

THE STATE OF TEXAS           §  
  §  
COUNTY OF STEPHENS       §

**ENCROACHMENT AGREEMENT**

This Encroachment Agreement (this “Agreement”) is made effective this 6<sup>th</sup> day of February, 2024 by and between the City of Breckenridge, Texas (the “City”) and New Destination Church, a Texas non-profit corporation (“Church”).

**WHEREAS**, Church is the owner of that certain property being in Stephens County, Texas, and being more particularly described as a 0.09 acre tract out of the northeast quarter of Section 9 of the Lunatic Asylum Lands, City of Breckenridge, Stephens County, Texas, as more particularly described in the attached **Exhibit “A”** (the “Church Property”);

**WHEREAS**, on December 5, 2023, the City closed a portion of Dyer Street lying north of the Church Property on which a portion of the Church’s building sits as well as a paved area that has long been used for parking to serve the Church Property;

**WHEREAS**, along with its conveyance of the Church Property to the Church, the City also conveyed the south forty feet of the west one-hundred and fifty feet of Dyer Street in the Original Town of Breckenridge, Stephens County, Texas to the Church (the “Church Street Property”);

**WHEREAS**, the City owns the north forty feet of the west one-hundred and fifty feet of Dyer Street in the Original Town of Breckenridge, Stephens County, Texas where the parking facilities for the Church Property sit (the “City Property”);

**WHEREAS**, Church wishes to continue to allow the parking facilities (the “Encroachment”) to remain on the City Property for so long as the Church Property and the Church Street Property are used for a Church, in order to allow for adequate parking for Church patrons;

**WHEREAS**, the City Property has been used for parking to serve the Church Property and Church Street Property for many years and said Encroachment imposes no burden or inconvenience to the City; and

**WHEREAS**, the Breckenridge City Commission, for and on behalf of the City, has agreed to grant Church the requested use of the City Property.

**NOW, THEREFORE**, for and in consideration of the premises, the mutual benefits to be derived by the provisions of this Agreement, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by the parties hereto, Church and the City do hereby covenant and agree as follows:

1. **Encroachment.** The City hereby grants, approves, and permits Church, for the benefit of and as an appurtenance to the Property, to encroach into the City Property with existing parking facilities to serve the Church Property and the Church Street Property.

2. Maintenance. The Church may, but is not obligated to, maintain the Encroachment. Whenever the Church shall perform any construction, maintenance, repairs or replacements to the Encroachment, such work shall be done expeditiously and in a good and workmanlike manner and in accordance with all applicable laws, codes, rules, statutes and regulations of governmental authorities having jurisdiction thereof. The City shall have no obligation to perform any maintenance or improvements to the City Property or the Encroachment.

3. Condition. The Church accepts the Encroachment on an “AS IS” basis and in its present condition. Owner acknowledges that its acceptance of an “AS IS” basis forms a material part of the consideration of this Agreement.

4. Indemnification. **CHURCH, ITS RESPECTIVE HEIRS, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS, SHALL INDEMNIFY AND SAVE HARMLESS THE CITY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, INSURERS AND ADVISORS FROM ANY AND ALL CLAIMS, DEMANDS, CHARGES, SUITS OR ACTIONS FOR PROPERTY DAMAGE OR LOSS, OR LOSS OF USE THEREOF, AND PERSONAL INJURY AND DEATH, WHETHER AT LAW OR IN EQUITY, BROUGHT BY ANY PERSON, ENTITY, OR AGENCY, INCLUDING BUT NOT LIMITED TO OWNERS AND EMPLOYEES OR AGENTS OF OWNERS, AND ALL EXPENSES OF LITIGATION INCLUDING BUT NOT LIMITED TO, REASONABLE ATTORNEYS’ FEES AND LITIGATION EXPENSES, ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE USE, CARE OR MAINTENANCE OF THE ENCROACHMENT.**

5. Duration. This Agreement shall remain in effect for so long as the Church owns the Church Property and the Church Street Property and operates a church on said property.

6. Amendment. This Agreement may be amended, modified or terminated only in writing, executed and acknowledged by all parties to this Agreement or their respective successors or assigns.

7. Rights Reserved. The City reserves for itself and its successors the right to continue to use the City Property.

8. Miscellaneous. This Agreement shall be governed in accordance with the laws of the State of Texas and venue for any proceeding relating to this Agreement shall lay in Stephens County, Texas. The paragraph headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof. Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers. No party hereto shall be obligated to take any action to enforce the terms of this Agreement or to exercise any easement, right, power, privilege or remedy granted, created, conferred or established hereunder.

9. Recitals. The Recitals are incorporated in their entirety into this Agreement.

Executed to be effective as of the date and year first written above.

