

**Recorded: 8/5/2021 at 8:36:02.0 AM**  
**County Recording Fee: \$22.00**  
**Iowa E-Filing Fee: \$3.00**  
**Combined Fee: \$25.00**  
**Revenue Tax:**  
**Polk County, Iowa**  
**Julie M. Haggerty RECORDER**  
**Number: 202100082881**  
**BK: 18684 PG: 896**

## **DECLARATION OF INGRESS/EGRESS AND ACCESS EASEMENT**

**Preparer Information:**

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**Declarant:**

Lost Planet Development, LLC

**Legal Description:**

See Page 2.

## DECLARATION OF INGRESS/EGRESS AND ACCESS EASEMENT

This Declaration of Ingress/Egress and Access Easement (“Declaration”) is made this \_\_\_\_\_ day of July, 2021, by Lost Planet Development, LLC, an Iowa limited liability company (the “Declarant”).

### RECITALS

A. Declarant is the owner of real property in Polk County, Iowa, legally described as follows:

Parcel 2020-230, as shown on Plat of Survey filed April 23, 2021 in Book 18491, Page 816 of the Polk County, Iowa Recorder’s Office (“Property”).

B. Declarant is additionally the owner of real property in Polk County, Iowa, legally described as follows:

Parcel 2020-231, as shown on Plat of Survey filed April 23, 2021 in Book 18491, Page 816 of the Polk County, Iowa Recorder’s Office (“Benefitted Property”).

C. Declarant desires to establish the easement(s) herein described for purposes of providing access to the neighboring recreational trail network by the owner of adjacent Parcel 2020-231.

### DECLARATION

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares as follows:

1. Definitions. All capitalized terms used in this Declaration shall, unless otherwise defined elsewhere in this Declaration, have the following meanings:

“Benefitted Property” means Parcel 2020-231, as shown on the Plat of Survey April 23, 2021 in Book 18491, Page 816.

“City” means the City of Des Moines, Iowa.

“County” means the Polk County, Iowa.

“Permittees” means any tenant(s) or occupant(s) of the Benefitted Property, or any portion thereof, and the respective guests, vendors, licensees, invitees, customers, contractors and agents of the owners of such Benefitted Property, or portion thereof.

“Property” means Parcel 2020-230 as shown on the Plat of Survey filed April 23, 2021 in Book 18491, Page 816.

“Owner(s)” means the record titleholder(s) of the Property or any portion thereof.

2. Grant of Ingress/Egress and Access Easement. Declarant hereby establishes a perpetual, non-exclusive, easement for ingress/egress and access, over, across and through the South 10 feet of the Property (“Easement Area”), as currently exists or as hereinafter may be constructed/alterd, for the benefit of the owner(s) of the Benefitted Property and their respective Permittees.

3. Maintenance. The Owners shall keep and preserve the Easement Area in good repair and condition at all times. The Easement Area shall be maintained in a good and safe condition, including but not limited to, maintaining, repairing and replacing any and all gravel, paved surfaces and curbs (as may be applicable from time to time), and removing snow, ice and other debris timely and as necessary. All such maintenance shall be prosecuted in such a manner that it does not adversely affect the use of the Easement Area by the owners of the Benefitted Property and their respective Permittees.

4. Erection of Structures Prohibited. No Owner shall erect any fence or other structure, or cause or permit any obstruction, planting or material to be placed under, over, on, through, across or within the Easement Area without obtaining the prior written consent of the Declarant, and, where applicable, the City and County.

5. Right of Access. The owners of the Benefitted Property and their Permittees shall have the right of access to the Easement Area and have all rights of ingress, egress and access reasonably necessary for the use and enjoyment of the Easement Area from property adjacent thereto as herein described, including but not limited to, the right to remove any unauthorized fences, structures, obstruction, planting or material placed or erected under, over, on, through, across or within the Easement Area.

6. Restoration of Property. The owners of the Benefitted Property shall restore the Easement Area after exercising their rights hereunder to a condition substantially similar to that prior to exercising said rights.

7. Enforcement. Any owner of the Benefitted Property may enforce this Declaration against the Owners by seeking injunctive relief, specific performance or any other remedy available at law or in equity. In the event of litigation to enforce or interpret the terms of this Declaration, the prevailing party shall be entitled to recover its costs of litigation, including, without limitation, reasonable attorney’s fees.

8. No Merger. It is expressly understood and agreed that the easements, rights and privileges granted and conveyed herein shall never be extinguished by reason of the fact that the legal or beneficial title to the entirety of the Property or Benefitted Property (or any interest therein or part thereof), as the case may be, is or may be vested in the same person or entity.

