



Skagit County Auditor

9/20/2016 Page

1 of

15

\$87.00

3:13PM

WHEN RECORDED RETURN TO:

Land Title and Escrow Company
P.O. Box 445
Burlington, WA 98233

DOCUMENT TITLE(S):

Pedestrian Access and Joint Parking Easement

Land Title and Escrow

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

GRANTOR:

EVANGELICAL LUTHERAN SALEM CHURCH OF MOUNT VERNON, WASHINGTON, a non-profit corporation, which acquired title as Salem Lutheran Church

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

GRANTEE:

SKAGIT VALLEY FAMILY YMCA

SEP 20 2016

Amount Paid \$

Skagit Co. Treasurer

By

Deputy

ABBREVIATED LEGAL DESCRIPTION:

Ptn Gov. Lot 7, 8-34-4 E W.M. (Aka Lot 1, SP #PL12-018).

and Lt 2 SP# PL12-018

TAX PARCEL NUMBER(S):
340408-0-0013-0600, P116052

(Ex B)
and P 111842 (Ex.A)

PEDESTRIAN ACCESS AND JOINT PARKING EASEMENT

THIS EASEMENT AGREEMENT is made and entered into this 1st day of September, 2016 by and between SALEM LUTHERAN CHURCH ("SALEM"), and SKAGIT VALLEY FAMILY YMCA, ("YMCA").

RECITALS

- A. SALEM owns a fee interest in certain real property ("the Church Property") legally described on **Exhibit A** attached to this Agreement and incorporated herein by this reference as if set forth in full. The Church Property is also known as Skagit County Tax Parcel P111842, located in the City of Mount Vernon, Washington.
- B. Subsequent to the closing of a purchase and sale agreement, and recordation of a deed, YMCA will own a fee interest in certain real properties ("the YMCA Property") adjacent to the Church Property and legally described on **Exhibit B** attached here to and incorporated herein by this reference as if set forth in full. The YMCA Property is also known as Skagit County Tax Parcel P116052, located in the City of Mount Vernon, Washington.
- C. On June 6th, 2016, SALEM and YMCA entered into a Commercial & Investment Real Estate Purchase and Sale Agreement wherein YMCA agreed to purchase the YMCA Property from SALEM. Pursuant to that Agreement and the amendments thereto, the parties agreed to enter into a joint access and parking easement ("the Parking Easement") and a pedestrian easement to extend a walkway connecting the YMCA Property and the Church ("the Pedestrian Easement"). Both YMCA and SALEM agreed to grant each other a parking easement to each other's parking lots located on the YMCA Property and the Church Property.
- D. The parties now intend to establish the terms and agreements reached prior to the sale of the SALEM Property to YMCA and to set forth the terms and conditions of the Easements granted between the parties. It is the further intent of the parties that this easement will be recorded through escrow at the time the deed transferring property from SALEM to YMCA is recorded pursuant to the Commercial & Investment Real Estate Purchase and Sale Agreement.
- E. The legal descriptions of the easement area will be amended after this document is recorded, based upon the final construction plans to be prepared by the YMCA.

NOW, THEREFORE, in consideration of, on, and subject to the terms and conditions set forth below, the parties agree as follows:

EASEMENT AGREEMENT

A. Grant and Reservation of Pedestrian Easement

1. Pedestrian Easement. SALEM hereby grants and conveys to YMCA, a permanent, non-exclusive easement, over, through, and upon SALEM'S property as described in Exhibit "A"

for pedestrian purposes. In addition, SALEM hereby reserves an easement across the YMCA property described in Exhibit "B" for pedestrian purposes. The two easements shall be known as the "Pedestrian Easement Area". It is the intent of the parties to amend the foregoing legal descriptions through an amended deed at such time as the legal descriptions are established through the development of the YMCA's construction drawings.