**City:**

CITY OF BRECKENRIDGE, TEXAS

\_\_\_\_\_  
Bob Sims, Mayor

ATTEST:

\_\_\_\_\_  
Jessica Sutter, City Secretary

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF STEPHENS   §

This instrument was acknowledged before me on the \_\_\_\_ day of February, 2024, by Bob Sims, as Mayor of the City of Breckenridge, Texas, on behalf of said city.

\_\_\_\_\_  
Notary Public, State of Texas

**Church:**

NEW DESTINATION CHURCH, a Texas non-profit corporation

\_\_\_\_\_  
Daniel R. McDuff, \_\_\_\_\_ (Title)

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF STEPHENS   §

This instrument was acknowledged before me on the \_\_\_\_ day of February, 2024, by Daniel R. McDuff, as \_\_\_\_\_ (Title) of New Destination Church, a Texas non-profit corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

# EXHIBIT "A"

## OWEN SURVEYING CO.

P. O. BOX 336, BRECKENRIDGE, TX 76424

MICHAEL DAVIS,  
PRESIDENT  
OFFICE 254-559-9898  
FAX 254-559-7372

ERIC BRENNAN, RPLS #5560

Firm Number 10069000  
[www.owensurveying.com](http://www.owensurveying.com)

### METES AND BOUNDS DESCRIPTION 0.09 Acre Tract

All that certain 0.09 acre tract or parcel of land situated in the City of Breckenridge in the northeast quarter of Section 9, of the Lunatic Asylum Lands, original grantee and patentee D. W. Hullum, patent filed 12 June 1877, and recorded in volume B page 386 of the Patent Records of the County of Stephens State of Texas, said tract being part of Block 33 of Original Town Plat of Breckenridge, dated May 1878, and recorded in volume C page 34 of the Deed Records of Stephens County, plat now located in slide 91A of the Plat Cabinet of the Plat Records of said Stephens County, and said tract being all of a tract as described in deed to The City of Breckenridge, filed 20 August 1946, and recorded in volume 210 page 12 of said deed records, and being more particularly described as follows;

**BEGINNING** for the northeast corner of the tract being described herein at a found iron rod with a plastic cap marked 5560 on the south line of Dyer Street, same being the north line of said Block 33, said rod being the northwest corner of Lot 1 of Brown's Subdivision, according to plat of the same filed 28 March 1923, and recorded in volume 120 page 43 of said deed records, said plat now located in Slide 6B of said plat cabinet, from said rod a found iron rod with a plastic cap marked 4015 being the northwest corner of Block 6 of said original town plat bears South 89 degrees 55 minutes 53 seconds East, a distance of 610.50 feet;

**THENCE:** South 00 degrees 01 minutes 26 seconds West, with the west line of said Lot 1, a distance of 25.00 feet to a set 1/2 inch rebar for the southeast corner of said City tract, same being the northeast corner of a tract as described in deed to Patrick E. Muncie et ux, Wendy L. Muncie, filed 04 April 2006, and recorded in volume 1822 page 120 of said official public records, from said rebar a found 1 1/2 inch pipe bears North 49 degrees 52 minutes East, a distance of 0.63 feet;

**THENCE:** North 89 degrees 55 minutes 53 seconds West, with the south line of said City tract, and with the north line of said Muncie tract, a distance of 150.00 feet to a set 1/2 rebar by a found 1 1/2 inch pipe on the east line of Smith Street same being the west line of said Block 33 for the southwest corner of said City tract, same being the northwest corner of said Muncie tract;

**THENCE:** North 00 degrees 01 minutes 26 seconds East, with the west line of said Block 33, and with the east line of said Smith Street, a distance of 25.00 feet to a set 1/2 inch rebar at the intersection of the east line of said Smith Street, and the south line of said Dyer Street for the northwest corner of said City tract, same being the northwest corner of said Block 33, from said rebar a set 1 1/2 inch rebar at the intersection of the south line of said Dyer Street and the west line of said Smith Street being the northeast corner of said Block 35, same being the northeast corner of a tract as described in deed to the City of Breckenridge, filed 20 August 1946, and recorded in volume 210 page 13 of said deed records, surveyed concurrently this date bears North 89 degrees 55 minutes 53 seconds West, a distance of 80.00 feet;

**THENCE:** South 89 degrees 55 minutes 53 seconds East, with the north line of said Block 33 and the south line of said Dyer Street, a distance of 150.00 feet to the **POINT OF BEGINNING** and containing 0.09 of an acre of land.

NAD83 NCTZ Grid Bearings.



Eric Brennan, Texas Registered  
Professional Land Surveyor  
Number 5560  
Dated 23 October 2023

