

RECORD IN REAL PROPERTY RECORDS  
JACKSON COUNTY, MISSOURI

**COVER PAGE FOR RECORDING**

Title of Document: DECLARATION OF CROSS-ACCESS, UTILITY, AND CROSS-  
DRAINAGE EASEMENT

Date of Document: \_\_\_\_\_, \_\_\_\_

Grantor: CITY OF INDEPENDENCE, MISSOURI;  
NP EASTGATE COMMERCE CENTER PHASE 1, LLC

Grantees and  
Mailing Addresses: CITY OF INDEPENDENCE, MISSOURI  
111 E. Maple Ave.  
Independence, Missouri 64050

NP EASTGATE COMMERCE CENTER PHASE 1, LLC  
3315 N. Oak Trafficway  
Kansas City, Missouri 64116

Legal Description: See Exhibits A through D, attached hereto

Instrument No.  
Reference: 2023E0022868

When recorded  
return to: c/o NorthPoint Development, LLC  
Attn: Leo Salinger  
3315 N. Oak Trafficway  
Kansas City, Missouri 64116

**DECLARATION OF CROSS-ACCESS,  
UTILITY, AND CROSS-DRAINAGE EASEMENT**

THIS DECLARATION OF CROSS-ACCESS, UTILITY, AND CROSS-DRAINAGE EASEMENT (this “**Declaration**”) is hereby made, declared, and reserved as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), by the CITY OF INDEPENDENCE, MISSOURI, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri (“**City**”), with an address of 111 E. Maple Ave., Independence, Missouri 64050, and NP EASTGATE COMMERCE CENTER PHASE 1, LLC, a Missouri limited liability company (“**NP Eastgate**”), with an address c/o NorthPoint Development, LLC, 3315 North Oak Trafficway, Kansas City, MO 64116. For the purposes of this Declaration, NP Eastgate may be referred to herein as the “**Declarant**”.

WHEREAS, City is the owner of: (i) that certain real property located in the City of Independence, Jackson County, Missouri, as legally described in Exhibit A attached hereto (the “**Lot 1-Building A2 Property**”); and (ii) that certain real property located in the City of Independence, Jackson County, Missouri, as legally described in Exhibit B attached hereto (the “**Lot 2-Building A3 Property**”);

WHEREAS, NP Eastgate is the owner of: (i) that certain real property located in the City of Independence, Jackson County, Missouri, as legally described in Exhibit C attached hereto (the “**Detention-Tract A Property**”); and (ii) that certain real property located in the City of Independence, Jackson County, Missouri, as legally described in Exhibit D attached hereto (the “**Unplatted Commercial Property**”);

WHEREAS, City leases the Lot 1-Building A2 Property to NP Eastgate pursuant to that certain Lease Agreement dated as of May 1, 2023 (the “**Lot 1-Building A2 Ground Lease**”), in connection with the City’s issuance of those certain Chapter 100 Taxable Industrial Development Revenue Bonds (Broadacres Phase 1 Project – Building 1), Series 2023, pursuant to an ordinance passed by the City Council on October 17, 2022, in accordance with Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended (the “**Act**”);

WHEREAS, City leases the Lot 2-Building A3 Property to NP Eastgate pursuant to that certain Lease Agreement dated as of May 1, 2023 (the “**Lot 2-Building A3 Ground Lease**”), in connection with the City’s issuance of those certain Chapter 100 Taxable Industrial Development Revenue Bonds (Broadacres Phase 1 Project – Building 1), Series 2023, pursuant to an ordinance passed by the City Council on October 17, 2022, in accordance with the Act;

WHEREAS, the City and NP Eastgate desire to create an integrated business park development on the Property (hereinafter defined) (the “**Eastgate Phase 1 Park**”) containing diverse areas for, but not limited to, any of (but not necessarily all of) the following uses: commercial, office, industrial, retail, storm water management and detention and related uses as the same may, from time to time, be implemented in substantial conformance with the governmental approvals therefor;

WHEREAS, the City and NP Eastgate have filed, or will file, of record subdivision plans for the Property;