2. The foregoing easements are for the purpose of pedestrian ingress and egress between the Church Property described on **Exhibit A** and the YMCA Property described on **Exhibit B**. The pedestrian access improvements will be constructed according to construction drawings approved by YMCA and SALEM in furtherance of a site plan entitlement approval or other development approval granted by the City of Mt. Vernon to YMCA for development of the YMCA Property. All costs and expenses of all engineering, design, and construction of the pedestrian access improvement shall be paid by YMCA.
3. The Pedestrian Easement Areas will be generally located along the eastern boundary of the YMCA parcel, and along the western boundary of the SALEM parcel.
4. THE YMCA will provide a specific metes and bounds description at the time the construction of improvements by the YMCA has been completed. Both parties are obligated to execute an amendment to this easement at such time as the legal description has been prepared.
5. The pedestrian easements will commence at such time as all necessary improvements have been completed.

Grant and Reservation of Parking Lot Easements

6. Parking Lot Easements. SALEM hereby grants and conveys to YMCA, a permanent, non-exclusive easement, over, through, and upon SALEM'S property as described in Exhibit "A" for vehicle parking purposes. In addition, SALEM hereby reserves an easement across the YMCA property described in Exhibit "B" for vehicle purposes. The two easements shall be known as the "Parking Easement Area". It is the intent of the parties to amend the foregoing legal descriptions through an amended deed at such time as the legal descriptions are established through the development of the YMCA's construction drawings. The Parking Easement Area shall consist of 98 spaces on the SALEM Property for use by patrons and guests of the YMCA, and an equal number of spaces on the YMCA Property for use by members and guests of the SALEM church.
7. The foregoing easements are for the purpose of joint and mutual use as a parking area. The pedestrian access improvements will be constructed according to construction drawings approved by YMCA and SALEM in furtherance of a site plan entitlement approval or other development approval granted by the City of Mt. Vernon to YMCA for development of the YMCA Property. All costs and expenses of all engineering, design, and construction of the pedestrian access improvement shall be paid by YMCA.
8. The Parking Easement Areas will be generally located along the eastern boundary of the YMCA parcel, and along the western boundary of the SALEM parcel.

9. THE YMCA will provide a specific metes and bounds description at the time the construction of improvements by the YMCA has been completed. Both parties are obligated to execute an amendment to this easement at such time as the legal description has been prepared.

10. The parking easements will commence at such time as all necessary improvements have been completed.

C. Miscellaneous.

11. Repair and Maintenance. Both parties agree that they shall at all times maintain the improvements within the Parking Easement Area and the Pedestrian Easement Area located on the irrespctive properties in a safe and serviceable condition, and shall promptly repair any and all defects in such improvements. All maintenance and repair of the improvements within the Parking Easement Area and the Pedestrian Easement Area on the Church Property shall at the sole cost and expense of SALEM. All maintenance and repair of the improvements within the Parking Easement Area and the Pedestrian Easement Area on the YMCA Property shall at the sole cost and expense of YMCA.

12. Liens. Grantees shall not permit any construction lien to be filed against any easements here in or against the Church Property for work, labor, or materials furnished in connection with the construction, operation or maintenance of the improvements to the YMCA Property scheduled to begin in 2017, and if any such liens occur, the party incurring the obligation shall hold the other harmless thereon.

13. Indemnity.

a. Regarding the Pedestrian Easement Area.

i. SALEM's Indemnity of YMCA. SALEM shall hold harmless, indemnify, and defend YMCA, its elected and appointed officers, employees, and agents from and against any and all claims, demands, losses, damages, expenses, and liabilities of every kind and description, including attorney's fees and costs, for injuries, sickness, or death of persons or damage to property caused by or arising out of SALEM'S use, maintenance, or repair, or the use of the Pedestrian Easement by SALEM's employees, agents or patrons, of the pedestrian access improvements in the Pedestrian Easement Area. Notwithstanding the above, nothing herein shall require YMCA to indemnify, hold harmless, or defend the Grantor or its elected or appointed officers, employees, or agents to the extent that any such claim, demand, loss, damage, expense, or liability is caused by the sole negligence of SALEM or its elected or appointed officers, employees, or agents. The provisions of this Section shall survive termination of this Easement for any claims, demands, losses, damages, expenses, or liabilities arising out of an event which occurred prior to such termination.

