

RESOLUTION NO. R-17-13

A RESOLUTION AUTHORIZING THE EXECUTION OF
A SHARED PARKING AGREEMENT BETWEEN ST. JOHN EVANGELICAL LUTHERAN CHURCH
AND BARTLETT LEARNING CENTER
(125 E. SEMINARY AVENUE)

WHEREAS, Article 22.2.10 of the City of Wheaton Zoning Ordinance provides for the approval of a Shared Parking Agreement when the parties to the Agreement are property owners whose property uses have parking demands which are inconsistent with each other and when the total off-street parking requirements of the parties to the Shared Parking Agreement may exceed the total number of off-street parking spaces available, and

WHEREAS, Article 22.2.10 of the Wheaton Zoning Ordinance further provides that the Shared Parking Agreement shall be subject to the reasonable approval of the City Council and the following conditions are requirements: (i) signed by the owners of each use included in the Agreement, (ii) termination shall require written notice to the non-terminating party or parties and the City Manager, (iii) termination shall not become effective sooner than six (6) months following the date of the written termination notice, and upon termination of any Shared Parking Agreement, the parties and uses thereto shall be subject to all parking requirements provided for in the Zoning Ordinance, and

NOW, THEREFORE BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois that the Shared Parking Agreement between the St. John Evangelical Lutheran Church and Bartlett Learning Center dated March 4, 2013 is hereby approved.

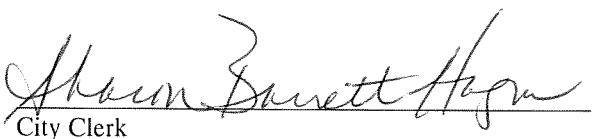
BE IT FURTHER RESOLVED that this Resolution and the Shared Parking Agreement shall be recorded in the office of the DuPage County Recorder at the expense of the St. John Evangelical Lutheran Church and Bartlett Learning Center.

ADOPTED the 4th day of March, 2013.



Michael J. Jones
Mayor

Attest:



Sharon Bennett Hagan
City Clerk

Roll Call Vote

Ayes: Councilwoman Pacino Sanguinetti
Councilman Scalzo
Councilman Suess
Mayor Pro Tem Mouhelis
Councilman Rutledge
Councilman Saline

Nays: None

Absent: Mayor Gresk

Motion Carried Unanimously

DOCUMENT PREPARED BY:

Tracy D.Kasson
Rathje & Woodward, LLC
300 E. Roosevelt Rd., Suite 300
Wheaton, IL 60187

AFTER RECORDING RETURN TO:

Tracy D. Kasson
Rathje & Woodward, LLC
300 E. Roosevelt Rd., Suite 300
Wheaton, IL 60187

PARKING EASEMENT AGREEMENT

This Parking Easement Agreement (this "Agreement") is made and effective as of the _____ day of _____, 2012, by and between St. John Evangelical Lutheran Church of Wheaton, an Illinois not-for-profit corporation ("St. John's"), and Bartlett Learning Center, an Illinois not-for-profit corporation ("Bartlett Learning").

RECITALS:

WHEREAS, St. John's is the owner of certain parcels of real property situated in the City of Wheaton, DuPage County, Illinois and more particularly described on Exhibit A attached hereto and made a part hereof (hereinafter referred to as "St. John's Property"); and

WHEREAS, Bartlett Learning is the owner of that certain real property situated adjacent to the St. John's Property, and more particularly described on Exhibit B attached hereto and made a part hereof (hereinafter referred to as "Bartlett Learning Property"); and

WHEREAS, St. John's previously owned the Bartlett Learning Property and as a condition precedent to its sale of the Bartlett Learning Property to Bartlett Learning, St. John's required Bartlett Learning to grant to St. John's a parking easement over the Bartlett Property containing the existing parking lot and access drives on Sunday of every week and December 24th of every year; and

WHEREAS, Bartlett Learning intends to move into the Bartlett Property to operate a school on the Bartlett Property; and

WHEREAS, the parties desire and require, in conjunction with the sale of the Bartlett Learning Property and Bartlett Learning's use of the Bartlett Learning Property, to provide for

and grant a permanent parking easement for Sundays and December 24th of every year over portions of the Bartlett Property, as shall be defined and set forth in this Agreement.

NOW THEREFORE, in consideration of the above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Recitals.** The foregoing recitals are deemed remade herein and form a part of this Agreement, as if fully restated herein.