WHEREAS, pursuant to that certain Reconveyance Agreement dated September 14, 2022 by and between NP Eastgate (as owner thereunder) and Beyond the Horizon (Area D) LLC, a Missouri limited liability company (hereinafter “**BTH**”), NP Eastgate agreed to convey the Unplatted Commercial Property to BTH following the recordation of the subdivision plans for the Property;

WHEREAS, the City and NP Eastgate desire to provide for the preservation of the values and amenities in the Eastgate Phase 1 Park and for the maintenance of certain areas, and, to this end, desires to subject the Property to the easements, covenants, restrictions, charges, assessments, and liens set forth in this Declaration; and

WHEREAS, BTH acknowledges that upon the reconveyance of the Unplatted Commercial Property, the Unplatted Commercial Property shall be subject to the provisions and obligations set forth in this Declaration;

NOW, THEREFORE, the City and NP Eastgate hereby declare that the land described in **Exhibit A, Exhibit B, Exhibit C, and Exhibit D** (the “**Property**”), shall be held, sold, used, and conveyed subject to the following easements, covenants, restrictions, charges, assessments, and liens, all of which are for the purpose of promoting the common good and general welfare of all Owners and Tenants (as such terms are hereinafter defined) and thereby enhancing and protecting the value, desirability, and attractiveness of such land. This Declaration shall run with such land and with the title to such land and shall be binding on all parties having or acquiring any right, title, or interest in such land or any part thereof, subject to the limitations provided in this Declaration, and shall inure to the benefit of each Owner and Tenant, and their respective successors and assigns.

1. **Incorporation of Recitals.** The recitals set forth above are hereby incorporated into this Declaration as if fully set forth herein.

2. **Amendment and Restatement.** This Declaration is intended to amend, restate, and replace in its entirety that certain Access and Easement Agreement dated March 31, 2023 by and between NP Eastgate (as Grantor) and City (as Grantee), recorded with the Jackson County, Missouri Recorder as Instrument No, 2023E0022868 (the “**Access Easement**”). Upon execution and recording of this Declaration in the official records of Jackson County, Missouri, the Access Easement shall be of no further force and effect.

3. **Definitions.** The following terms, when used in this Declaration or in any amendment thereto, shall have the following meanings (except as otherwise expressly provided or unless the context otherwise requires):

a. “**Declarant**” shall mean NP Eastgate.

b. “**Ground Lease**” shall mean and refer to: (i) the Lot 1-Building A2 Ground Lease; and (ii) Lot 2-Building A3 Ground Lease.

c. “**Ground Lessee**” shall mean and refer to any person or entity to whom the leasehold interest in a Parcel has been granted pursuant to a Ground Lease.

d. “**Necessary Road Drain**” shall refer to that portion of the Drainage and Utility Facilities located within the public right-of-way for Necessary Road, as depicted in the Utility Plan.

e. “**Owner**” shall mean and refer to: (i) the record owner, whether one or more persons or entities, of the fee simple title to a Parcel (unless such Parcel is subject to a Ground Lease), including Declarant; or (ii) if a Parcel is subject to a Ground Lease, the Ground Lessee of such Parcel, including Declarant. “Owner” shall not include a person having an interest merely as security for the performance of an obligation.

f. “**Parcel**” shall mean and refer to any subdivided lot of real property appearing on any Plat, or any other parcel of real property constituting part of the Property, together with all permanent structural improvements thereon.

g. “**Plat**” shall mean and refer to that certain Minor Subdivision of Eastgate Commerce Center, First Plat recorded on \_\_\_\_\_, in the office of the Recorder as Instrument Number \_\_\_\_\_ in Book \_\_\_\_ at Page \_\_\_\_, together with all other replacement plans in respect of the Property thereafter agreed to by all Owners and recorded in the office of the Recorder.

h. “**Recorder**” shall mean the Jackson County, Missouri Recorder of Deeds Office.

i. “**Tenant**” shall mean any person or entity who occupies a Parcel as the named “lessee” under a written lease or sublease from an Owner, or any other licensee or occupant of any building on such Owner’s Parcel, or any subtenant of any such person or entity.

j. “**Utility Plan**” shall mean that certain utility plan for the Property attached hereto as **Exhibit F**.

