

FILED FOR RECORD AT THE REQUEST OF:

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AFTER RECORDING RETURN ORIGINAL TO:

Christopher J. Mertens
Miller, Mertens & Spanner, PLLC
1020 N Center Parkway, Suite B
Kennewick, WA 99336
Misc 09-288

CASCADE TITLE CO.

88.

Grantor(s): Tri Cities Chaplaincy, a Washington non-profit corporation

Grantee(s): Tri Cities Chaplaincy, a Washington non-profit corporation

Legal Description: Lots 1 and 2 as delineated on Short Plat No. 3192, as recorded under auditor's recording No. 2009-010124, records of Benton County, Washington.

Assessor's Property Tax Parcel/Account No.: 1-1289-201-3192-001, 1-1289-201-3192-002

**DECLARATION OF COVENANTS, EASEMENTS
AND PARKING AGREEMENT**

THIS COVENANT/AGREEMENT is by and between **TRI CITIES CHAPLAINCY**, a Washington non-profit corporation, (hereinafter "TCC") acting as the owner of all property described herein and as both Grantor and Grantee.

WHEREAS, TCC is the owner of certain real property situated in the City of Kennewick, County of Benton, State of Washington, legally described as follows:

Lots 1 and 2 as delineated on Short Plat No. 3192, as recorded under auditor's recording No. 2009-010124, records of Benton County, Washington.

WHEREAS, it is the intent of TCC to provide access to each lot, through each lot as presently developed and as may be developed in the future, to facilitate the free flow of vehicular traffic, as well as provide maximum utilization of their respective parking lots; and

THEREFORE, TCC hereby declares that the above described property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, agreements and conditions, all of which are for the purpose of enhancing and protecting the value, access, desirability and attractiveness of the real property. These easements, covenants, restrictions, agreements and conditions shall run with the real property, shall be binding on all owners having or acquiring any right, title or interest in the described properties or any part thereof, shall inure to the benefit of each owner thereof, and are in addition to any other easements, covenants, restrictions and conditions of record.

1. **Grant of Easement:** TCC hereby grants and conveys a right of access, including ingress and egress and parking, over, upon and across the respective Lots 1 and 2 on the roadways and parking areas now or in the future existing on the Properties. This right of easement over and upon the respective Properties includes the right of the parties and their respective tenants, business invitees, customers and guests to use each other's parking lot(s), except as otherwise restricted in this Agreement.

2. **Payment of Cost of Construction for Future Development:** The cost of all future development of the respective properties shall be borne exclusively by the party owning the property being developed.

3. **Existing Roadway and Parking Maintenance:** Any owner shall maintain their roadways and parking lots existing on their respective properties in reasonably good condition. The owners agree to jointly maintain the parking lots and roadway so as to maintain a common

appearance. The expense for repair, replacement and maintenance, including snow and ice removal, shall be borne by the party where the road or parking lot is located.

4. **Modification to Account for Changed Conditions:** TCC acknowledges that the nature and character of the utilization of the properties may change over time, necessitating modification to this Agreement. For example, the tenants, customers, business invitees or guests of one party or the other may consume an excess amount of parking that interferes or restricts the other owner's use of its property. Similarly, an excessive amount of traffic may necessitate expanding, modifying or relocating an access point to improve traffic flow. Accordingly, TCC, and its assigns and successors, agree to cooperate fully in modifying this Agreement in order to address a change in conditions. All such modifications shall be in writing. In the event the parties reach an impasse in their negotiations on a modification, such impasse shall be resolved in arbitration as hereinafter provided.

5. **Miscellaneous Provisions:**

5.1 No owner of the above described real property shall be considered the agent or partner of any other party or owner.

5.2 This Agreement shall not be varied, altered or modified except by written agreement signed by each owner of the above described real property.

5.3 This Agreement shall be binding upon the heirs, executors, administrators or assigns of either party or their successors-in-interest, if a corporation.

5.4 The reciprocal easement and agreement provided herein shall be deemed to run with the land both benefited by and servient to the easement and agreement.

5.5 Any owner taking possession of the land described herein agrees to indemnify and hold the other owner harmless from all claims, suits or causes of action for

personal injury, death or property damage by their respective tenants, business invitees, customers and guests arising out of their use of the other owner's property as permitted by this Agreement and howsoever caused, including, but not limited to the negligence of the indemnitee. The duty to indemnify includes the duty to pay for all attorney fees and costs of litigation incurred in defense of all such claims or suits. Each party, and their assigns and successors, shall carry a minimum of \$1,000,000.00 combined policy limits on their respective property liability insurance coverage.

5.6 In the event the owners are in dispute over this Agreement, or in the event they reach an impasse with regard to modifying the Agreement as provided in Paragraph 4 hereof, such dispute or impasse shall be resolved by a single neutral arbitrator who shall be selected by the mutual agreement of the parties. If they are unable to reach agreement within ten (10) days following declaration of an impasse or dispute by either, then either party may petition the Superior Court for Benton County for the appointment by the Court of a single neutral arbitrator who shall then resolve the dispute in accordance with an arbitration hearing conducted in accordance with RCW 7.04. The arbitrator's decision shall be conclusive and binding on the parties, except as otherwise provided in the aforesaid RCW. The fee of the arbitrator shall be borne one-half by each party. Each party shall bear its own attorney's fees as related to the resolution of an impasse. However, in the event a dispute arises between the parties out of this Agreement, the prevailing party in the resulting arbitration shall be awarded its attorney's fees and all costs of litigation. Prevailing party status shall be determined in a post-arbitration hearing, at which time the arbitrator rendering the decision shall consider all pre-hearing written offers of settlement submitted by one party to the other.

