

After recording, please return to:  
JCT Holdings LLC  
201 Ferry St SE  
Salem, OR 97301

### PARTITION CONSENT AFFIDAVIT

Know all persons by these presents that we, Pioneer Trust Bank, N.A., being the Mortgagee for that Mortgage recorded in Reel 4599, Page 192, Marion County Deed Records, and the Assignee in that Assignment of rents recorded in Reel 4599, Page 193, Marion County Deed Records, having been made aware of the proposed subdivision plat known as Waln Creek Crossing, hereby agree and consent to said subdivision, and to the easements granted thereon.

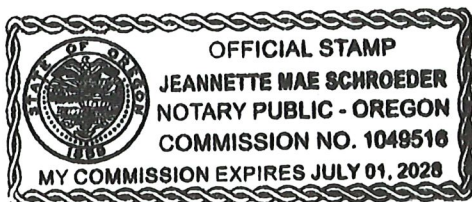
In witness whereof we set our hands and seals this 3<sup>RD</sup> day of DECEMBER, 2024.

Pioneer Trust Bank, N.A.

By: 

Brian Cox, Commercial Loan Officer  
(Print Name), (Title)

This instrument was acknowledged before me on December 3, 2024 by  
Brian Cox, Commercial Loan Officer



Jeannette M. Schroeder  
Notary Public for Oregon

My Commission expires: July 1, 2028

**After recording, return to:**  
Mark C. Hoyt  
Sherman Sherman Johnnie & Hoyt  
PO Box 2247  
Salem, OR 97308

Declarant:  
JCT Holdings  
201 Ferry Street  
Suite 400  
Salem, OR 97301

### **DECLARATION OF EASEMENT AND MAINTENANCE AGREEMENT**

This Declaration of Easement and Maintenance Agreement (“Agreement”) is made this 6<sup>th</sup> day of December, 2024 by JCT HOLDINGS, LLC, an Oregon limited liability company (“Declarant”).

### **RECITALS**

- A. Declarant owns the real property in Salem, Marion County, OR, more particularly described as Lots 1, 2 and 3 of Waln Creek Crossing, the plat of which was recorded \_\_\_\_\_, 2024, as Instrument No. \_\_\_\_\_ in the Marion County Oregon records.
- B. Lots 1, 2, and 3 were be created by the Plat of Waln Creek Crossing and will be accessed by a 32 foot Private Access Easement (“Easement”) located on Lot 1 and providing access to Lots 1, 2 and 3 which is reflected on the Plat of Waln Creek Crossing.
- C. Declarant wishes establish the terms and conditions of the Easement, establish the maintenance responsibility for the Easement, and bind Lots 1, 2 and 3 of Waln Creek Crossing to the terms, conditions, and responsibilities set forth herein in perpetuity;

NOW, THEREFORE, Declarant, as part of the creation and development of Lots 1, 2 and 3 of Waln Creek Crossing does hereby declare:

### **AGREEMENT**

1. **Declaration of Easement.** The Easement labeled 32.00’ PRIVATE ACCESS AND UTILITY EASEMENT PER THIS PLAT on sheet 3 of the subdivision of Waln Creek Crossing, and described on Exhibit A attached hereto (the “Easement Area”) shall burden Lot 1 for the benefit of Parcels 2 and 3 as a nonexclusive easement for the installation of utilities and ingress/egress and vehicular access to and from Parcels 2 and 3, through that portion of Parcel 1 depicted on Exhibit A as the Easement Area. The Easement Area may be used for the installation of utilities and such ingress and egress purposes by Lots 2 and 3, their successors in ownership, and the tenants, invitees, agents, and employees of Owners of Lots 2 and 3 and such successors (collectively, the “Users”), such use to be in common with use of the Easement Area by the owner of the Parcel 1 and its tenants,

invitees, agents, employees, successors, and assigns. No above-ground structures, barriers, fences, buildings, or other improvements of any kind will be installed in the Easement Area other than roadway surfaces and improvements thereto.

2. **Nature of Easement.** The Easement granted herein is appurtenant to Parcels 2 and 3 and benefits Parcels 2 and 3. This Easement will transfer with the fee title to Parcels 2 and 3 only if Parcels are conveyed in their entirety, without partition or subdivision. Subject to the restriction contained herein, the transfer of this Easement will occur regardless of whether it is expressly mentioned in the conveyance instrument.
3. **Maintenance and Repair of Easement.** The Parties will share in the maintenance and repair responsibilities for the Easement, in proportion to each Party's use of the Easement Area, following the guidelines provided in ORS 105.175. In the event the Parties cannot agree as to the scope and costs of repairs or maintenance, any Party may call a meeting to discuss and seek to determine any needed repairs or maintenance to the Easement Area. Notice of any meeting shall be given in writing and hand delivered or mailed by First Class Mail, postage prepaid, to the address of the other Party or Parties. The meeting may be called no sooner than 10 days after the mailing or delivery of the notice. If maintenance and repairs are agreed upon in such meeting, following the meeting, notice will be sent by the Party calling the meeting to the other Parties each Party's projected share of the cost of the agreed upon maintenance. The amount shall be due and payable within 7 days of completion of the work and delivery of an invoice for the cost of the work. The cost of the repairs shall be a lien upon the property of any Party not paying their share and may be foreclosed as provided by Oregon law by the Party or Parties advancing the costs of repair.
4. **Damage Repair.** If the Easement Area is damaged by a Party, or party's invitee or agent, due to their negligence or abnormal use, the Party who caused, or whose invitee or agent caused, the damage shall be solely responsible for the cost of repairing the damage. In the event of such damage, and the damage is not timely repaired by the Party responsible for the damage ("**Damaging Party**"), the Damaging Party shall be notified in writing of the need for repair. In the event the Damaging Party does not undertake the required repairs within 10 days of receipt of the notice, or in the event of damage preventing use of the Easement, by the next day, and diligently pursue the repairs to completion, any Non-Damaging Party may undertake or complete the repairs, and the cost of doing so shall be due and payable from the Damaging Party immediately upon completion of the repairs. The cost of the repairs shall be a lien upon the property of the Damaging Party and may be foreclosed as provided by Oregon law by the party or parties advancing the costs of repair.
5. **Arbitration of Scope of Work.** In the event the Parties cannot agree on the scope of maintenance, the dispute shall be submitted in a summary fashion to an arbitrator appointed by the Arbitration Service of Portland, or, in the event the Arbitration Service of Portland is no longer in existence, a similar organization. Once an arbitrator is appointed, the arbitrator shall set forth the procedure by which the determination of the required maintenance will be made. No discovery shall be authorized, and the proceeding shall be designed to minimize the expense of the parties, while reaching an informed determination as to whether maintenance of the Easement is required and if required, the appropriate