4. Declaration and Reservation of Drainage and Utility Easement.

a. City and NP Eastgate hereby reserve, for the benefit of (i) themselves and any future Owners of any portion of the Property, their Tenants, successors and assigns, and (ii) the portions of the Property served by said Drainage and Utility Facilities, a perpetual non-exclusive easement on, over, and across:

- (A) those storm drains, rip rap, facilities, detention ponds, storm sewers and other appurtenances, utility lines and facilities, and related improvements constructed on the portions of the Property shown in **Exhibit H** for common use of the Parcels comprising the Property (the “**Drainage and Utility Facilities**”);
- (B) any drainage, water, sewer, electrical, natural gas, or other utility easements shown on both (i) the Plat to be recorded by NP Eastgate with the Recorder, upon approval by the City and/or Jackson County officials, and (ii) the Utility Plan; and
- (C) any incidental right of surface drainage over the Detention-Tract A Property and the detention areas within the Unplatted Commercial Property;

together with the right of the Declarant or City only to enter upon and to reconstruct, use, operate, maintain, repair, replace and patrol drainage and detention structures and appurtenances thereto, as further set forth herein. The areas described in this Section 4(a) and/or as shown in **Exhibit H** are collectively referred to herein as the “**Drainage and Utility Easement Area**”.

b. City shall reconstruct, use, operate, maintain, repair, replace and patrol drainage for the curb inlet structure as shown in “City Drainage Easement for Right-of Way” depicted in **Exhibit J**. NP Eastgate will be responsible to reconstruct, use, operate, maintain, repair, replace and patrol drainage to the storm line and flume downstream of the curb inlet structure only. City hereby grants NP Eastgate non-exclusive easement on, over, and across the City right-of-way to service this storm line and flume. Any future modifications to this structure or pipe will be jointly approved by both the City and NP Eastgate and/or their successors. City and NP Eastgate acknowledge that the parties intend for the above-described

storm line and flume to be dedicated as a public storm line at a future date since such line collects public right-of-way stormwater runoff.

5. Construction of Drainage and Utility Facilities.

a. NP Eastgate has prior hereto constructed certain Drainage and Utility Facilities within the Drainage and Utility Easement Area to serve the Eastgate Phase 1 Park. Any Owner constructing additional Drainage and Utility Facilities following the date hereof shall design and construct such Drainage and Utility Facilities at its sole cost and expense in accordance with permitted plans and specifications. Any Drainage and Utility Facilities will be constructed in a lien-free, good and workmanlike manner in accordance with all applicable laws, rules and regulations, including but not limited to the requirements of the City and all other governmental entities.

b. NP Eastgate hereby reserves/grants, for the benefit of any Owner constructing Drainage and Utility Facilities only (including any individual Owner making connections thereto) following the date hereof, a temporary construction easement over and upon the Drainage and Utility Easement Area and Detention-Tract A Property (and over such adjacent property thereto as is reasonably necessary for the associated construction work on the Drainage and Utility Facilities) for (i) the purpose of constructing all Drainage and Utility Facilities, (ii) ingress and egress of vehicles and equipment related to the construction of the Drainage and Utility Facilities, (iii) access by construction personnel for the purpose of engaging in construction activities related to the construction of the Drainage and Utility Facilities, (iv) parking of construction workers' vehicles, construction trucks, and construction equipment, and (v) any other uses or purposes reasonably necessary, in the constructing Owner's reasonable discretion, for the completion of the construction of the Drainage and Utility Facilities.

c. The temporary construction easement granted in this Section 5 shall be effective as of the Effective Date and shall automatically expire on the completion of the Drainage and Utility Facilities; provided, however, that any Owner constructing Drainage and Utility Facilities shall limit the duration of such construction use to only such period of use as is reasonably necessary for the respective project.

