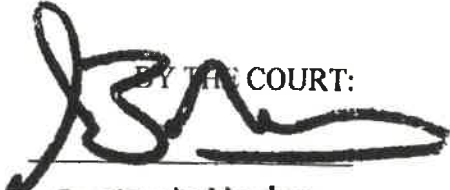
COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA ORPHANS'  
COURT DIVISION

IN RE: ALBRIGHT COLLEGE  
ENDOWMENT FUND APPROVAL

: NO. 89100  
:  
:

SCHEDULING ORDER

AND NOW, this 19<sup>th</sup> day of December, 2024, with regards to the foregoing  
Emergency Consent Petition, it is ordered that a hearing is scheduled for December<sup>20</sup>, 2024, at  
2:15. The hearing will take place at the Berks County Courthouse, Orphans' Court, 633  
Court Street, Second Floor, Courtroom 5B, Reading, Pennsylvania 19601.

BY THE COURT:  
  
J. Benjamin Nevius J.

DEC 19 2024

Filed  
Berks Co. Register of Wills/Clerk of Orphans' Court

Copy emailed to counsel 12/19/24

COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA ORPHANS' COURT DIVISION

IN RE: ALBRIGHT COLLEGE  
ENDOWMENT FUND APPROVAL

: NO. 89100  
:  
:

**DECREE**

AND NOW, this 20<sup>th</sup> day of December, 2024, upon consideration of the Emergency Consent Petition for Approval of Albright College Endowment Fund Loan, and any responses thereto, it is hereby ORDERED and DECREED that:

1. This Court has jurisdiction over the within Petition and the Petitioner pursuant to 15 Pa. C.S.A. §§ 514(c), 5547(b), 5550, 5930, and 5976(b); 20 Pa. C.S.A. §§ 711(21); and Rule 2156 of the Pennsylvania Rules of Judicial Administration, 201 Pa. Code. § 2156;
2. Pursuant to Section 726 of the PEF Code, 20 Pa. C.S.A. § 726, venue of the within Petition is proper in Berks County, Pennsylvania where the Albright campus is situate;
3. The loan from Albright endowment funds is approved pursuant to the terms, as outlined in Paragraphs 19 and 20 of the Petition, as being consistent with this Court's authority pursuant to 20 Pa. C.S.A. § 7740.3, and is therefore also consistent with 15 Pa. C.S.A. §§ 314(c), 5547(b), 5930, and 5976(b); and
4. The Petition is therefore hereby GRANTED and the Albright endowment fund loan, as described in said Petition and as further described in the Resolution, is hereby approved.

BY THE COURT:

  
J. Benjamin Nevius J.

DEC 20 2024

Filed  
Berks Co. Register of Wills/Clerk of Orphans' Court