

Return to:  
MEASURE, SAMPSEL, SULLIVAN & O'BRIEN, P.C.  
24 First Avenue East, Suite C  
P.O. Box 918  
Kalispell, Montana 59903

63857 FPT

## EASEMENT AGREEMENT

THIS AGREEMENT is made by and between Bethany Lutheran Church, Inc. of P.O. Box 398, Bigfork, Montana 59911 ("Grantor"), and Flathead County Library Foundation, Inc. of 44 2<sup>nd</sup> Ave. W., Kalispell, Montana 59901 ("Grantee").

### RECITALS:

WHEREAS, Grantor sold, and Grantee purchased, a portion of Grantor's real property and improvements including easements for utilities, signage, shared access, and shared parking. In contemplation of this sale, Grantor caused the survey and recording of the Amended Plat of Lots 18, 19 & 20 of J.H. Horn Tracts, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference.

WHEREAS, Grantor owns the following real property:

- (1) that certain real property and appurtenances with a legal description as follows:

Lots 21, 22, 23, and 24 of the J.H. Horn Tracts, according to the plat thereof and on record in the office of the county clerk and recorder of Flathead County, Montana, lying East of the State Highway No. 35 as now laid out and in use;

And

- (2) that certain real property and appurtenances depicted on **Exhibit A** with a legal description as follows:

Lots 18A and 20A of the Amended Plat of Lots 18, 19 & 20 of J.H. Horn Tracts, according to the plat thereof and on record in the office of the county clerk and recorder of Flathead County, Montana, lying East of the State Highway No. 35 as now laid out and in use;

(hereinafter referred to collectively as "Grantor's Property"). Grantor owns and

operates a church on its property.

WHEREAS, Grantee owns that certain real property and appurtenances depicted on **Exhibit A** with a legal description as follows:

Lot 19A of the Amended Plat of Lots 18, 19 & 20 of J.H. Horn Tracts, according to the plat thereof and on record in the office of the county clerk and recorder of Flathead County, Montana, lying East of the State Highway No. 35 as now laid out and in use,

(hereinafter "Grantee's Property"). Grantee owns and operates a branch of the Flathead County Library on its property.

WHEREAS, Grantor's Property has two separate parking lots identified as follows: (1) the West Parking Lot accessed from State Highway 35, and (2) the East Parking Lot accessed from Bridge Street. Presently, these parking lots are separated by Grantor's buildings, trees, and landscaping as depicted on the annotated Google Earth photo attached hereto as **Exhibit B** and incorporated herein by this reference.

WHEREAS, by this instrument, the parties intend to memorialize their agreed upon easements for utilities, signage, shared access from Bridge Street, and shared parking over the East Parking Lot.

NOW, THEREFORE, for valuable consideration, and in consideration of the mutual promises herein to be kept and performed, the parties agree as follows:

### **EASEMENT FOR UTILITIES**

I. **EASEMENT FOR UTILITIES**: Grantor grants, bargains, sells and conveys to Grantee a permanent easement for the location and maintenance of all existing utilities serving Grantee's Property, the precise location of such existing utilities including water, power, and sewer, are as defined and depicted on the attached **Exhibit A**. The parties shall not alter the location of these utility easements absent mutual written consent. Any future mutual written agreement to alter the location of the access easement shall be recorded with either an attached amended survey or sketch with precise, ascertainable measurements. Grantor likewise grants, bargains, sells and conveys to Grantee an easement for the location, installation, and maintenance of any future utilities which Grantee may deem necessary or desirable, including but not limited to, internet, cable, and other information distribution and signal devices. Grantee is solely responsible for the costs of installation and ongoing maintenance of any existing or future utilities serving Grantee's Property.

### **EASEMENT FOR SIGNAGE**

2. **EASEMENT FOR SIGNAGE**: Grantor grants, bargains, sells and conveys to Grantee a permanent easement for the location and ongoing maintenance of one or both of the following signs on Grantor's Property: (a) a sign exclusive to Grantee alone, for identification and directional purposes, located at or close to the intersection of Bridge Street and the existing access road to the properties; and (b) a sign for the joint use by both Grantor and Grantee, for identification and directional purposes, located at any location to which the parties mutually agree. Grantee is solely responsible for the costs of installation and ongoing maintenance of its exclusive sign. Both parties agree to share equally the costs of installation and ongoing maintenance of any future sign(s) they may agree to jointly use.

### **EASEMENT FOR SHARED ACCESS**

3. **EASEMENT FOR SHARED ACCESS**: Grantor grants, bargains, sells and conveys to Grantee a permanent easement for ingress and egress over and along the existing gravel access road and parking lot located upon Grantor's Property.

4. **LOCATION AND SCOPE OF EASEMENT**: The access easement extends from Bridge Street to the parties' adjoining property boundary line, its precise location as defined and depicted on the attached **Exhibit A**. The parties shall not alter the location of the access easement absent mutual written consent. Any future mutual written agreement to alter the location of the access easement shall be recorded with either an attached amended survey or sketch with precise, ascertainable measurements. This easement is for the use and benefit of the occupants of Grantor and Grantee, and their respective guests, licensees, and invitees.