6. Declaration and Reservation of Cross Access Easement.

a. City and NP Eastgate hereby reserve, for the benefit of (i) themselves and any future Owners of any portion of the Property, and for any Tenants holding a leasehold interest in any portion of the Property, along with any employees, customers, contractors, vendors, subtenants, agents, licensees, invitees, and/or guests thereof, and (ii) the portions of the Property served by said access easements, a non-exclusive, perpetual access easement over and upon the driveways and sidewalks contained or constructed, from time to time, within those portions of the Property legally described and depicted on Exhibit G, attached hereto and incorporated herein (the "**Access Easement Area**"), solely for the purpose of vehicular and pedestrian access, ingress and egress between and among the portions of the Property, and the nearby public roads serving the Property (or portions thereof). No Owner or Tenant shall have any rights to access, by virtue of this Declaration, any portion of any other Owner's property that is not shown on Exhibit G as a part of the Access Easement Area.

b. In exercising their respective rights under this Declaration, the Owners and Tenants of the Property shall not at any time: (a) obstruct any driveways, or other access to, from, or through any portion of the Access Easement Area; (b) unreasonably interfere with, disrupt, or delay any business being conducted on any portion of the Property by any Owner or Tenant thereof or their respective employees, customers, contractors, vendors, subtenants, agents, licensees, invitees, and/or guests at any

time; or (c) unreasonably interfere with the enjoyment of any portion of the Property by any Owner or Tenant thereof or their respective employees, customers, contractors, vendors, subtenants, agents, licensees, invitees, and/or guests.

7. Maintenance Related to the Access Easement Area, Drainage and Utility Easement Area and/or Drainage and Utility Facilities.

a. Declarant shall maintain the driveways and sidewalks and any associated improvements (such as curb, gutter, lighting, and landscaping) within the Access Easement Area and the Drainage and Utility Facilities within the Drainage and Utility Easement Area, and shall keep the same in good repair, order and condition, including, without limitation, the maintenance, repair, replacement, sweeping, cleaning, snow removal, repair of any potholes in the pavement, and re-striping, and, if required by law, in accordance with the standards necessary to comply with all applicable laws, codes, and ordinances. Notwithstanding the foregoing, the City shall maintain the Necessary Road Drain portion of the Drainage and Utility Facilities. Declarant may elect to discharge its obligations under this Section 7.a by means of a qualified property management company or other adequately insured, bonded and licensed professional contractor acting on behalf of Declarant. The Declarant shall obtain and keep in force such policies of insurance and surety bonds, as are necessary to adequately insure and protect the Access Easement Area and the Drainage and Utility Facilities within the Drainage and Utility Easement Area and the operations thereon as deemed by the Declarant to be necessary and appropriate, provided that such insurance must include adequate liability insurance for any maintenance activities performed or caused to be performed by the Declarant on the Access Easement Area and the Drainage and Utility Facilities within the Drainage and Utility Easement Area.

b. Each Owner shall be responsible for reimbursing Declarant for its pro rata share of the reasonable and customary out-of-pocket hard costs and expenses paid to non-affiliate third parties of Declarant's obligations under Section 7.a above (the “**Reimbursable Maintenance Hard Costs**”). Each Owner’s pro rata share of the Reimbursable Maintenance Hard Costs shall be equal to the quotient of the gross floor area (square feet) of any building/improvement located on such Owner’s portion of the Property (whether it be within a Parcel, a lot, or unplatted), divided by 823,000 square feet (which is the approved aggregate area for all buildings/improvements located on the Property as of the Effective Date). If the approved aggregate area for all buildings/improvements located on the Property changes after the Effective Date, the new approved aggregate area for all buildings/improvements located on the Property shall be used as the denominator for the formula in the previous sentence. No Owner, other than Declarant, shall be responsible for reimbursing Declarant for its pro rata share of the Reimbursable Maintenance Hard Costs until a temporary certificate of occupancy is issued for such Owner’s building/improvement. Each Owner shall reimburse Declarant within sixty (60) days after Declarant has provided an invoice and supporting documentation to such Owner of the Reimbursable Maintenance Hard Costs; provided, however that Declarant shall not seek reimbursement more often than quarterly.

c. Notwithstanding the foregoing to the contrary, in the event that any Owner, said Owner’s Tenants, or any of their respective employees, agents, contractors, or invitees (each an “**Owner Responsible Party**”), shall cause any damage to the Access Easement Area, Drainage and Utility Easement Area and/or Drainage and Utility Facilities (collectively, the “**Shared Development Infrastructure**”), the Owner for the Owner Responsible Party causing such damage (i) shall be responsible for all of the Reimbursable Maintenance Hard Costs relating to the repair, restoration, or replacement of the damaged portion of the Shared Development Infrastructure as provided below, and (ii) shall indemnify each other Owner from all non-affiliate third party claims which could properly be asserted under Missouri law arising out of the damage causing event, whether such damage is due to intentional or negligent acts by the Owner Responsible Party. Declarant shall perform such repairs, restoration or replacement within a reasonable