2. **Grant of Easements.**

(a) **Access and Parking Easement.** Bartlett Learning hereby declares, grants and establishes, as an appurtenance to St. John's Property and for the benefit of the St. John's Property, an irrevocable perpetual and exclusive easement for: (a) pedestrian and vehicular ingress and egress ("St. John's Property Access Easement") to and from the St. John's Property on, in, over and across that surface portion of the Bartlett Learning Property, dimensioned and described on Exhibit C, attached hereto and made a part hereof ("St. John's Property Access Easement Area"); and (b) parking passenger motor vehicles on spaces and for ingress and egress to and from the St. John's Property ("St. John's Parking Easement"), located on the Bartlett Learning Property to serve the St. John's Property, during the hours of 12:01 a.m. to 11:59 p.m., on Sunday of every week and on December 24th of every year, in the area as depicted on Exhibit C ("St. John's Property Parking Easement Area"). The St. John's Property Access Easement Area and St. John's Property Parking Easement Area shall be maintained, repaired and replaced by Bartlett Learning provided, however, St. John's and its agents shall be able to snow plow the St. John's Property Access Easement Area and St. John's Property Parking Easement Area at its sole cost and expense. If, however, any maintenance, repair or replacement is required as a result of the act or omission of St. John's, St. John's shall be required to perform the maintenance, repair or replacement at its expense.

(b) **Benefitted Parties.** The St. John's Property Access Easement and St. John's Parking Easement granted hereby shall be for the benefit of St. John's, its successors and assigns, and its guests, invitees, agents, employees and licensees.

(c) **Reservation of Right, Relocation.** Any rights to the St. John's Property Access Easement Area and St. John's Property Parking Easement Area not specifically granted to St. John's herein are reserved for Bartlett Learning and its successors and/or assigns.

3. **Public Use.** Notwithstanding anything herein to the contrary, this Agreement shall be considered only a grant of private easements and shall not create any rights to the public, whatsoever, and nothing contained herein shall constitute a dedication of an easement for public use.

4. **Indemnification.** To the fullest extent permitted by law, any grantee of easement rights herein will indemnify and hold any grantor harmless from and against any and all claims,

litigation, liability, loss, injury, damage, cost, and/or expense on account of injury to or death of any person or persons whomsoever or on account of damage to any property in any way arising out of, caused, by connected with, or attributable to the operation, maintenance, and/or use of the easements or the rights herein granted, or the performance or non-performance of obligations hereunder; and the indemnifying party will defend by counsel satisfactory to the indemnified party any suit or action brought against such party based on any such alleged injury, death, or damage and shall pay all damages, costs and expenses, including attorneys' fees, connected therewith or resulting therefrom, except to the extent such claims are caused by the negligence or the willful act or omissions of the grantor or its respective agents or employees.

5. **Binding Effect.** Each and all of the easements, covenants, conditions and provisions contained in this Agreement, whether of an affirmative or negative nature; (i) are made for the direct and mutual benefit of the parcels and each and every portion thereof as described herein; (ii) constitute easements and covenants running with the land; (iii) shall bind every owner of a parcel, or any portion thereof and all users or occupants thereof and their respective successors in interest and assigns; and (iv) shall inure to the benefit of, and be binding upon St. John's and Bartlett Learning and their respective permitted successors in interest and assigns. By accepting title, a mortgage, a lease, or any other interest or estate in any property affected by this Agreement, the grantee of title thereto agrees to be bound by all the provisions, terms, obligations and conditions of this Agreement and all properly executed amendments thereto. Upon sale of any parcel herein or any portion thereof, to the extent of such sale, the rights, obligations and liabilities of said selling party shall be deemed to have been assigned to said purchaser, but said selling party shall remain liable for all obligations, liabilities, acts or omissions arising or accruing prior to the date of said sale.

6. **Enforcement.** This Agreement may be enforced either at law or in equity, with the non-breaching party entitled to injunctive relief and/or monetary damages. If any action for enforcement of this Agreement is brought, the non-prevailing party in such action shall reimburse the prevailing party for its reasonable attorney's fees, reasonable expenses and related costs in such action.

7. **Amendment.** This Agreement, or specific provisions herein, may be modified or amended only by a written instrument executed by the parties, or their respective permitted successors or assigns, who are burdened and benefitted by a particular grant.

8. **Severability.** If any clause, sentence or other portion of the terms, conditions, covenants and restrictions herein becomes illegal, null or void, for any reason, or is held by any court of competent jurisdiction to be so, the remaining portions of this Agreement shall remain in full force and effect.

9. **Construction.** The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction so that the intention of the parties to confer commercially usable right of enjoyment on the beneficiaries hereof is carried out.

10. **Remedies.** Except as otherwise provided in this Agreement, in the event any party shall be in default of any obligation or undertaking hereunder, said party shall be sent

notice thereof and shall be given at least seven (7) days to cure in the event of a monetary default and at least twenty (20) days to cure in the event of a non-monetary default before the non-defaulting party may seek, pursuant to any and all legal and equitable remedies, to enforce this Agreement, provided, however, in case of a life threatening emergency, the non-defaulting party may seek an immediate injunction, restraining order or other court order, with or without notice as the court shall allow, without having to wait for any grace period to expire.