5. **NEIGHBORLY ACCOMMODATION**: Given that the access easement depicted on **Exhibit A** traverses the East Parking Lot, and given that the parties may pave the entire shared access road and their respective portions of the East Parking Lot, and given that the parties do not yet know the precise location and configuration for line painting of the East Parking Lot or their respective portions thereof, each party grants to the other permission, as a reasonable neighborly accommodation, to travel outside the boundaries of the access easement depicted on **Exhibit A**, as may be necessary for the limited purpose of accessing their respective parcels and their reciprocal easements for shared parking. This neighborly accommodation is for the use and benefit of the occupants of Grantor and Grantee, and their respective guests, licensees, and invitees.

### **RECIPROCAL EASEMENTS FOR SHARED PARKING**

6. **RECIPROCAL EASEMENTS FOR SHARED PARKING**: Grantor and Grantee each grants, bargains, sells and conveys to the other a permanent reciprocal easement for shared parking over and within that portion of the existing East Parking Lot



which lies within the boundaries of each party's deeded property. This easement expressly excludes any shared parking over Grantor's West Parking Lot.

7. LOCATION AND SCOPE OF EASEMENT: The location of the parties' reciprocal parking easements over and within the existing East Parking Lot is generally depicted on the attached **Exhibit B**, keeping in mind the location of the parties' common boundary line depicted on **Exhibit A**. Either party may expand the portion of the East Parking Lot located on its respective deeded property without the consent of the other, and any such expansion shall become part of the reciprocal easements and inure to the benefit of the other party. However, no party shall reduce the portion of the East Parking Lot located on and within its respective deeded property absent the parties' mutual written consent. Any future mutual written agreement to alter the location (via reduction) of the shared parking easement shall be recorded with either an attached amended survey or sketch with precise, ascertainable measurements. This easement is for the use and benefit of the occupants of Grantor and Grantee, and their respective guests, licensees, and invitees.

8. OCCASIONAL USE RESTRICTION: Either party shall have the right to reserve, by use of cones or similar visual aids, any number of parking spaces in the entire East Parking Lot for such Party's exclusive use on certain special occasions related to their respective business activities, not to exceed 24 hours in duration for each such special occasion.

9. FUTURE PAVING OF SHARED PARKING EASEMENT: Either party, at its sole cost and expense, has the right to pave the portion of the East Parking Lot located on and within its respective deeded property. In that event, the party choosing to pave its portion shall be solely responsible for the future upkeep and maintenance costs related to such paving. Should it come to pass that both parties have paved the portions of the East Parking Lot located on and within their respective deeded properties, then ¶10 below shall automatically apply and the parties together shall be responsible, on a proportionate basis, for all future upkeep and maintenance costs related to such paving.

**PROVISIONS APPLICABLE TO BOTH EASEMENTS FOR SHARED ACCESS  
AND SHARED PARKING**

10. MAINTENANCE COSTS:

A. *Definition of Maintenance and Repair Costs*. At this time, maintenance and repair costs include snow removal, pothole filling, and gravel grading. Paving, chip sealing, and line painting are considered future capital improvements governed by ¶11 below.

B. *Individual Responsibility*. The parties shall each be solely responsible for all maintenance and repair costs of their individual walkways serving their



respective parcels and buildings. If any damage to the shared access or shared parking easements is solely attributable to the gross negligence or intentional misconduct of one party, or their guests and invitees, then such party shall be solely responsible to repair and restore the affected easement to its prior condition.

C. *Joint Responsibility for Shared Access Easement and Shared Reciprocal Parking Easement.* The parties will jointly share and pay all maintenance and repair costs of the shared access easement and the shared reciprocal parking easements in accordance with a 1/3-2/3 division as follows: 1/3 share to Grantee, and 2/3 share to Grantor.

D. *Terms of Payment.* Payment of all maintenance and repair costs shall be made in a prompt and timely manner given the nature and extent of the maintenance. Unless otherwise agreed, each party shall pay its share of maintenance and repair costs within thirty (30) days of receipt of the invoice for same or receipt of written notice by the other party of same.

11. CAPITAL IMPROVEMENTS. Subject to ¶ 9 above, no capital improvement to either the shared access easement or the shared reciprocal parking easements shall be undertaken absent the mutual written consent of the parties. The term "capital improvement" includes paving, chip sealing, line painting, and similar alterations or improvements. If the parties agree upon a capital improvement, then ¶ 10 above shall automatically apply for all future maintenance and repair costs related to such capital improvement. Any capital improvement agreement shall be in written form as an amendment to this Easement Agreement and recorded.