period of time (not to exceed 90 days) after written notice of such damage, and the Owner causing such damage shall reimburse Declarant's Reimbursable Maintenance Hard Costs for such work within thirty (30) days after invoice from Declarant. During the term of this Declaration, each Owner or its Tenants shall maintain adequate insurance to cover each such Owner's possible liability hereunder. If, at the time of causing damage, such Owner's insurance does not actually cover the Owner's obligations hereunder and such Owner does not otherwise remit payment to Declarant as properly invoiced pursuant to this Section 7(c), then the Owner's obligations shall be secured by a lien on the Owner's portion of the Property which shall be recorded by Declarant and released by Declarant when such payment has been remitted. All unpaid costs and expenses evidenced by statements delivered to the Owner Responsible Party as required hereinabove, together with interest, costs, and related attorney's fees, shall be secured by a lien on the Owner Responsible Party's portion of, as applicable, the Property, in favor of the Declarant. Any claim of lien shall be subordinate to any memorandum of lease, security deed, mortgage or deed of trust now or hereafter affecting the Owner Responsible Party's portion of the Property which is recorded prior to such lien. If such failure to pay continues after a second notice from the Declarant to the Owner Responsible Party and the passage of thirty (30) days after receipt of such second notice, the Declarant may institute suit to collect all amounts due.

d. In the event Declarant or any affiliate no longer owns any portion of the Property, Declarant shall transfer, convey and assign to another Owner, who shall assume the duties, obligations and liabilities of Declarant hereunder. Any such assignment, to be effective, must be in writing, in recordable form, and must specifically refer to all the rights, powers, privileges and reservations of Declarant hereunder, and shall be recorded with the Recorder. Upon recording of such assignment, Declarant shall be relieved from all liabilities, obligations and duties arising hereunder from and after the date of such assignment. The term "Declarant" as used herein includes all such assignees and their heirs, successors and assigns in accordance with this Section 7.d. Alternatively, Declarant may, and is hereby authorized to, create a property owners' association or similar organization to exercise the rights and discharge the obligations of Declarant under this Declaration. The organizational documents of which property owners' association or similar such organization shall be in form and substance reasonably acceptable to the Owners.

#### 8. Emergency Repairs.

a. In the event that Declarant fails to maintain or repair the Access Easement Area, Drainage and Utility Easement Area and/or Drainage and Utility Facilities located upon the Property, and such failure to maintain or repair poses an imminent danger or hazard to persons and property accessing the Access Easement Area, Drainage and Utility Easement Area and/or Drainage and Utility Facilities ("**Hazard**"), any Owner may deliver to Declarant written notice of such danger or hazard. In the event that Declarant fails to cure any Hazard within fifteen (15) days after its receipt of written notice thereof, the Owner that provided said notice shall have the right, but not the duty, to undertake and complete any repair, restoration, or replacement which is necessary to cure such Hazard; provided, however, that if Declarant has already undertaken and is diligently pursuing efforts to cure such Hazard, then Declarant shall have an additional sixty (60) days in which to complete the cure of such Hazard. Any such repair, restoration, or replacement undertaken by Declarant shall be completed by an adequately insured, bonded and licensed professional contractor.

b. Within thirty (30) days after the completion of such repair, restoration, or replacement by Declarant or an Owner (the "**Incurring Party**"), the Incurring Party shall invoice the Declarant (to the extent Declarant has defaulted in its responsibilities) or the Owner for the Owner Responsible Party causing damage pursuant to Section 7(c) (as applicable, the "**Reimbursing Party**") for the total cost thereof accompanied by paid invoices detailing the work performed, and the Reimbursing Party shall pay in full the amount of such invoice within thirty (30) days after receipt thereof. In the event

the Reimbursing Party is Declarant, then the Incurring Party shall have the right to offset such sums against any sums owed to Declarant under Section 7 hereof. If the statement is not so paid, the amount shall bear interest at a rate of twelve (12%) percent per annum from the date of receipt of the statement until the date payment is made. All unpaid costs and expenses evidenced by statements delivered to the Reimbursing Party as required hereinabove, together with interest, costs, and related attorney's fees, shall be secured by a lien on the Reimbursing Party's portion of, as applicable, the Property, in favor of the Incurring Party. Any claim of lien shall be subordinate to any memorandum of lease, security deed, mortgage or deed of trust now or hereafter affecting the Reimbursing Party's portion of the Property which is recorded prior to such lien. If such failure to pay continues after a second notice from the Incurring Party to the Reimbursing Party and the passage of thirty (30) days after receipt of such second notice, the Incurring Party may institute suit to collect all amounts due.