ii. YMCA'S Indemnity of SALEM. YMCA shall hold harmless, indemnify, and defend SALEM, its elected and appointed officers, employees, and agents from and against any and all claims, demands, losses, damages, expenses, and liabilities of every kind and description, including attorney's fees and costs, for injuries, sickness, or death of persons or damage to property caused by or arising out of YMCA'S use, maintenance, or repair, or the use of the Pedestrian Easement by YMCA's employees, agents or

patrons, of the pedestrian access improvements in the Pedestrian Easement Area. Notwithstanding the above, nothing herein shall require SALEM to indemnify, hold harmless, or defend the Grantor or its elected or appointed officers, employees, or agents to the extent that any such claim, demand, loss, damage, expense, or liability is caused by the sole negligence of YMCA or its elected or appointed officers, employees, or agents. The provisions of this Section shall survive termination of this Easement for any claims, demands, losses, damages, expenses, or liabilities arising out of an event which occurred prior to such termination.

b. Regarding the Parking Easements.

- i. Occurring on the YMCA Property. SALEM shall hold harmless, indemnify, and defend YMCA, its elected and appointed officers, employees, and agents from and against any and all claims, demands, losses, damages, expenses, and liabilities of every kind and description, including attorney's fees and costs, for injuries, sickness, or death of persons or damage to property caused by or arising out of SALEM's use, maintenance, or repair, or the use of the Parking Easement by SALEM's employees, agents or patrons, of the pedestrian access improvements in the Pedestrian Easement Area on the YMCA Property. Notwithstanding the above, nothing herein shall require YMCA to indemnify, hold harmless, or defend the Grantor or its elected or appointed officers, employees, or agents to the extent that any such claim, demand, loss, damage, expense, or liability is caused by the sole negligence of SALEM or its elected or appointed officers, employees, or agents. The provisions of this Section shall survive termination of this Easement for any claims, demands, losses, damages, expenses, or liabilities arising out of an event which occurred prior to such termination.
- ii. Occurring on the Church Property. YMCA shall hold harmless, indemnify, and defend SALEM, its elected and appointed officers, employees, and agents from and against any and all claims, demands, losses, damages, expenses, and liabilities of every kind and description, including attorney's fees and costs, for injuries, sickness, or death of persons or damage to property caused by or arising out of YMCA's use, maintenance, or repair, or the use of the Parking Easement by YMCA's employees or agents of the pedestrian access improvements in the Pedestrian Easement Area on the Church Property. Notwithstanding the above, nothing herein shall require SALEM to indemnify, hold harmless, or defend the Grantor or its elected or appointed officers, employees, or agents to the extent that any such claim, demand, loss, damage, expense, or liability is caused by the sole negligence of YMCA or its elected or appointed officers, employees, or agents. The provisions of this Section shall survive termination of this Easement for any claims, demands, losses, damages, expenses, or liabilities arising out of an event which occurred prior to such termination.

14. Insurance. At all times during which this Easement is in effect, YMCA shall maintain comprehensive general liability insurance providing coverage for those claims, demands, losses, damages, expenses, and liabilities described in Section 5(a)(i) and 5(b)(i) above, in the amount of \$1,000,000.00 per occurrence/aggregate, naming SALEM as an additional insured as to the claims, demands, losses, damages, expenses, and liabilities described in Section 5(a)(i) and 5(b)(i). In addition, at all times during which this Easement is in effect, SALEM shall maintain comprehensive general liability insurance providing coverage for those claims,

demands, losses, damages, expenses, and liabilities described in Section 5(a)(ii) and 5(b)(ii) above, in the amount of \$1,000,000.00 per occurrence/aggregate, naming YMCA as an additional insured as to the claims, demands, losses, damages, expenses, and liabilities described in Section 5(a)(ii) and 5(b)(ii). All such insurance shall be with companies authorized to do business within the State of Washington by the State Insurance Commissioner. Each party shall provide the other with ACORD Form Certificates of Insurance evidencing the required insurance coverage on an annual basis.