#### MISCELLANEOUS PROVISIONS APPLICABLE TO ALL EASEMENTS

12. NOTICE OF DELINQUENCY/LATE FEES/INTEREST: Any payment described herein that is not paid when due shall be deemed delinquent. Delinquent payments shall incur a weekly late fee of \$10.00, and bear interest from the due date at a rate of not less than 10% per annum. Upon determination of delinquency, the non-delinquent party shall immediately send a written Notice of Delinquency to the delinquent party stating the following:

- a. the fact of delinquency;
- b. the accrual of weekly late fees and in what amount;
- c. the accrual of interest and in what amount; and
- d. that if payment in full, including any late fees and interest, is not made within thirty (30) days of the date of the Notice of Delinquency, a lien will be imposed against the delinquent party's property.

13. LIEN RIGHTS: In the event outstanding payments, late fees, and interest owed are not paid within 30 days of the Notice of Delinquency, the non-delinquent party

may file a lien with the Flathead County Clerk and Recorder against the property of the delinquent party, which lien shall contain a certified, acknowledged statement of all amounts owed and unpaid, including attorney's fees and costs in filing the lien, the place where payment shall be made, and a statement that a true and correct copy of the lien has been mailed, prior to recording, to the delinquent party by certified or registered mail, return receipt requested. Once the delinquent party makes payment in full, the non-delinquent party shall similarly record a Satisfaction of Lien within thirty (30) days of the date payment in full is made. Upon removal of the lien, the non-delinquent party will immediately send to the delinquent party a final accounting and a Notice of Removal of Lien.

14. SUBDIVISION RESTRICTION: No party to this Agreement shall further subdivide their respective interests, rights and obligations conveyed and/or provided herein without the advance written consent of the other party.

15. ABANDONMENT OR NON-USE: The property interests conveyed and the rights and obligations provided herein shall not be lost, forfeited, or waived by a party's abandonment or non-use.

16. BINDING AND APPURTENANT: The property interests conveyed and the rights and obligations provided herein shall run with the land and be appurtenant to the parties' respective properties. The duties created are binding upon the parties and their heirs, assigns, and successors in interest.

17. MODIFICATION: This Agreement may be modified only upon the express, written agreement of the parties executed with the same formalities as this instrument. Any modification agreement shall be recorded in the office of the Clerk and Recorder of Flathead County, Montana.

18. DISPUTE RESOLUTION: With the exception of a party's delinquency, the parties will endeavor to resolve any other dispute concerning this Agreement by direct discussion. If resolution is not reached by discussion, the parties will participate in mediation through an objective, third-party mediator. Any settlement reached in mediation will be binding on all parties and each party will be responsible for its own attorney's fees and costs. If a dispute is not settled by mediation, then it may be resolved by the appropriate Montana Eleventh Judicial District Court sitting without a jury. The parties will have all remedies available at law and in equity in the event of breach of this Agreement. The parties waive all rights to a trial by jury regarding any dispute arising hereunder. The prevailing party of any such lawsuit is entitled to reasonable attorney's fees and costs.

19. NOTICES: All notices required by this Agreement shall be in writing and sent via email or certified US mail to the party's last known email or mailing address. If using email, the notice is effective immediately. If using US mail, the notice is effective

three (3) business days after mailing.

20. RECORDING: The parties agree to record this Agreement, and any future amendments hereto, in the office of the Clerk and Recorder of Flathead County, Montana.

IN WITNESS WHEREOF the parties have hereunto set their hands on their respective Counterpart Signature Pages that follow.



COUNTERPART SIGNATURE PAGE - GRANTOR

GRANTOR:

DATED this 18 day of December, 2018

SIGNED:

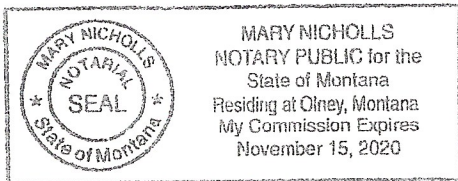
Bethany Lutheran Church, Inc.

Ron Harapat  
By: Ron Harapat, its duly acting President

STATE OF MONTANA

County of Flathead

This instrument was acknowledged before me this 18 day of December, 2018 by  
Ron Harapat.



Mary Nicholls  
Print Name: \_\_\_\_\_  
Notary Public for the State of Montana

COUNTERPART SIGNATURE PAGE - GRANTEE

GRANTEE:

DATED this 18 day of December, 2018

SIGNED:

Flathead County Library Foundation, Inc.

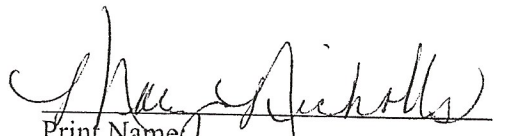
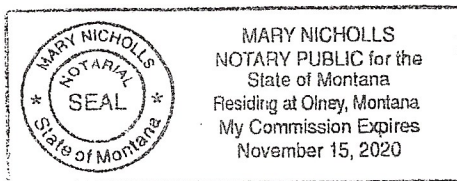


By: Roy Beekman, its duly acting President

STATE OF MONTANA

County of Flathead

This instrument was acknowledged before me this 18 day of December 2018 by Roy Beekman.

  
Print Name \_\_\_\_\_  
Notary Public for the State of Montana