c. Each Owner hereby grants to Declarant and every other Owner, and their employees, agents, consultants, and contractors, a non-exclusive temporary easement over, upon, across, within, and under the Access Easement Area, and the Drainage and Utility Easement Area located upon its real property as is reasonably necessary for the purpose of undertaking and completing any repair, restoration, or replacement under this Section 8.

9. Term of Easement. This Declaration and all covenants, conditions, and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration with the Recorder, and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, cancelled, or terminated by written agreement in accordance with Section 12.

10. [Reserved]

11. [Reserved]

12. Amendment and Termination. The parties agree that the provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written agreement of the then-current Owner(s) of the Lot 1-Building A2 Property and the Lot 2-Building A3 Property, and the Owner of the largest portion of the Unplatted Commercial Property, evidenced by a document that has been fully-executed and acknowledged by all such Owners and recorded with the Recorder.

13. Duration and Binding Effect. This Declaration, and the easements, rights, covenants, agreements, and obligations set forth herein, shall benefit, burden, and run with the Property, and any portion thereof, and shall continue in effect in perpetuity. Subject to Section 14, this Declaration shall bind and inure to the benefit of the Owners of the Property and their respective successors and assigns. This Declaration is not intended and shall not be construed to create any rights in or for the benefit of the general public.

14. Assignment. The rights under this Declaration shall run with the Property, but may not be otherwise assigned or transferred by any Owner to any non-Owner. Any assignment or other transfer of an Owner's interest to a non-Owner shall be void.

15. BTH Acknowledgement. BTH joins this Declaration to provide its acknowledgement and consent that the Unplatted Commercial Property shall be subject to the terms of this Declaration upon NP Eastgate conveying such Unplatted Commercial Property to BTH after recording the Plat.

16. No Joint Venture; No Dedication. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any



other similar relationship between the parties. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Access Easement Area or the Drainage and Utility Easement Area. No easements, except those expressly set forth in this Declaration, shall be implied by this Declaration.

17. Notices. Notices relating to this Declaration must be in writing and sent to the addressees of record or registered agent for each Owner. The addresses for Declarant and BTH are set forth below. A party may change its address of record for notices by giving five (5) days' prior written notice of such change to the other Owners. A written notice will be considered given (a) when personally delivered, (b) two (2) business days after deposit in the United States Mail as first class mail, certified or registered, return receipt requested, with postage prepaid, (c) one (1) business day after deposit with a reputable overnight delivery service for next business day delivery.

Declarant: NP EASTGATE COMMERCE CENTER PHASE 1, LLC  
c/o NorthPoint Development, LLC  
3315 North Oak Trafficway  
Kansas City, Missouri 64116  
Attn: Assistant General Counsel

BTH: BEYOND THE HORIZON (AREA D) LLC  
214 S. Spring Street  
Independence, Missouri 64050  
Attn: President

18. Governing Law. The laws of the State of Missouri shall govern the interpretation, validity, performance, and enforcement of this Declaration.

19. Entire Agreement. This Declaration contains the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings between City and Declarant with respect to such subject matter.

20. Severability. If any provision of this Declaration shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

21. Estoppel Certificate. Any party hereto shall, from time to time, execute and deliver, within thirty (30) days following a written request therefor from any other party hereto, an estoppel certificate confirming (i) that to the best of the certifying party's knowledge, no other party is in default in any respect under this Declaration, or, if in default, specifying such default, (ii) any sums then owed by the party requesting such estoppel certificate and specifying whether the certifying party claims any lien under Sections 7.c. or 8.b and, if it does, the amount of such lien, and (iii) that this Declaration remains in full force and effect and has not been modified, or, if modified, stating the modifications with specificity.

[SIGNATURES CONTAINED ON FOLLOWING PAGES]

**IN WITNESS WHEREOF**, the City has executed and delivered this Declaration of Cross-Access, Utility, and Cross-Drainage Easement, to be effective as of the Effective Date.

**CITY:**

CITY OF INDEPENDENCE, MISSOURI

[SEAL]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF MISSOURI            )  
  ) SS.  
COUNTY OF JACKSON        )

On this \_\_\_\_ day of \_\_\_\_\_, 202\_, before me, a notary public in and for said county and state, came \_\_\_\_\_, the \_\_\_\_\_ of the City of Independence, Missouri, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri, who is personally known to me to be the same person who executed the within instrument on behalf of said City, and such person duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

[SEAL]

My commission expires \_\_\_\_\_

IN WITNESS WHEREOF, NP Eastgate has executed and delivered this Declaration of Cross-Access, Utility, and Cross-Drainage Easement, to be effective as of the Effective Date.

**NP EASTGATE:**

**NP EASTGATE COMMERCE CENTER PHASE 1, LLC**, a Missouri limited liability company

By: NPD Management, LLC, a Missouri limited liability company, its Administrative Representative

By: \_\_\_\_\_  
Nathaniel Hagedorn, Manager

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this day of \_\_\_\_\_, 202\_, before me personally appeared Nathaniel Hagedorn, to me known to be the person described in and who executed the foregoing instrument, who being by me duly sworn, did say such person is the Manager of NPD Management, LLC, a Missouri limited liability company, the Administrative Representative of NP Eastgate Commerce Center Phase 1, LLC, a Missouri limited liability company, and acknowledged said instrument to be such person's free act and deed and the free act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public in and for said County and State

My Commission Expires:  
\_\_\_\_\_

IN WITNESS WHEREOF, BTH has executed and delivered this Declaration of Cross-Access, Utility, and Cross-Drainage Easement, to be effective as of the Effective Date.

**BTH:**

**BEYOND THE HORIZON (AREA D) LLC,**  
a Missouri limited liability company

By: \_\_\_\_\_  
Randall E. Pratt, President

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this day of \_\_\_\_\_, 202\_, before me personally appeared Randall E. Pratt, to me known to be the person described in and who executed the foregoing instrument, who being by me duly sworn, did say such person is the President of Beyond the Horizon (Area D) LLC, a Missouri limited liability company, and acknowledged said instrument to be such person's free act and deed and the free act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public in and for said County and State

My Commission Expires:  
\_\_\_\_\_

**LENDER CONSENT AND SUBORDINATION**

THE UNDERSIGNED, holder of that certain Deed of Trust, Assignment of Leases and Rents, and Security Agreement, made and given by NP EASTGATE COMMERCE CENTER PHASE 1, LLC, a Missouri limited liability company, dated May 3, 2023, recorded May 12, 2023, as Instrument No. 2023E0033331 (the “**Deed of Trust**”), which was made in favor of the undersigned as Beneficiary (together with its successors and assigns, “**Beneficiary**”) for itself and such other co-lenders as may exist from time to time, hereby consents to the foregoing Declaration of Cross-Access, Utility, and Cross-Drainage Easement (the “**Easement**”) and further agrees that the lien of the Deed of Trust shall be subject and subordinate to the Easement.

**SIMMONS BANK**, an Arkansas state-chartered bank

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 202\_ before me personally appeared \_\_\_\_\_, to me known to be the person described in and who executed the foregoing instrument, who being by me duly sworn, did say \_\_ is the \_\_\_\_\_ of **SIMMONS BANK**, an Arkansas state-chartered bank, and acknowledged said instrument to be \_\_ free act and deed and the free act and deed of said Simmons Bank.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

Print Name: \_\_\_\_\_  
Notary Public in and for said County and State

My Appointment Expires: \_\_\_\_\_

Exhibit A

Exhibit "A" – EastGate Proposed Lot 1

A tract of land in the Southeast Quarter of Section 9 and the Southwest Quarter of 10, Township 49 North, Range 31 West of the 5th Principal Meridian in Independence, Jackson County, Missouri, being described as follows:

COMMENCING at the South Quarter Corner of said Section 10; thence North 87°59'52" West, along the South line of the Southwest Quarter of said Section 10, a distance of 2650.81 feet to the Southwest Corner of said Section 10;  
Thence North 88°10'15" West, along the South line of the Southeast Quarter of said Section 9, a distance of 449.70 feet;  
Thence North 01°49'45" East, a distance of 336.10 feet to the TRUE POINT OF BEGINNING;  
Thence North 88°10'15" West, a distance of 446.27 feet;  
Thence North 00°20'37" East, a distance of 30.03 feet;  
Thence South 88°31'07" West, a distance of 3.81 feet;  
Thence North 02°05'30" East, a distance of 8.63 feet;  
Thence South 88°34'08" East, a distance of 53.12 feet to the beginning of a curve tangent to said line;  
Thence Easterly, a distance of 382.73 feet along the curve concave to the Northwest, having a radius of 415.00 feet and a central angle of 52°50'27";  
Thence North 38°35'24" East tangent to said curve, a distance of 202.70 feet to the beginning of a curve tangent to said line;  
Thence Northeasterly, a distance of 143.31 feet along the curve concave to the Southeast, having a radius of 415.00 feet and a central angle of 19°47'09";  
Thence North 58°22'33" East tangent to said curve, a distance of 1150.02 feet;  
Thence South 31°37'27" East, a distance of 555.00 feet;  
Thence South 58°22'33" West, a distance of 1040.78 feet to the beginning of a curve tangent to said line;  
Thence Southwesterly, a distance of 225.16 feet along the curve concave to the North, having a radius of 145.00 feet and a central angle of 88°58'12";  
Thence North 32°39'15" West, a distance of 214.63 feet to the beginning of a curve tangent to said line;  
Thence Westerly, a distance of 69.24 feet along the curve concave to the South, having a radius of 35.00 feet and a central angle of 113°20'39";  
Thence South 34°00'06" West, tangent to said curve, a distance of 327.80 feet to the true POINT OF BEGINNING. Containing 748,007 square feet or 17.17 acres more or less.

Note: The bearings referenced in this description are based on Missouri State Plane Grid North. All distances and bearings herein are as surveyed and described by Jed A.M. Baughman, Missouri PLS 2014020708 in September of 2022.

**Exhibit B**

Exhibit “B” – EastGate Proposed Lot 2

A tract of land in the Southwest Quarter of 10, Township 49 North, Range 31 West of the 5th Principal Meridian in Independence, Jackson County, Missouri, being described as follows:

COMMENCING at the South Quarter Corner of said Section 10; thence North  $87^{\circ}59'52''$  West, along the South line of the Southwest Quarter of said Section 10, a distance of 1681.10 feet; Thence North  $02^{\circ}00'08''$  East, a distance of 975.62 feet to the TRUE POINT OF BEGINNING; Thence North  $31^{\circ}37'27''$  West, a distance of 555.00 feet; Thence North  $58^{\circ}22'33''$  East, a distance of 1071.00 feet to the beginning of a curve tangent to said line; Thence Northeasterly a distance of 180.64 feet along the curve concave to the South, having a radius of 115.00 feet and a central angle of  $90^{\circ}00'00''$  to a point of cusp; Thence North  $46^{\circ}05'53''$  East, a distance of 5.12 feet; Thence South  $31^{\circ}37'27''$  East, a distance of 306.09 feet to the beginning of a curve tangent to said line; Thence Southeasterly a distance of 212.06 feet along the curve concave to the West, having a radius of 135.00 feet and a central angle of  $90^{\circ}00'00''$ ; Thence South  $58^{\circ}22'33''$  West tangent to said curve, a distance of 1056.00 feet to the true POINT OF BEGINNING. Containing 653,683 square feet or 15.01 acres more or less.

Note: The bearings referenced in this description are based on Missouri State Plane Grid North. All distances and bearings herein are as surveyed and described by Jed A.M. Baughman, Missouri PLS 2014020708 in September of 2022.

**Exhibit C**

Legal Description of Detention – Tract A Property



**Exhibit D**

Legal Description of Unplatted Commercial Property



**Exhibit F**

Utility Plan

**Exhibit G**

Access Easement Area

**Exhibit J**

City Drainage Easement for Right-of-Way