scope of maintenance. The arbitrator shall have full authority to decide how the case will be presented and decided. The arbitrator's decision shall be final and binding on the Parties, not subject to appeal, and may be entered as a Circuit Court Judgment as provided by law.

6. **No Dedication.** Nothing contained herein will be deemed to be a gift or dedication of any portion of the Easement Area to the general public, for the general public, or for any public use or purpose whatsoever.
7. **Breach of Agreement.** In the event that a Party is in breach of any term of this Agreement, the breaching party will be prohibited from using the Easement for as long as the breach continues. The non breaching party will provide the breaching party with written notice of the breach and notice that they will be prohibited from using the Easement until such breach is cured.
8. **Indemnity.** The owners of Lots 1, 2 and 3 must, at their sole cost and expense, indemnify, defend, and hold the other lot owners and their successors, and assigns completely and forever harmless from and against any and all claims, demands, liabilities, disputes, suits, proceedings, causes of action (including, but not limited to, all statutory, contract, or tort theories), obligations, debts, liens, fines, charges, penalties, contracts, promises, damages (including punitive damages, property damage, bodily injury to persons, or death), costs, expenses, attorneys' fees (whether incurred at trial, on appeal, or otherwise), and losses, whether known, unknown, asserted, unasserted, presently existing, arising in the future, fixed, conditional, or contingent, arising from or relating to, directly or indirectly from the lot owners and their employees, guests, invitees, and/or owners' actions in connection with the Easement or use thereto.
9. **Interests of Successors.** The Parties hereby covenant and agree that their respective rights and obligations under this Agreement are binding upon and inure to the benefit of their respective successors, as limited by the terms of this Agreement, and that the burden and benefits of this Agreement run with Parcels 1, 2 and 3, as limited by the terms of this Agreement.
10. **Amendment.** This Agreement may only be amended by written instrument executed by all Parties.
11. **No Partnership.** None of the terms or provisions of this Agreement will be deemed to create a partnership between or among the Parties, nor will it cause them to be considered joint venturers or members of any joint enterprise. This Easement is not intended, nor will it be construed to create any third-party beneficiary rights in any person who is not a Party.
12. **Consents.** Whenever the consent or approval of a Party is required to be given hereunder, such consent or approval will not be unreasonably withheld, delayed, or conditioned unless the provision in question expressly stipulates another standard of approval.

13. **Entire Agreement.** This is the entire Agreement of the Parties with respect to the matters described herein. This Agreement supersedes all prior written or oral agreements or understandings with respect to the matters described herein.
14. **Governing Law.** This Agreement shall be construed according to the laws of the State of Oregon.
15. **Attorney Fees.** In the event suit or action is instituted to enforce or interpret the terms and provisions hereof, the prevailing party in such suit or action shall be entitled to recover their reasonable attorney fees and all other reasonable expenses connected thereto and, in any appeal, or review thereof.
16. **Reservation of All Remaining Legal Rights and Interests in Parcel 1.** Except for the terms and provisions of this Agreement, Declarant hereby expressly reserves and maintains all other legal rights and interests arising or related to its ownership of Parcel 1 to the owner of Parcel 1 and their successors in interest.
17. **Risk of Loss.** All parties and their permitted successors will be deemed to have elected to use the Easement Area at their sole risk. Any and all express warranties and any and all implied warranties of any kind, as specifically disclaimed and the owners of Lots 1, 2 and 3 and their permitted successors accept the Easement in its present condition, "AS IS, WHERE IS."
18. **Time is of the Essence.** Time is of the essence concerning all obligations and rights contained in this Agreement.

IN WITNESS WHEREOF, Declarant executed this Declaration, this 6 day of December, 2024.

JCT Holdings, LLC

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

Its: member

STATE OF Georgia )  
 ) ss.  
County of Fannin )



This instrument was acknowledged before me on December 6, 2024, by James Tokarski, authorized member of JCT Holdings, LLC, an Oregon limited liability company, who acknowledged this instrument to be their free and voluntary act and deed.

PERSONALLY KNOWN  
☒ PRODUCED IDENTIFICATION

Vera Davis  
(Signature Notary)

Vera Davis

Notary Public for Fannin

My commission expires: 7/27/27