15. Injunctive Relief. If either party violates any of the provisions of this Agreement, the non-breaching party shall be entitled to an injunction restraining any further violation of this Agreement (without any bond or security being required), or any other appropriate decree of specific performance, without showing any actual damage or that monetary damages would not provide an adequate remedy. Such remedy shall not be exclusive and shall be in addition to any other remedy that the non-breaching party may have, including, without limitation, the right to monetary damages for the period preceding such enforcement.
16. Termination. This Easement may be terminated as follows:
 - a. For Breach. In the event of a material breach of the terms and conditions of this Easement by either party, the other may terminate this Easement thirty (30) days written notice provided to the other pursuant to the notice requirements under Section 10(d) below, provided, that this Easement shall not terminate if the defaulting party cures the breach within such thirty (30) day period, or if a cure cannot be completed within thirty (30) days, this Easement shall not terminate as long as the defaulting party commences a cure within thirty (30) days and pursues said cure diligently to completion.
 - b. Ownership. This Easement shall automatically terminate and expire on the earlier of: (1) the voluntary or involuntary transfer of the Church property to a successor or assign; or (2) the voluntary or involuntary transfer of the YMCA property to a successor or assign. Upon termination of this Easement, all improvements subject to this Agreement shall become the property of the owner of the property on which the improvement is located, free and clear of any interest of the other.
 - c. Recording. Upon termination of this Easement by either party, the non-defaulting party shall record a Notice of Termination or other appropriate instrument against the title of the Church Property and the YMCA Property and this Easement shall thereafter be of no further effect.
 - d. No Compensation upon Termination. No compensation shall be paid by either party to the other for the termination of this Easement as provided in this Section, the parties having agreed that the access and parking availability is sufficient consideration for all promises and commitments made by both parties in this Easement. Termination of this Easement does not terminate or otherwise affect other easements recorded against the Church Property or the YMCA Property.
17. Compliance with Laws and Conditions. The construction, operation, use, maintenance, and repair of the access and parking improvements authorized by this Easement shall comply with

all applicable federal, state, and local laws, ordinances and regulations. Such construction, operation, use, maintenance, and repair shall also comply with any applicable conditions of approval imposed by the City of Mt. Vernon on any permits for construction of the improvement or on any site plan entitlement or other development approval issued by the City of Mt. Vernon for development of the YMCA Property.

18. General Provisions.

- a. Time is of the Essence. Except as otherwise specifically provided in this Easement, time is of the essence of each and every provision of this Easement.
- b. Binding Effect-Recording. This Easement shall be recorded in the real property records of Skagit County, Washington, and shall run with the land described herein as the Church Property and the YMCA Property, and shall be binding on and inure to the benefit of the parties, their successors in interest and assigns as to such land. This Easement may not be assigned by either party to anyone who is not an owner of the Church Property or the YMCA Property except as provided in Section 10(c), below.
- c. Lessee of YMCA Property. All parking and pedestrian easement rights granted and retained by YMCA shall cease if the YMCA sells parcel # P116052.
- d. Notices. Notices under this Easement shall be in writing and if personally delivered or sent by facsimile shall be effective when received. If sent by a commercially recognized overnight courier or mailed, a notice shall be deemed effective on the day after it is deposited with the overnight courier or three (3) days after it is deposited in the U.S. Mail, as registered or certified mail, return receipt required, postage prepaid, directed to the other party. Notices shall be delivered, air couriered, mailed or sent by facsimile to the following address and telephone numbers:

Skagit Valley Family YMCA
Attn: Robert N Shrumm
215 East Fulton St,
Mount Vernon WA 98273

Salem Lutheran Church
2529 N. LaVenture Road
Mount Vernon, WA 98274
Fax: _____

Or such other address as may be provided by either party to the other from time to time. Any changed address shall become effective five (5) days after notice of the change is given.

- e. Legal Relationships. This Easement creates only the relationship of Grantor and Grantee of easement rights and no joint venture, partnership or other joint undertaking is intended hereby, and neither party hereto shall have any rights to make any representations or incur any obligations on behalf of the other. Neither party has authorized any agent to make any

UNRECORDED
representations, admit any liability or undertake any obligation on its behalf. Neither party has executed this Easement on behalf of an undisclosed principal, and no third party is intended to be benefited by this Easement. The parties agree that this Easement involves only the conveyance of real property rights; the parties are not being assured of plan approvals or development entitlements.


- f. Waiver. Failure of either party at any time to require performance of any provision of this Easement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.
- g. Prior Agreements. This Easement constitutes the entire understanding between the parties concerning the subject matter here in, and supersedes any prior discussions or offers, oral or written.
- h. Applicable Law. This Easement shall be construed, applied and enforced in accordance with the laws of the State of Washington.
- i. Subsequent Modifications. This Easement may be modified only by written instrument agreed to by the parties and recorded in the real property records of Skagit County, Washington.
- j. Invalidity of Provisions. If any provision of this Easement is declared invalid or is unenforceable for any reason, such provision shall be deleted from this Easement and shall not invalidate any other provision contained herein.
- k. Attorney's Fees. In the event that either party commences proceedings or institutes suit to enforce any rights hereunder, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.
- l. Counterparts. This instrument may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same instrument.


IN WITNESS WHEREOF, the parties have executed this Easement on the dates hereinafterwritten.

SKAGIT VALLEY FAMILY YMCA


By: YMCA CEO ROBERT SCHRUMM

SALEM LUTHERAN CHURCH


By: MICHAEL P. MCMANUS
Its: PRESIDENT OF CHURCH COUNSEL

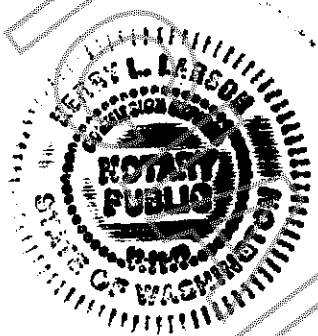

BY: TREVA VOTIPKA, VICE PRESIDENT
OF CHURCH COUNSEL

STATE OF WASHINGTON)

) ss.
COUNTY OF Skagit)

I certify that I know or have satisfactory evidence that Robert Schrumm is the person who appeared before me, and said person acknowledged that he/she signed this instrument and on oath stated that he/she is authorized to execute the instrument and acknowledged it as the CEO of SKAGIT YMCA, to be the free and voluntary act of such party, for the uses and purposes mentioned in this instrument.

WITNESS my hand and official seal hereto affixed this 20 day of September, 2016.



Kerry L. Larson
Printed Name: Kerry L. Larson
NOTARY PUBLIC in and for the State of WA
Residing in Mount Vernon, WA
My Commission Expires: 8/06/2019

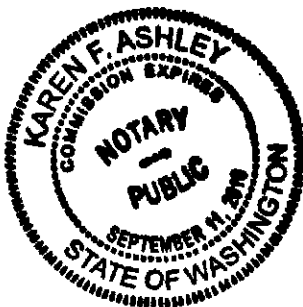
STATE OF WASHINGTON)

) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that is the TREVA VOTIPKA person who appeared before me, and said person acknowledged that he/she signed this instrument and on oath stated that he/she is authorized to execute the instrument and acknowledged it as the PRESIDENT AND * of SALEM LUTHERAN CHURCH to be the free and voluntary act of such party, for the uses and purposes mentioned in this instrument.

*VICE PRESIDENT, RESPECTIVELY

WITNESS my hand and official seal hereto affixed this 19 day of SEPTEMBER, 2016.



Karen Ashley
Printed Name: KAREN ASHLEY
NOTARY PUBLIC in and for the State of WA
Residing in SEDRO-WOOLLEY, WA
My Commission Expires: 9/11/2018

EXHIBIT A
The Church Property

EXHIBIT 'A'

'The Church Property'

Lot 2, Short Plat No. PL12-018, "Salem Short Plat", approved May 29, 2012, recorded June 5, 2012, under Skagit County Auditor's File No. 201206050038, being a portion of Lot 1, Short Plat No. MV-8-94, approved July 1, 1997, all being a portion of Government Lot 7, Section 8, Township 34 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

EXHIBIT B
The YMCA Property

EXHIBIT 'B'

'The YMCA Property'

Lot 1, Short Plat No. PL12-018, "Salem Short Plat", approved May 29, 2012, recorded June 5, 2012, under Skagit County Auditor's File No. 201206050038, being a portion of Lot 1, Short Plat No. MV-8-94, approved July 1, 1997, all being a portion of Government Lot 7, Section 8, Township 34 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

EXHIBIT C
The Parking Easement Area

Exhibit C

EXISTING
BUILDING

EXISTING
BUILDING

EXISTING
SALEM
LUTHERAN
CHURCH

EXISTING
PH

HOAG ROAD

