

BOROUGH OF CARLISLE

ORDINANCE NO. _____

**AN ORDINANCE OF THE BOROUGH COUNCIL OF THE
BOROUGH OF CARLISLE, CUMBERLAND COUNTY,
PENNSYLVANIA APPROVING AN AGREEMENT
BETWEEN THE BOROUGH OF CARLISLE AND THE
YMCA.**

WHEREAS, Article VI, Section 602.A.6 of the Carlisle Home Rule Charter requires that the purchase of an interest in property by the Borough of Carlisle be approved by Ordinance; and

WHEREAS, the Young Men’s Christian Association of Carlisle PA (the “YMCA”) and the Borough of Carlisle (the “Borough”) desire to enter into an agreement (the “Agreement”) which allows the Borough to acquire an interest in a portion of the property owned by the YMCA for future intersection improvements to be made by the Borough.

NOW, THEREFORE, IT IS HEREBY ORDAINED by the Borough Council of the Borough of Carlisle as follows:

SECTION 1. The Agreement between the Borough of Carlisle and the YMCA attached to this Ordinance and incorporated by reference herein as “Exhibit A” is hereby approved.

SECTION 2. The appropriate officers of the Borough are hereby authorized and directed to execute the Agreement on behalf of the Borough of Carlisle.

SECTION 3. This Ordinance shall become effective immediately upon enactment.

ENACTED AND ORDAINED this 14th day of March, 2019.

ATTEST:

BOROUGH OF CARLISLE

Joyce E. Stone, Secretary

By: _____
Timothy A. Scott, Mayor

AGREEMENT

THIS AGREEMENT ("Agreement") is dated this ____ day of _____, 2019,

by and between:

BOROUGH OF CARLISLE, a Pennsylvania home rule municipality with an address of 53 West South Street, Carlisle, Pennsylvania 17013 (hereinafter "Borough")

And

YOUNG MEN'S CHRISTIAN ASSOCIATION OF CARLISLE PA, with an address of 311 South West Street, Carlisle, Pennsylvania 17013 (hereinafter "YMCA").

BACKGROUND

WHEREAS, YMCA is the owner of an improved property located at 311 South West Street, Carlisle, Pennsylvania (the "Property") having acquired the Property by Deed dated and recorded March 31, 1958 in the Office of the Recorder of Deeds in and for Cumberland County, Pennsylvania in Deed Book "T", Volume 18, Page 265; and

WHEREAS, YMCA has received from the Borough land development plan approval for the Property (the "Plan") conditioned upon, inter alia, the Borough and YMCA entering into this Agreement; and

EXHIBIT A

WHEREAS, YMCA would be required as a condition of Plan approval pursuant to §226-32 of the Borough of Carlisle Subdivision and Land Development Ordinance to either dedicate to the Borough land for public recreational purposes or pay a fee to the Borough (the "recreation fee") in lieu of the dedication of such land; and

WHEREAS, YMCA has requested a waiver of the recreation fee, which waiver Borough Council has granted subject to the ability of the Borough to obtain either a fee simple interest or easement interest on the southwest corner of the YMCA Property for improvements to be made in the future at the intersection of West Willow Street, South West Street and Walnut Bottom Road (the “intersection improvements”); and

WHEREAS, the parties desire to document by this Agreement their respective rights and obligations as they pertain to the Borough acquiring in the future either a fee simple interest or easement interest on the YMCA Property for the intersection improvements.

NOW THEREFORE, in consideration of the mutual terms and provisions set forth in this Agreement and intending to be legally bound hereby, the parties agree as follows:

1. The preamble set forth above is incorporated in this Paragraph and made a part of the parties’ Agreement.

2. YMCA agrees to grant and convey, and will grant and convey, to the Borough a fee simple interest or easement interest in the Property consisting of a 1,008 square-foot triangular area having a base of 48 feet and a length of 42 feet on the southwest portion of the Property (the “Easement Area”) as depicted on the plan sheet attached hereto and incorporated by reference herein as “Exhibit A”.

3. Upon written notice from the Borough to YMCA, YMCA agrees within 30 days of such notice to convey the Easement Area to the Borough, by either fee simple deed or easement instrument, as the Borough shall designate in such notice, by delivering the appropriate instrument in recordable form to the office of the Borough Manager. Such instrument shall be prepared by and recorded at the expense of the Borough and provided to YMCA with the notice

described above. The conveyance of the Easement Area by YMCA shall be free and clear of all liens and encumbrances.

4. In the event the Borough is obligated due to the requirements of any grant or funding provided to the Borough for purposes of constructing the intersection improvements to have other or additional instruments provided to and/or executed by YMCA, YMCA agrees to cooperate in the execution of such instruments necessary for the Borough to acquire the Easement Area.

5. YMCA acknowledges and agrees that the conveyance of the Easement Area to the Borough shall be without the payment of consideration to YMCA and that the waiver by the Borough of the payment of a recreational fee is sufficient consideration for the Borough's future acquisition of the Easement Area.

6. The parties agree that in the event the Easement Area on the Property to be acquired by the Borough is decreased in size, YMCA shall convey that lesser Easement Area to the Borough, in which event YMCA shall still receive the benefit of the full recreational fee waiver granted by Borough Council. In the event it is necessary for the Borough to increase the Easement Area beyond 1,008 square feet, the Borough agrees to pay to YMCA consideration for that additional area in excess of 1,008 square feet based on the then fair market value of that additional area necessary to be acquired, as determined by an appraisal to be performed at the expense of the Borough. The obligation of YMCA to convey the Easement Area together with any required additional area shall be subject to the Borough making payment to YMCA for such additional area in exchange for the appropriate instrument in recordable form being delivered to the Borough. In addition, YMCA agrees that the conveyance of any additional area,

the Easement Area or any lesser portion of the Easement Area, shall be free and clear of all liens and encumbrances.

7. The Borough agrees that the Easement Area or any additional area that may be needed in addition to the Easement Area shall not result in the net loss of any parking spaces on the Property. The Borough also agrees that it shall be responsible for and assume all costs and expenses associated with the moving of the sign structure on the Property if the sign structure is located within the Easement Area (or the additional area in excess of the Easement Area) and the repair, replacement or relocation of any sidewalk adjoining the Property occasioned by the Borough's intersection improvements. The Borough further acknowledges and agrees that the Easement Area, any lesser Easement Area and any additional area that may be needed, whether acquired by easement or fee simple conveyance in accordance with the terms of this Agreement, may still be considered part of the total lot area of the Property by YMCA.

8. Any notices required to be given by this Agreement shall be given by first class mail, postage prepaid, return receipt requested or by Federal Express to the address of the receiving party identified in the beginning of this Agreement.

9. The parties agree that there shall be no modification of this Agreement except in writing executed by both the Borough and YMCA.

10. The parties acknowledge and agree that this Agreement contains the entire understanding of the parties and there are no representations, warranties, covenants or undertakings other than those expressly set forth in this Agreement.

11. Nothing in this Agreement shall be construed as waiving any rights the Borough has under any law that allows for the Borough to acquire land or any interest in land by legal process, which rights are expressly reserved by the Borough herein.

COUNTY OF CUMBERLAND

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On this, the ____ day of _____, 2019, before me, the undersigned officer, personally appeared _____, who acknowledged _____ to be the _____ of the YOUNG MEN'S CHRISTIAN ASSOCIATION OF CARLISLE PA, and _____, as such _____, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of such organization.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.

Notary Public