11. Notices.

(a) All notices or other communications required or given under the terms of this Agreement shall be in writing and shall be delivered by: (i) receipted personal delivery; (ii) commercial overnight courier service; or (iii) facsimile transmission, accompanied by a copy of the notice mailed by first-class mail, addressed to the parties as follows:

If to St. John's: St. John Evangelical Lutheran Church of Wheaton
Attn: John Crowe
Parish Administrator
410 N. Cross Street
Wheaton, IL 60187

With a Copy to: Tracy D. Kasson
Rathje & Woodward, LLC
300 E. Roosevelt Rd.
Suite 300
Wheaton, IL 60187
(630) 510-4920
Fax: (630) 668-9218

If to Bartlett Learning: _____

With a Copy to: _____

(b) A notice shall be deemed to have been served: (i) upon the date of receipt if served by personal delivery or by commercial overnight courier service; and (ii) upon the date of receipt of service by facsimile transmission,

provided that the transmission is completed by 5:00 p.m., with confirmation of receipt, or if not completed by 5:00 p.m., on the next business day.

(c) Any party may change the address to whom service of notices shall be effected by a notice in conformity with the provisions of this Paragraph 11. The requirement to serve a courtesy copy of a notice shall be deemed a courtesy only, and failure to comply with the requirement shall not affect the compliance provisions of this Paragraph 11.

12. **Authority.** Each of the parties hereto hereby represents and warrants to the other that the execution and delivery of this Agreement by the representing and warranting party has been duly authorized, that this Agreement has been validly executed and delivered by such party, and that this Agreement is binding upon such party in accordance with its terms.

13. **Estoppel Certificates.** Any party to this Agreement, or their successors in interest, shall, following prior written request from another party set forth herein, execute an estoppel certificate certifying the following statements, to the extent each is true, and specifying any inaccuracy in such statements:

- A. That the certifier is the owner of the identified property and is a party to this Agreement;
- B. That the Agreement is in full force and effect and has not been amended, modified or assigned;
- C. That the requesting party is not in default of any provision of the Agreement and that no event or omission has occurred which, with the passage of time or the giving of notice, would constitute a default;
- D. That the certifier has no claims against the requesting party;
- E. That neither party to the Agreement has any unpaid outstanding monetary obligation to the other; and
- F. Such other provisions as the requesting party may reasonably request.

In the event the certifier does not, following twenty (20) days' prior written request from the other, followed by an additional fifteen (15) days' prior written reminder notice, respond to a request to execute an estoppel certificate as described above, the accuracy of the contents of the request shall be deemed admitted. No party shall submit to any other party more than three (3) requests for estoppel certificates within any twelve (12) month period.

14. **Non-Waiver.** No waiver by any party of any default in performance on the part of another party, or of any breach or series of breaches, or any of term, covenant or condition of this Agreement shall constitute a waiver of any subsequent breach or a waiver of any term,

covenant or condition.

IN WITNESS WHEREOF, this Agreement is dated as of the day and year first above written.

GRANTOR:

Bartlett Learning Center

By:

Title: _____

GRANTEE:

St. John Evangelical Church of Wheaton

By:

John Crowe, Parish Administrator

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that John Crowe, Parish Administrator of St. John Evangelical Church of Wheaton, an Illinois religious corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as Parish Administrator, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntarily act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2012.

NOTARY PUBLIC

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, _____ of Bartlett Learning Center, an Illinois not-for-profit corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as _____, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntarily act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2012.

NOTARY PUBLIC

MORTGAGEE CONSENT AND JOINDER

This consent and Joinder executed this _____ day of _____, 2012, by ("Lender"), as Mortgagee of the Bartlett Learning Center Property defined in the attached Agreement.

Lender is the holder of a Mortgage dated _____, and recorded on _____, as Document No. _____ (such mortgage, as previously or hereafter amended, renewed, extended and continued from time to time is herein called the "Mortgage"), and hereby consents to the foregoing Agreement and agrees that the Mortgage shall be subject and subordinate in all respects to the Agreement. In the event of any foreclosure or acquisition of title to the Bartlett Learning Center Property (as defined in the Agreement) by Lender or any successor-in-interest to Lender, the foregoing Agreement shall not be disturbed and shall remain in full force and effect, and Lender and its successors-in-interest will abide and be bound by the terms of the Agreement and all of the terms and conditions thereof.

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

STATE OF _____)
) ss
COUNTY OF _____)

I, _____, a Notary Public in and for said County and State, certify that _____, the _____ of _____, personally known to me to be the person whose name is subscribed to the foregoing instrument, personally appeared before me this day and acknowledged that, being duly authorized, he/she signed and delivered the said instrument as his/her free and voluntary act and as the free and voluntary act of the corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2012.

NOTARY PUBLIC

Printed Name

My Commission Expires: