

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, AND EASEMENTS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS (this "**Declaration**") is made and entered into on **January 18, 2021** (the "**Effective Date**") by and between Rushing Commercial Crossing LLC, an Oregon limited liability company ("**Party 1**"), Rushing Wiltsey Crossing, LLC, an Oregon limited liability company ("**Party 2**"). Parties 1 and 2 collectively are hereinafter referred to as "**Declarants**". Party 1 is hereinafter referred to as "**Declarant 1**"; Party 2 is hereinafter referred to as "**Declarant 2**". This Declaration shall become effective upon the date of recordation in the real property records of Marion County, Oregon.

**RECITALS:**

- A. Marion County, Oregon recording rules require two parties for the recording of this Declaration. Declarants desires to comply with Marion County's rules to allow for the recording of this Declaration; and
- B. Declarant 1 is the owner of the real property described in *Exhibit "A"*, which is attached hereto and by this reference made a part hereof ("**Lots 2, 3 & 4**"). Lot 2 is currently bare land. Declarant 2 is the owner of the real property, also legally described in *Exhibit "A"*, which is attached hereto and by this reference made a part hereof ("**Lots 1 & 5**"). Each Lot individually, if not specifically described with a Lot number, shall hereinafter be referred to as a "**Lot**". Lot 1, Lot 2, Lot 3, Lot 4 and Lot 5 are collectively hereinafter referred to as the "**Lots**". The term "**Development**" consists of the Lots, and any additional land annexed to the development pursuant to the terms of this Declaration; and
- C. The Declarants desire to have Lots 2 and 4 (vacant land Lots) developed and used in an integrated and coordinated manner with adjacent Lots and desires to create reciprocal access easements that will mutually benefit and burden the real property described in *Exhibit "A" and Exhibit "C"*, pursuant to the terms and conditions of this Declaration; and
- D. Declarant 1 desires to create Building Envelopes, as defined below, for Lots 2 and 4. The Building Envelope shall be an area that may contain a Building Area, as defined below. A map showing the location of the Building Envelopes for Lots 2 and 4 is attached hereto as *Exhibit "B"*, and incorporated herein.
- E. The Declarants desire to create a reciprocal access easement, the South Access Easement, which is further defined below, that will provide for access through the parking lots and driveways located on Lots 1, 2, 3, 4 & 5. A map showing the location

of the South Access Easement is attached hereto as *Exhibit "D"*, and incorporated herein; and

- F. The Declarants desires to create a reciprocal access easement, the East Access Easement, which is further defined below, that will provide for access through the parking lots and driveways located on Lots 1, 2, 3, 4 & 5. A map showing the location of the East Access Easement is attached hereto as *Exhibit "D"*, and incorporated herein.

#### **DECLARATION:**

NOW, THEREFORE, in order to assure the orderly and beneficial development of the Lots, Declarants do hereby declare that all Lots in the Development shall be held, sold and conveyed subject to the provisions of this Declaration, which shall run with the land and shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Development or any part thereof, and heirs, successors and assigns of such parties, on the following terms:

1. **Definitions.** The following terms shall have the meanings set forth below:

**"Anchor Lot":** Lot 2 is the Anchor Lot. In the event that Lot 2 is hereafter divided, Declarant shall determine which of the subdivided lots is the Anchor Lot, provided however that Declarant reserves the right to determine that each or all of the subdivided portions of the Anchor Lot constitutes an Anchor Lot, for purposes of this Declaration.

**"Building Area":** All those areas on each Lot on which buildings or other commercial structures are constructed in accordance with this Declaration, together with any drive-through lanes, outdoor play or eating areas, and outdoor sales areas shown on any site plan approved by Declarant.

**"Building Envelope":** The purpose of the Building Envelopes is to generally identify the portions of the Lots that may contain a Building Area.

**"Common Area":** All those areas on each Lot, which are not Building Areas. Canopies which extend over the Common Areas, together with any columns or posts supporting the same, shall be deemed to be a part of the building to which they are attached and not a part of the Common Area.

**"Declarant":** The undersigned, Rushing Commercial Crossing, LLC, and successors and assigns as fee owner. At such time as Declarant no longer owns at least one Lot, all references in this Declaration to Declarant and all rights of approval or consent held by Declarant shall refer, instead, to (and be

exercisable solely by) the fee owner of the Anchor Lot.

**"Easement Areas":** Collectively, the Common Area, the Access Easement Area, the Utility Easement Area, and the Sign Easement Area.

**"Non-Anchor Lot":** The Lots in the Development other than the Anchor Lot.

**"Owners":** Collectively, the owners of each of the Lots. The singular term "Owner" shall mean any one of the Owners.

**"Permitted Persons":** Each Owner and its respective successors, and assigns; the employees, representatives, agents, licensees, business visitors, customers, and invitees of the Owner; and the tenants of the Owner and employees, representatives, agents, licensees, business visitors, customers, and invitees of such tenants. An "Owner's Permitted Persons" and similar terms shall mean the Permitted Persons whose rights under this Declaration derive from that particular Owner.

**"Sign Easement Area":** The Sign Easement Areas that benefit Lots, as shown on *Exhibit "A"*, as it may be modified in accordance with this Declaration.

**"Utility Easement Area":** All areas of the Development on, over, under or through which any Utility Lines, as defined in Section 7.1 below, and including new Utility Lines installed in accordance with such Section, are located which serves the Owner's Lot exclusively or in common with the other Owner's Lot.

**"Access Easement Area":** The Access Easement Area consists of two (2) separate access easements. The first is the access easement located on the road area that benefits Lots 1, 2 & 3 as shown on *Exhibits "A" and "D"*, which are attached hereto and incorporated herein, and hereinafter referred to as the **"East Access Easement"**. The second is the access easement located on the road area that benefits Lots 2, 3, 4 and 5, as also shown on *Exhibits "A" and "D"*, which are attached hereto and incorporated herein, and hereinafter referred to as the **"South Access Easement"**. If the term Access Easement Area is used, then it is referring to both the East Access Easement and the South Access Easement collectively. If an individual access easement area is referenced, it will state the specific name of such easement.

## **2. Building and Common Area Development.**

### **2.1 Common Area.** All portions of a Lot that are not used as

Building Area shall, at the time that a building is developed on the applicable Lot, be developed as improved Common Area by the Owner thereof, at the Owner's sole cost and expense, in accordance with the site plan approved by the Declarant in accordance with Section 2.1. Development of such Common Area shall be substantially completed no later than the day the first occupant of a building on such Lot opens for business.

**2.2 Building Height.** No portion of any building on a Lot shall exceed one (1) story or twenty-three (23) feet in height above grade, except as otherwise approved in writing by Declarant. Such height will not in any event exceed the limitations imposed by applicable legal requirements. However, Proposed Building, located on Lot 2 and as shown on *Exhibit "B"*, is excluded, now and in the future, from such height and story restrictions as described above in this Section 2.2. Building Height. Additionally, Lot 1 is also excluded in its entirety, now and in the future, from such height and story restrictions as described above in this Section 2.2. Building Height.

**2.3 Construction Requirements.**

**a) Staging and Performances of Work.** All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Area improvements located in the Development shall be performed and completed in a good, workmanlike and expeditious manner, and so as not to unreasonably interfere, obstruct or delay (i) access to or from the Development, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking in that portion of the improved Common Area located in front of any building Development, including, without limitation, access to service facilities. Staging for the construction, replacement, alteration or expansion of any building, sign or Common Area improvements located in the Development including, without limitation, the location of any temporary buildings, or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment, shall be limited to that portion of the Development approved in writing by Declarant. If a retail store is then open on the Anchor Lot, all such staging shall be at least 500 feet from the public entrance(s) to such retail store unless Declarant agrees otherwise in its sole discretion. At no time will construction be allowed to disrupt or block access to open businesses on any Lot. At Declarant's option the staging area(s) and/or construction area(s) shall be fenced at the expense of the person contracting for the performance of such work ("**Contracting Party**"). Unless otherwise specifically stated herein, Contracting Party shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, signs and Common Area improvements damaged or destroyed in the performance of such work.

**b) Handling of Lien Claims.** The Contracting Party shall not permit any liens to stand against any lot for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within fifteen (15) days after receipt of

written notice from the Owner of any lot encumbered by any such lien or claim of lien, cause any such outstanding lien or claim of lien to be released of record or bonded over in accordance with applicable law. If the Contracting Party fails to do so within such fifteen (15) day period, then the Owner of the lot shall have the right, at the Contracting Party's expense, to cause such lien to be bonded over.

- c) **Incidental Temporary Encroachments.** Declarants recognize that incidental encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of buildings, signs and Common Area improvements located in the Development, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Area or with the normal operation of any business in the Development.

**2.4 Casualty and Condemnation.** In the event all or any portion of any building in the Development is (i) damaged or destroyed by fire or other casualty, or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such building shall promptly restore or cause to be restored the remaining portion of such building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such building together with all rubble and debris related thereto. All Building Areas on which buildings are not reconstructed following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Development or any portion thereof, shall be covered by a one-inch asphalt dust cap and shall be kept weed free and clean at the Owner's sole cost and expense until buildings are reconstructed thereon.

**2.5 Signage; Sign Easement Area.** If an Owner or the Declarant provides a Sign Easement Area located on its' lot for the benefit of the Owner of another lot, then and to that extent, the Owner of the other lot (the "**Sign Owner**", shall have, and the Owner of the burdened lot grants for the benefit of the Owner of the other lot, a nonexclusive easement over the designated Sign Easement Area for the purposes of construction, operation, maintenance and replacement of the Sign Owner's sign, in accordance with the terms of this Declaration, together with the right of ingress and egress to and from the applicable Sign Easement Area. Owner or Declarant reserves the right to relocate the Sign Easement Area, at Owner's or Declarant's sole cost and expense (including, without limitation, the cost of reconstruction of any sign(s) in the relocated Sign Easement Area), provided that the relocated Sign Easement Area provides substantially equivalent exposure and benefit to the Owner that is benefitted by the relocated Sign Easement Area. The maintenance and repair of any sign located in the Sign Easement Area shall be prorated according to the prorate share of the sign that each Owner and/or tenant of an Owner has as a percentage of the total sign size.

**2.6 Temporary License.** Each Owner of a lot ("**Licensor Owner**"), grants to the Owner of an adjacent lot in the Development ("**Licensee Owner**"), and the contractors, material men and laborers of the Licensee Owner, a temporary license ("**License**") for access and passage over and across the Common Area of the Licensor Owner's lot as shall be reasonably necessary for the Licensee Owner to construct and/or maintain improvements upon the Licensee Owner's lot; provided, however, that such License shall be in effect only during periods when actual construction and/or maintenance is being performed and, provided further, that the use of such License shall not unreasonably interfere with the use and operation of the Common Area on the Licensor Owner's lot by others. Prior to exercising the rights of the License herein granted, the Licensee Owner shall first deliver to the Licensor Owner a written statement describing the need to exercise rights under the License, and, in addition, shall deliver to the Licensor Owner a certificate of insurance evidencing that its contractor has obtained and has in force general public liability insurance with such coverage and limits as shall be reasonably acceptable to the Licensor Owner, and statutory workmen's compensation coverage. A Licensee Owner availing itself of the License shall promptly pay all costs and expenses associated with such work, shall diligently and expeditiously complete such work, and shall promptly clean the area and restore the affected portion of the Common Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

### **3. Access Easements; Parking.**

#### **3.1 Access Easements.**

(a) **South Access Easement.** Declarants hereby declares, grants, and conveys to, on, over, across, along, and upon Lots 1, 2, 3, 4 and 5 ("Lots"), a permanent, mutual, perpetual, reciprocal easement and right-of-way for use by the Declarants, all future Owners of Lots, future Owners of any portion of Lots, and their respective successors, and assigns, employees, agents, licensees, business visitors, customers, and invitees; and the tenants of the Owners of Lots, the tenants of future Owners of any portion of Lots, and the employees, representatives, agents, licensees, business visitors, customers, and invitees of such tenants (the "**South Access Easement**"). The South Access Easement shall form a continuous right-of-way. The South Access Easement shall be reciprocal, appurtenant to, and benefit and burden Lots, respectively. The South Access Easement shall be used by Declarants, and the respective parties described herein, for vehicular and pedestrian ingress and egress purposes, including but not limited to the use of the driveways located on Lots. No party shall have the right to park, load, or unload any vehicle in the right-of-way, other than under emergency conditions. Use of the South Access Easement shall be on a regular, continuous, exclusive, non-priority bases, benefiting the Declarants, all future Owners of Lots, future Owners of any portion of Lots, and their respective successors, and assigns, employees, agents, licensees, business visitors, customers, and invitees; and the tenants of the Owners of Lots, the tenants of future Owners of any portion of Lots, and the employees, representatives, agents, licensees, business visitors, customers, and invitees of such tenants. The rights provided herein to the Declarants, and the respective parties described

herein, shall not lapse in the event of that party's failure to use the South Access Easement on a continuous basis. A map showing the approximate location of the South Access Easement is attached hereto as ***Exhibit "D"***, and incorporated herein. The Declarants nor any other party or entity described herein shall construct any fence or barrier of any kind that would impede use, access, parking, and/or visibility of the South Access Easement.

(b) East Access Easement. Declarants hereby declares, grants, and conveys to, on, over, across, along, and upon Lots 1, 2, 3, 4 and 5 ("Lots"), a permanent, mutual, perpetual, reciprocal easement and right-of-way for use by the Declarants, all future Owners of Lots, future Owners of any portion of Lots, and their respective successors, and assigns, employees, agents, licensees, business visitors, customers, and invitees; and the tenants of the Owners of Lots, the tenants of future Owners of any portion of Lots, and the employees, representatives, agents, licensees, business visitors, customers, and invitees of such tenants (the "***East Access Easement***"). The East Access Easement shall form a continuous right-of-way. The East Access Easement shall be reciprocal, appurtenant to, and benefit and burden Lots. The East Access Easement shall be used by Declarants, and the respective parties described herein, for vehicular and pedestrian ingress and egress purposes, including but not limited to the use of the driveways located on Lots. No party shall have the right to park, load, or unload any vehicle in the right-of-way, other than under emergency conditions. Use of the East Access Easement shall be on a regular, continuous, exclusive, non-priority bases, benefiting the Declarants, all future Owners of Lots, the tenants of future Owners of any portion of Lots, and their respective successors, and assigns, employees, agents, licensees, business visitors, customers, and invitees; and the tenants of the Owners of Lots 1, 2, 3, 4 and 5, future Owners of any portion of Lots 1, 2, 3, 4 and 5 and the employees, representatives, agents, licensees, business visitors, customers, and invitees of such tenants. The rights provided herein to the Declarants, and the respective parties described herein, shall not lapse in the event of that party's failure to use the East Access Easement on a continuous basis. A map showing the approximate location of the East Access Easement is attached hereto as ***Exhibit "D"***, and incorporated herein. The Declarants nor any other party or entity described herein shall construct any fence or barrier of any kind that would impede use, access, parking, and/or visibility of the East Access Easement.

**3.2 Parking.** Declarants hereby agree that all Parking spaces in each of the Lots will be considered Common Area and will be mutually beneficial for all Lots. There will be no exclusive parking in Common Areas, with the exception of the gated residential tenant parking on Lot 2. Each Owner shall maintain on such Owner's Lot sufficient parking spaces to meet the needs of the employees, customers and invitees of Owner and its tenants, and to satisfy requirements of any applicable parking codes and regulations (without regard to or inclusion of the nonexclusive Common Area parking rights under this Declaration). No Owner of a Non-Anchor Lot shall reduce the number of parking spaces on such Owner's Non-Anchor Lot from the number approved by Declarants in review of such Owner's site plan and no Non-Anchor Lot Owner shall apply for a variance from the requirements of any applicable parking codes and regulation so as

to reduce the number of spaces required on such Owner's Lot. Employees of an Owner and of its tenants as to the Owner's Lot shall not have, as a result of this Declaration, the contractual right to park in portions of the Development other than the Owner's Lot (except as may be mutually agreed and as set forth in a written agreement between the fee owner of the Lot and the user). The Owners shall cooperate with each other in taking any reasonable steps required to avoid any abuse of this provision or other violation of this Declaration.

**3.3 Rules.** The Owners from time to time may adopt, make, amend, revoke and enforce reasonable rules and regulations consistent with this Declaration for the purpose of regulating the use of the Common Area (including without limitation use of parking areas by employees and others), regulating vehicular traffic direction along roadways, and promoting the safety, order, and cleanliness of the Development. Each Owner will use reasonable efforts to cause its tenants and their respective customers, employees, independent contractors and invitees to comply with such reasonable rules and regulations. Such regulations shall be submitted to Lot Owners for its review and approval prior to implementation.

**3.4 No Barriers.** No fences, walls or barriers to access will be erected on the common boundary lines between the Lots that would interfere with the use for access, ingress and egress or parking in the Common Area, without the Owners' prior consent and the consent of the Declarants. Exception to this is the planned gated residential parking to be included on the West side of Lot 2 for the residential tenants of the building currently in development.

#### **4. Restriction on Use.**

**4.1 General Restrictions on Use.** The Lots shall not in any event be leased, subleased, operated or otherwise used for: (i) the display, distribution or sale of any "adult" books, "adult" films, "adult" periodicals or "adult" entertainment; (ii) the establishment or maintenance of a massage parlor, "adult" theater, "adult" bookstore, "sex" shop, "peep show" or bawdy house or brothel, or any use in violation of applicable zoning and other governmental laws and regulations; (iii) any distilling, refining, smelting, agricultural, animal raising or boarding (other than consumer pet shops), or mining operation.

**4.2 Prohibition on UST Systems.** No Lot shall contain, nor shall any Owner install, maintain, and/or operate any type of underground storage tank system for oil, gasoline, petroleum, or any other type of product, without the prior written consent of the Declarants, which may be withheld by Declarants, if Declarants believe such underground storage tank system would be detrimental to the use, safety, and/or value of the Lots, and/or the Development.



**5. Acceptance of Restrictions.** Any lease or occupancy agreement subsequently entered into with respect to a Lot will require that an Owner's tenant's use (and any changes to the original use by such tenant) must comply with applicable laws and recorded easements and restrictions affecting the property (including this Declaration). In acquiring a Lot, an Owner shall automatically be deemed to acknowledge that the restrictions set forth in this Declaration are an essential part of the particular transaction covering Owner's Lot and, further, that the restrictions set forth in this Declaration are fair and reasonable to assure all Owners of Lots, of their expected benefits and the orderly and beneficial development of the Development and the Lots, but not to control competition, recognizing that the relevant competitive market consists not of the Development but of the commercial retail market in the county in which the Development is located.

**6. Maintenance of Lots.**

**6.1 Generally; Common Area Maintenance.** Each Lot Owner shall maintain or cause to be maintained at all times that Lot Owner's Lot and portion of Access Easement Area owned (including, without limitation, the general cleanliness, operation, replacement, enhancement and preservation of such Lot) in accordance with a standard of operation as first-class facilities maintained in accordance with recognized industry standards for leading retail developments in the geographic area in which the Development is situated. The obligation of each Lot Owner to maintain its respective Lot shall include the Common Areas located on its Lot, including, but not limited to: (a) maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability, and restriping, when necessary, such paved surfaces; (b) removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition; (c) maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines; (d) operating, maintaining, repairing and replacing, when necessary, such artificial lighting facilities as shall be reasonably required; and (e) maintaining all landscaped areas (including, without limitation, those on the perimeter of the Lot), and maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines, and replacing shrubs and other landscaping as necessary.

**6.2 Maintenance of Exterior.** Each Lot Owner shall maintain (or cause to be maintained) the exterior of any building located on such Lot in a quality and condition comparable to that of first class retail developments of comparable size and nature located in the same geographic area as the Development. All service facilities shall be attractively screened from view from the parking areas.

**7. Utility Easements.**

**7.1 Grant of Utility Easements.** Subject to the terms and conditions in this Declaration, each Owner shall have a nonexclusive easement and right to operate, maintain, replace, repair, remove, improve, enlarge, reconstruct and, subject to the conditions of this Declaration, relocate any and all Utility Lines serving such Owner's

Lot currently existing over, under or across the Lots, as of the Effective Date of this Declaration. Subject to the restrictions in this Declaration, each Owner shall have the nonexclusive right to install, operate, maintain, improve, repair, replace, relocate, remove and reconstruct Utility Lines over, under or across the Lots, provided that any such actions do not unreasonably interfere with or impair (i) the rights of Permitted Persons to use the Common Area for the purposes set forth herein, or (ii) the operation by Permitted Persons of businesses at the Development. The **"Utility Lines"** mean any power line, water line, sewer line, gas line, communication line or other utility line, service or facility serving the Owner's Lot exclusively or in common with the other Owner's Lot affected thereby, and/or the Lots.

**7.2 Terms of Utility Easements.** Subject to the provisions of this Section 7.2, the Owners shall have the right to install new Utility Lines through the Common Area. All Utility Lines shall be underground unless required to be above ground by applicable law or the utility providing such service. The location of new or relocated Utility Lines and the foregoing work shall be subject to the prior written consent of the Owner over, under, or across whose property the Utility Lines are proposed to be located, and the prior written consent of the Declarants. Such consent shall not be unreasonably withheld or delayed. The Owner whose consent is sought may condition its consent on the Utility Lines not being located where the Owner intends to construct a building or other facility whose utility, use, construction or installation may be unreasonably interfered with by the presence of such Utility Lines unless the Owner proposing to locate such Utility Lines agrees to relocate the same to another location on the Utility Easement Area at its expense in the event such building or facility is actually constructed or such use is proposed to be commenced. Subject to the preceding sentence, if such Owner subsequently constructs a building over a Utility Line previously installed with that Owner's consent, such Owner shall relocate the line at its expense and in such a manner as to minimize the disruption in utility services. When a Utility Line is installed on another Owner's Lot the Owner who installs the line shall give the other Owner a legal description of the location of the Utility Line and a legal description of the easement area for such Utility Line. At its own cost and expense, each Owner (a) shall maintain and repair the Utility Lines installed by such Owner (or the Owner's predecessors in title); and (b) shall repair any damage to landscaping, pavement, buildings and all other improvements on the Development resulting from any work in connection with such Utility Lines or from the operation of such Utility Lines.

**7.3 Storm Drainage.** Each Owner shall have the perpetual right and easement to discharge surface storm drainage and/or runoff from the Owner's Lot over, upon and across the Common Areas of the other Lots in the Development, upon the following terms and conditions:

(a) The Common Area grades and the surface water drainage/retention system for the Development and each Lot shall be initially constructed in strict conformance with the plans and details approved by Declarants; and

(b) No Owner shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Lot if such alteration would increase the flow of surface water more than a de minimis amount onto an adjacent Lot either in the aggregate or by directing the flow of surface water to a limited area.

**8. Alteration of Common Areas and Building Areas.**

**8.1 Modification by Declarant.** Declarant shall have the right at any time and from time to time to alter, rearrange, reduce, or relocate, at Declarant's cost, the Common Areas and the Common Area improvements, or to modify the Building Areas on any Lot; provided, however, that no such action shall, without the consent of all materially affected Owner(s) as determined by Declarant in its good faith discretion, materially diminish, as determined by Declarant in its good faith discretion, the easements and rights granted, or adversely affect the purposes stated, under Sections 3 or 7 of this Declaration. Declarant shall not modify any buildings or related improvements constructed by an Owner in any material respect, modify the previously approved Building Area on an Owner's Lot in any material respect, or reduce the parking spaces provided on an Owner's Lot, without the consent of that Owner. This shall not pertain to Access Easement Area which shall not be modified without each respective Owner's and Declarant's written mutual consent. Modifications to those features which are conditions of any land use decision or other law or ordinance are not allowed with prior consent of the City of Salem.

**8.2 Required by Governmental Authority.** If any governmental authority requires any change in the Common Area, the Owners of the portions of the Common Area affected shall make every reasonable effort to minimize the negative impact of such changes on the rights and purposes set forth in Sections 3 and 7. In particular, if any governmental authority, by condemnation or otherwise, eliminates or reduces any access between public streets and the Development, the Owner of the affected property shall make reasonable efforts to obtain alternative access on such Owner's property.

**8.3 Relocated Common Area.** All of the rights and obligations set forth herein shall be fully applicable to any altered, rearranged or relocated Common Area, which shall then be deemed to be the Common Area.

**9. Hazardous Materials.** Each Lot Owner shall maintain its property and conform its activities and the activities of its Permitted Persons on that Lot Owner's property in compliance with all applicable requirements under applicable Environmental Laws, as defined below, with respect to the clean-up or remediation of Hazardous Substances, as defined below, the protection of the environment, the control of hazardous wastes, and the use, generation, transport, storage, removal and treatment of Hazardous Substances, and in a manner that reasonably minimizes the risk of liability, or damage to human health or the environment, from the release of Hazardous Substances.

Any Lot Owner or occupant who shall violate (or whose tenant, licensee, or subtenant shall violate) this restriction regarding Hazardous Substances shall be liable to all other Owners for all damages resulting to such Owners from such violation and shall promptly undertake and complete all required cleanup and remediation.

As used in this Declaration, the term "**Hazardous Substances**" shall mean any materials which because of their quantity, concentration or physical, chemical or infectious characteristics may cause or pose a present or potential hazard to human health or the environment when improperly handled, treated, stored, transported, disposed of or otherwise managed under applicable laws and regulations presently in effect. The term shall include, but is not limited to, gasoline, petroleum and an petroleum hydrocarbons, all hazardous substances, hazardous materials and hazardous wastes listed by the U.S. Environmental Protection Agency and the state in which the Development is located under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservative and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), the Federal Water Pollution Control Act (FWPCA), the Emergency Planning and Community Right-to-Know Act (EPCRA) and any and all other federal and state statutes applicable to the protection of human health or the environment ("**Environmental Laws**").

**10. Condemnation.** This Section 10 shall apply in the case of a condemnation, or a sale in lieu of condemnation, or an inverse condemnation having the same effect, concerning a portion or all of the Development. The award or purchase price paid for the taking shall be paid to the Owner of the property so taken. The other Owners who may have an easement, or those who may have other property interest or rights under this Declaration, in the land so taken do hereby (or by accepting the property covered by this Declaration shall be deemed to) release or waive those interests and rights with respect to such an award or purchase price. Such other Owners shall, however, have the right to seek an award or compensation for the loss of their easement right and other interests and rights, but only to the extent such award or compensation paid or allocated for such loss does not reduce the amount paid to the Owner of the property taken. If any access road to the Development is taken, the Owner of the property on which the access road was located shall use such Owner's best efforts to provide promptly a substitute access road to the Development on such Owner's Lot.

**11. Insurance.** Throughout the term of this Declaration, each Lot Owner shall maintain, with respect to the Easement Areas and Common Area within that Lot Owner's Lot a policy or policies of public liability insurance with a combined single limit of liability of not less than \$5,000,000 for bodily or personal injury or death and for property damage arising out of any one occurrence. The Non-Anchor Lot Owners will provide to Declarant from time to time, as Declarant may require, certificates of insurance showing that such policies of insurance: (i) name Declarant (and all other Owners as provided by written request by Owners as additional insureds; (ii) are issued for periods of not less than one year; and (iii) are issued by insurance companies qualified to do business in the State of Oregon having a general

policyholder's rating of not less than A and a financial rating of not less than Class X as rated in the most current available "Best's" Insurance Reports. The insurance required of a Lot Owner may be carried under a plan of self insurance, provided that such Owner has and maintains a net worth of the higher of (1) \$25,000,000 or (2) twelve times the required minimum single limit of insurance coverage required under this Section. An Owner may cause the insurance required under this Section to be maintained by its tenant for the benefit of the Owners, provided that such tenant maintains such insurance and otherwise satisfies the requirements of this Section 11.

## **12. Defaults.**

**12.1 Defaults.** A person shall be deemed to be in default of this Declaration upon the expiration of thirty (30) days from receipt of written notice from any Declarant and/or the Owner specifying the particulars in which such person has failed to perform such person's obligations under this Declaration unless such person has, prior to the expiration of the cure period, cured the matters specified in the notice of default. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) cannot reasonably be cured within the thirty-day cure period, and such person is using good faith, diligent efforts to cure the matters specified in the notice of default.

**12.2 Injunctive Relief.** In the event of a violation or threatened violation by any person of the restrictions contained in this Declaration, Declarant or any or all of the Owners shall, in addition to any other remedy available at law or in equity, have the right to enjoin such violation or threatened violation in a court of competent jurisdiction, it being acknowledged that monetary damages will be an insufficient remedy for such a violation.

**12.3 Effect of Default or Non-Use.** No Owner or any other person shall be entitled to cancel, rescind, or otherwise terminate this Declaration on account of any default hereunder, but this shall not limit any Owner's rights and remedies granted hereunder on account of such default. Abandonment or non-use (after receipt of a certificate of occupancy) of easement rights hereunder or of the property by an Owner will not reduce or affect an Owner's obligation to pay its share of costs for required access way maintenance under Section 6.1 of this Declaration, or to perform or comply with the terms of this Declaration.

**13. Term.** This Declaration shall be perpetual (except as provided below) and shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, their heirs, successors or assigns. By unanimous consent, all Owners may agree to terminate this Declaration, in which case they shall cause to be recorded an instrument acknowledging such termination. Termination of this declaration is not allowed without prior consent of the City of Salem.

## **14. General Provisions.**

**14.1. Status of Title; Property Taxes.** This Declaration is granted subject to all prior easements and encumbrances of record. Each Lot Owner warrants that it will defend the title and the other Owner's interests under this Declaration against any mortgage, tax lien or construction or other lien claim: (i) which affects the Development or Lot, (ii) which asserts priority over the interest of the other Owner(s) in enforcing this Declaration or which affects any other Owner(s) rights under this Declaration, and (iii) which is attributable to the party itself or its tenants, agents, contractors or subcontractors. This Declaration will not be subordinated or rendered inferior to any future financing by any Owner. Each Owner shall pay before delinquent all property taxes and assessments assessed on such Owner's Lot and the improvements constructed thereon. All property taxes for each Lot will be paid by that Lot's Owner effective July 1, 2020.

**14.2. Protection of Rights of Mortgagees.** No breach of the provisions in this Declaration shall defeat or render invalid the lien of any mortgage(s) or deed(s) of trust now or hereunder executed which affects an Owner's interests pursuant to this Declaration; provided, however, that upon any sale under foreclosure of any mortgage(s) or under the provisions of any deed(s) of trust, any purchaser at such sale, and its successors and assigns, shall hold any and all property interest so purchased subject to all of the provisions of this Declaration.

**14.3. Waiver.** No provision of this Declaration shall be deemed to have been waived unless such waiver is in writing signed by the waiving party. Failure at any time to require performance of any provision of this Declaration shall not limit an Owner's right to enforce the provision. Any waiver of any breach of any provision shall not be a waiver of any succeeding breach or a waiver of any provision of this Declaration.

**14.4. Attorneys' Fees and Costs of Arbitration.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Declaration, the prevailing party shall recover from the losing party reasonable attorneys' fees, together with all expenses, which may reasonably be incurred in taking such action, including, but not limited to costs incurred in searching records, the costs of title reports and expert witness fees, and anticipated post-judgment collection costs. If any appeal is taken from any judgment or decree of the trial or bankruptcy court, the losing party shall pay the prevailing party in the appeal its reasonable attorneys' fees and costs in such appeal. Said sums shall be in addition to all other sums provided by law.

**14.5. Indemnity.** Each Lot Owner shall defend, indemnify and hold the other Owners harmless from any claim, loss, liability or expense (including discovery costs and other litigation costs, and reasonable attorneys' fees) that: (a) arises out of or in connection with the intentional acts or gross negligence of the Owner or the employees, representatives, agents and independent contractors of the Owner, or any occurrence on or in the indemnifying Owner's Building Area; or (c) arises or results from the performance of any construction activities performed or

authorized by such indemnifying Owner; provided that the obligation to defend, indemnify and hold harmless for matters described in clauses (b) and (c) shall in the event of concurrent negligence or misconduct exclude claims to the extent that they are caused by the negligence or intentional misconduct of the indemnified person, or its agents, contractors or employees (while acting in such capacity).

**14.6. Entire Agreement.** This Declaration supersedes and replaces all written and oral agreements previously made or existing with respect to the matters set forth above.

**14.7. Governing Law and Venue.** This Declaration shall be governed by the laws of the state of Oregon. The parties hereby submit to jurisdiction in Marion County, Oregon, and agree that any and all disputes arising out of or related to this Declaration shall be litigated exclusively in the Circuit Court for Marion County, Oregon, and in no federal court or court of another county or state. Each party to this Declaration further agrees that pursuant to such litigation, the party and the party's officers, employees and other agents shall appear, at that party's expense, for deposition in Marion County, Oregon.

**14.8. Status Certificate, Information.** Within 20 days after receipt of a written request, a Lot Owner shall promptly deliver a written status certificate to the Owner requesting the same, stating (i) the current status of any work being performed or costs previously incurred which may be subject to reimbursement under the Declaration, (ii) whether this Declaration is unmodified and in full force and effect, and (iii) whether (to the best of the party's knowledge) the other Owner(s) are in compliance with their respective obligations hereunder, and any other matters that may be reasonably requested. Any request for reimbursement of costs for which reimbursement is provided herein will be accompanied with such information on the work performed and costs incurred as an Owner may reasonably require to verify the request. The party requesting reimbursement will promptly respond to requests for additional information about such work and costs.

**14.9. Notices.** All notices and communications given with respect hereto shall be in writing and shall be deemed given when personally delivered or on the third day following the date of deposit of the notice, in a postage paid envelope, sent either registered or certified mail and addressed to the party(s) intended to receive the notice at that party's address as follows:

Declarant: Rushing Commercial Crossing, LLC  
Attn: Bo Rushing  
4336 Commercial St SE, Ste. 140  
Salem, OR 97302

or such other address as Declarant may hereinafter specify by notice or otherwise.

**14.10. Amendments.** Except as otherwise set forth herein, this

Declaration may not be modified, amended or terminated except by the written agreement of all Owners (except that Declarant's rights may be and will be transferrable as described in the definition of "Declarant"). An Owner may waive one or more of its rights under this Declaration in writing signed by the party, and such writing need not be recorded. Otherwise, no modification or amendment of any provision of this Declaration shall be binding unless signed by all Owners and recorded in the real property records of Marion County, Oregon. Notwithstanding the foregoing, Declarants may add additional land to the Development without the consent of any other Owner's provided the addition of such additional land does not (i) increase an Owner's obligations under this Declaration or (ii) materially and adversely affect an Owner's ingress, egress or parking rights under this Declaration. All Owners, their successors, and assigns agree and understand that Lots 2 and 4, as of the Effective Date, are bare land which Declarant 1 plans on developing in the future, and such development shall be done pursuant to the terms and conditions of this Declaration. Further, the Owners, their successors, and assigns agree and understand that the Declarant does not know the current location of the Building Areas, the Building Envelopes, the Utility Easement Areas, and/or the Access Easement Areas for Lots 2 and 4. Declarant and all future Owners, their successors, and assigns shall use their reasonable best efforts to work together and cooperate in any and all amendments to this Declaration for the development of Lots 2 and 4. No future Owners, successors, or assigns shall receive any compensation for their cooperation and/or execution of an amendment to this Declaration for the development of Lots 2 and/or 4, but shall be reimbursed for any reasonable attorney fees and costs incurred by a future Owners, their successors, and assigns in the review of an amendment to this Declaration with regard to the development of Lots 2 and 4.

**14.11. Effect of Declaration.** Except as expressly set forth herein, nothing in this Declaration, express or implied, shall confer upon any person, other than the Owners, any right or remedies under or by reason of this Declaration. Except as expressly set forth herein, the rights and remedies of tenants and other persons are limited to those contained in the lease agreements or other agreements the Owners may have with such tenants or other persons and to those rights and remedies otherwise explicitly conferred by such Owners on such persons. Nothing in this Declaration shall prevent any Owner from imposing on such Owner's own tenants or other persons being granted rights of use, either expressly or by implication, by the Owner, such rules, regulations and restrictions as the Owner may determine to be necessary or appropriate. Each right granted pursuant to this Declaration is expressly for the benefit of the property described on the attached Exhibits.

**14.12. Successors and Assigns.** Every obligation under this Declaration shall run with the land and shall be binding upon all Owners and upon the heirs, personal representatives, successors and assigns of each of the foregoing, as Owners of the Lots and any subdivision thereof. Any reference to Declarant or other Owner shall apply only so long as the party owns property within the Development (unless the context clearly requires otherwise, and except as otherwise provided in the



definition of "Declarant" with respect to transfer of Declarant's rights), and thereafter such reference shall be intended to apply to such party's successor or assign. Any transferee of any Owner's Lot shall automatically be deemed, by acceptance of title to such property, to have assumed all of the obligations set forth in this Declaration relating to such property. The Owner shall, when such transfer is consummated, be relieved of all liability that arises thereafter under this Declaration, but such Owner shall not thereby be relieved of liability that arose before such time and which remains unsatisfied. An Owner has the right to assign to any tenant(s) of the Owner its rights and obligations under this Declaration throughout the term of the lease(s) to such tenant(s) or for a shorter time as the Owner may agree, but this shall not release the Owner from its obligations or liabilities under this Declaration.

**14.13. Effect of Invalidation.** If any provision of this Declaration is held to be invalid or unenforceable for any reason, such provision shall be ineffective to the extent of such invalidity or unenforceability, but the validity of the remaining provisions of this Declaration shall not be affected thereby. Furthermore, in lieu of each such invalid or unenforceable provision there shall be added automatically as a part of this Declaration a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable, so long as the material benefits intended to be conferred by the invalid or unenforceable provisions are afforded by the substitute provision.

**14.14. Not a Public Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Development to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

**14.15. No Partnership; Disclaimer.** No provision of this Declaration or previous (or subsequent) conduct or activities of Declarant(s) and/or present or subsequent Owner(s) will be construed: (i) as making Declarant(s) and/or present or subsequent Owner(s) a partner, joint venturer, agent or principal of or with each other, (ii) as creating any express or implied obligation for Declarant(s) to construct a retail building or other improvements on its Lot(s) (iii) as making Declarant(s) and/or present or subsequent Owner(s) responsible for payment or reimbursement of any costs incurred by each other, whether or not such development occurs (except as may be expressly set forth herein or as expressly set forth in the purchase and sale agreement, development agreement or other written agreements executed by the parties). Whether and how Declarant(s) may develop the Development and its Lot(s) are at Declarant's discretion. No person will have any claim against (or right to recover any damages or costs from) Declarant in the event Declarant does not develop the Development or its Lot(s).

**14.16. Exercise of Approval Rights; Limitation of Claims.** Declarant shall exercise its approval rights under this Declaration in good faith based on Declarant's business judgment and actual knowledge, and any exercise of such rights in

good faith shall be binding. By acceptance of its deed to a Lot, each Owner expressly agrees that Declarant will not be liable in damages for any denial or withholding by Declarant of consent or approval under this Declaration, and that the sole remedy of the party requesting such consent or approval shall be specific performance or other injunctive relief.

**14.17. Third Party Beneficiary Rights.** This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not an Owner of a Lot, unless otherwise expressly provided herein.

**14.18. Force Majeure.** The period of time provided in this Declaration for the performance of any act shall be extended for a period or periods of time equal to any period or periods of delay caused by strikes, lockouts, fire or other casualty, the elements or acts of God, refusal or failure of governmental authorities to grant necessary permits and approvals for the act (the parties agreeing to use reasonable diligence to procure the same), or other causes, other than financial, beyond their reasonable control.

**14.19. Interpretation.** The section headings and table of contents in this Declaration are for ease of reference only and shall not be deemed to define or limit the scope or content of any of the terms, covenants, conditions, or agreements in this Declaration. In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular. This Declaration was negotiated between the parties and any rule of construction interpreting this instrument against its drafter shall be inapplicable.

**14.20. Subordination.** All lender liens placed on the Lots by any Owners shall be subordinated to these declarations.

**14.21. Incorporation of Recitals.** The above recitals are incorporated herein as additional promises, representations, and warranties of the parties.

IN WITNESS WHEREOF, the Party 1, and Party 2,  
collectively referred to as the Declarants has caused this  
Declaration to be executed the day and year first above  
written.

**PARTY 1: Rushing Commercial Crossing, LLC**  
an Oregon limited liability company

**PARTY 2: Rushing Wiltsey Crossing, LLC**  
an Oregon limited liability company

By: Bonita Rushing

By: Bonita Rushing

Its: Manager

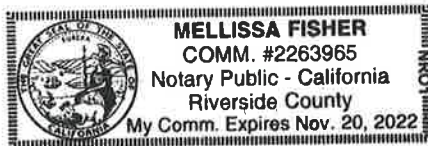
Its: Manager

California  
State of Oregon )

Riverside  
County of Marion )

A notary public or other officer completing this  
certificate verifies only the identity of the  
individual who signed the document to which this  
certificate is attached, and not the truthfulness,  
accuracy, or validity of that document.

On this 25 day of May 2021, appeared before me, Bonita Rushing, who  
being duly affirmed, did say that she is a member of Rushing Commercial Crossing, LLC, and that said  
instrument was signed on behalf of said company and acknowledged said instrument to be its voluntary  
act and deed.



Bonita Rushing  
Notary Public of Oregon California

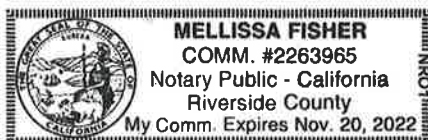
My Commission Expires: 11/20/2022

California  
State of Oregon )

Riverside  
County of Marion )

A notary public or other officer completing this  
certificate verifies only the identity of the  
individual who signed the document to which this  
certificate is attached, and not the truthfulness,  
accuracy, or validity of that document.

On this 25 day of May 2021, appeared before me, Bonita Rushing, who  
being duly affirmed, did say that she is a member of Rushing Wiltsey Crossing, LLC, and that said  
instrument was signed on behalf of said company and acknowledged said instrument to be its voluntary  
act and deed.



Bonita Rushing  
Notary Public of Oregon California

My Commission Expires: 11/20/2022

## Exhibit A

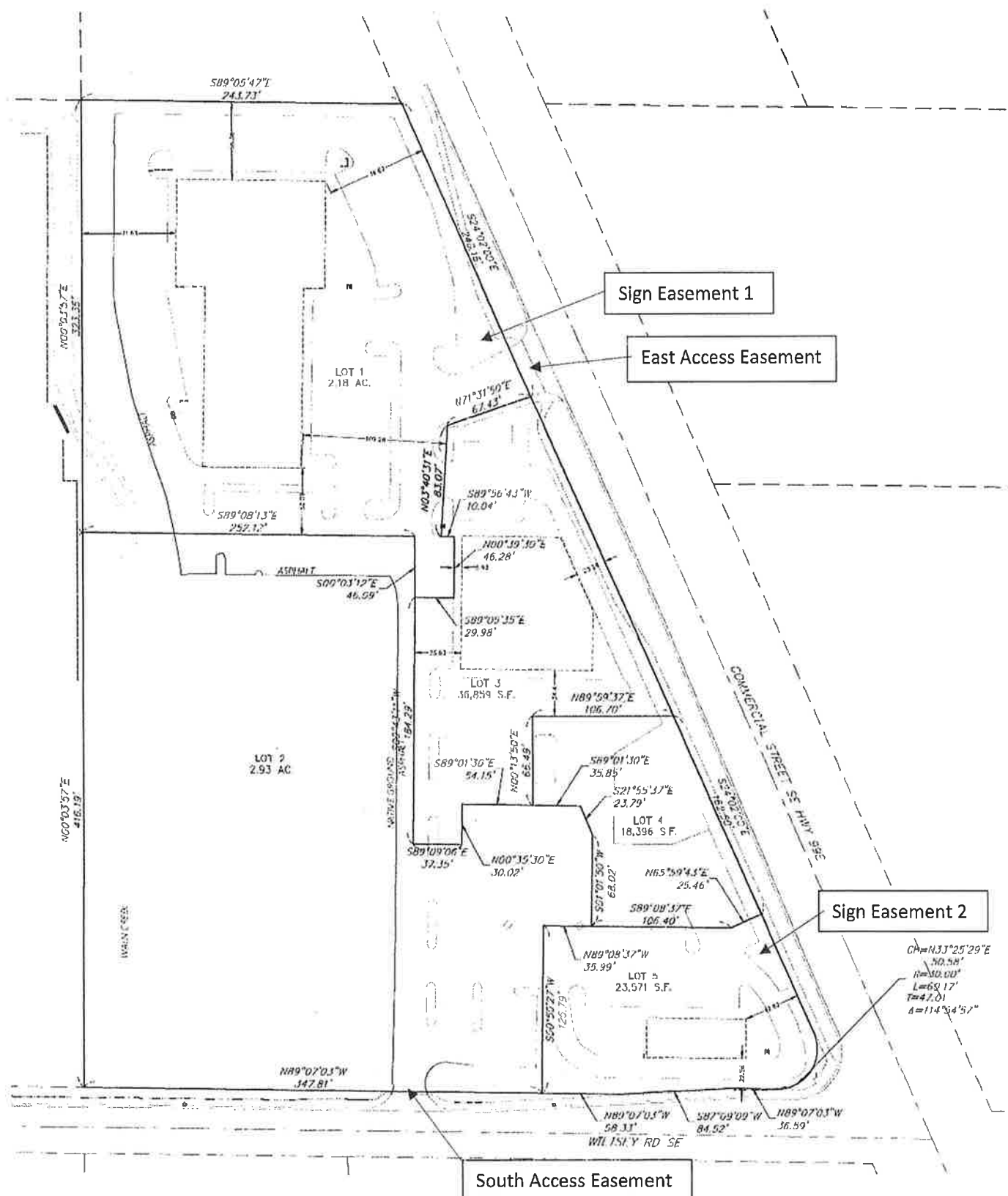
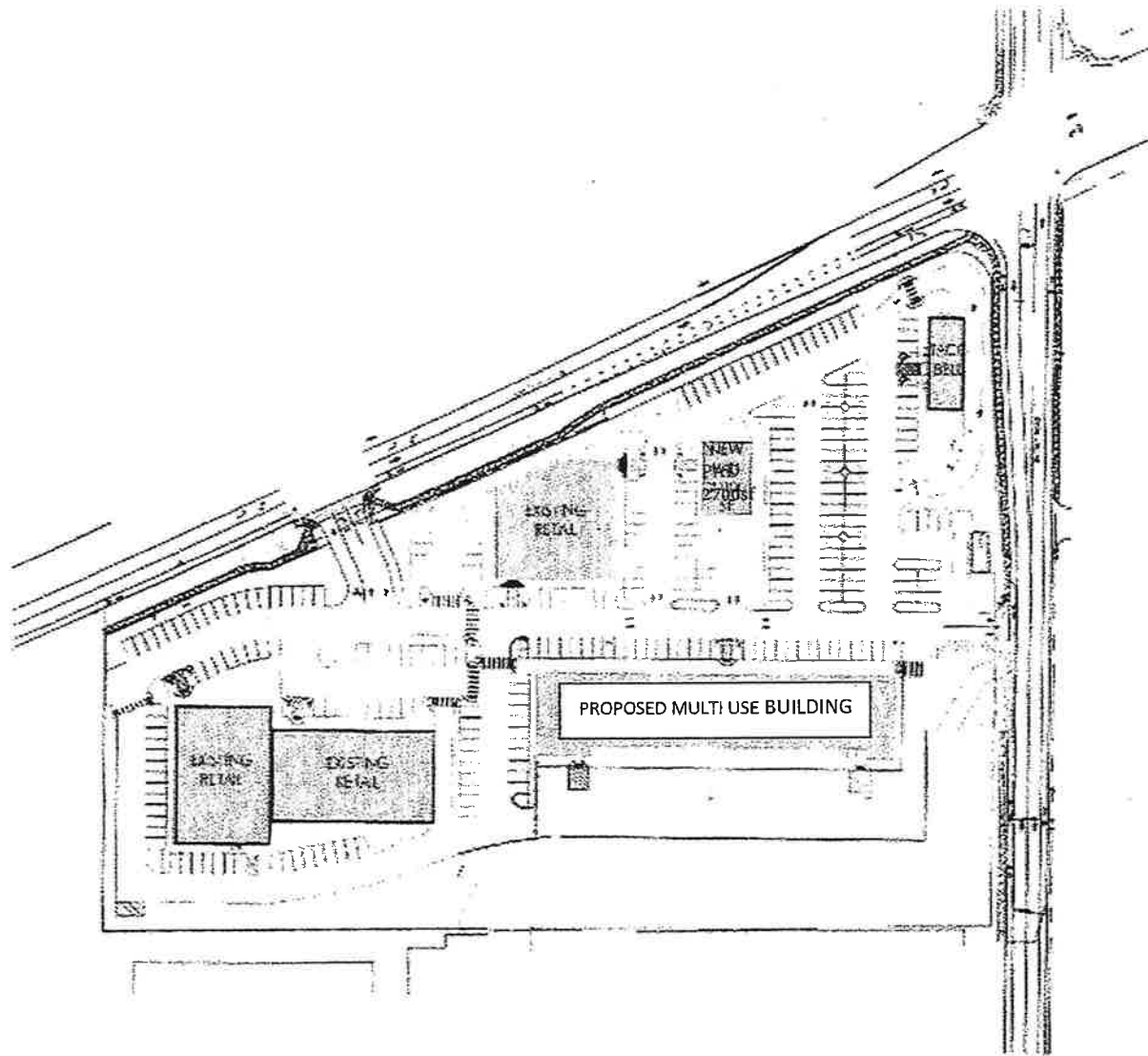


Exhibit B



## Exhibit C

### Variable Width Access Easement

Commencing at a 5/8" iron rod at the Southwest corner of a Tract of Land described in Reel 3285, Page 122, Marion County Deed Records, located in the Southwest Quarter of Section 14, Township 8 South, Range 3 West, of the Willamette Meridian, City of Salem, Marion County, Oregon; thence along the South line of said Tract South 89°07'03" East 234.40 feet to the True Point of Beginning; thence North 00°56'12" East 416.23 feet to the most Westerly South line of a Tract of Land described in Reel 3285, Page 120, Marion County Deed Records; thence North 00°56'12" East 99.19 feet; thence North 63°13'53" East 92.92 feet to the West Right of Way line of Commercial Street Southeast; thence along said Right of Way line South 24°02'00" East 40.75 feet to the most Northerly Northeast corner of a Tract of Land described in Reel 3285, Page 116, Marion County Deed Records; thence along the North line of said Tract and its extension South 71°31'50" West 80.01 feet; thence South 00°56'12" West 124.93 feet to the most Westerly North line of said Tract; thence South 00°56'12" West 184.28 feet to the most Westerly South line of said Tract; thence South 00°56'12" West 185.87 feet to the South line of said Tract of Land described in Reel 3285, Page 122, Marion County Deed Records; thence along said South line North 89°07'03" West 24.00 feet to the True Point of Beginning and containing 15,098 square feet more or less.

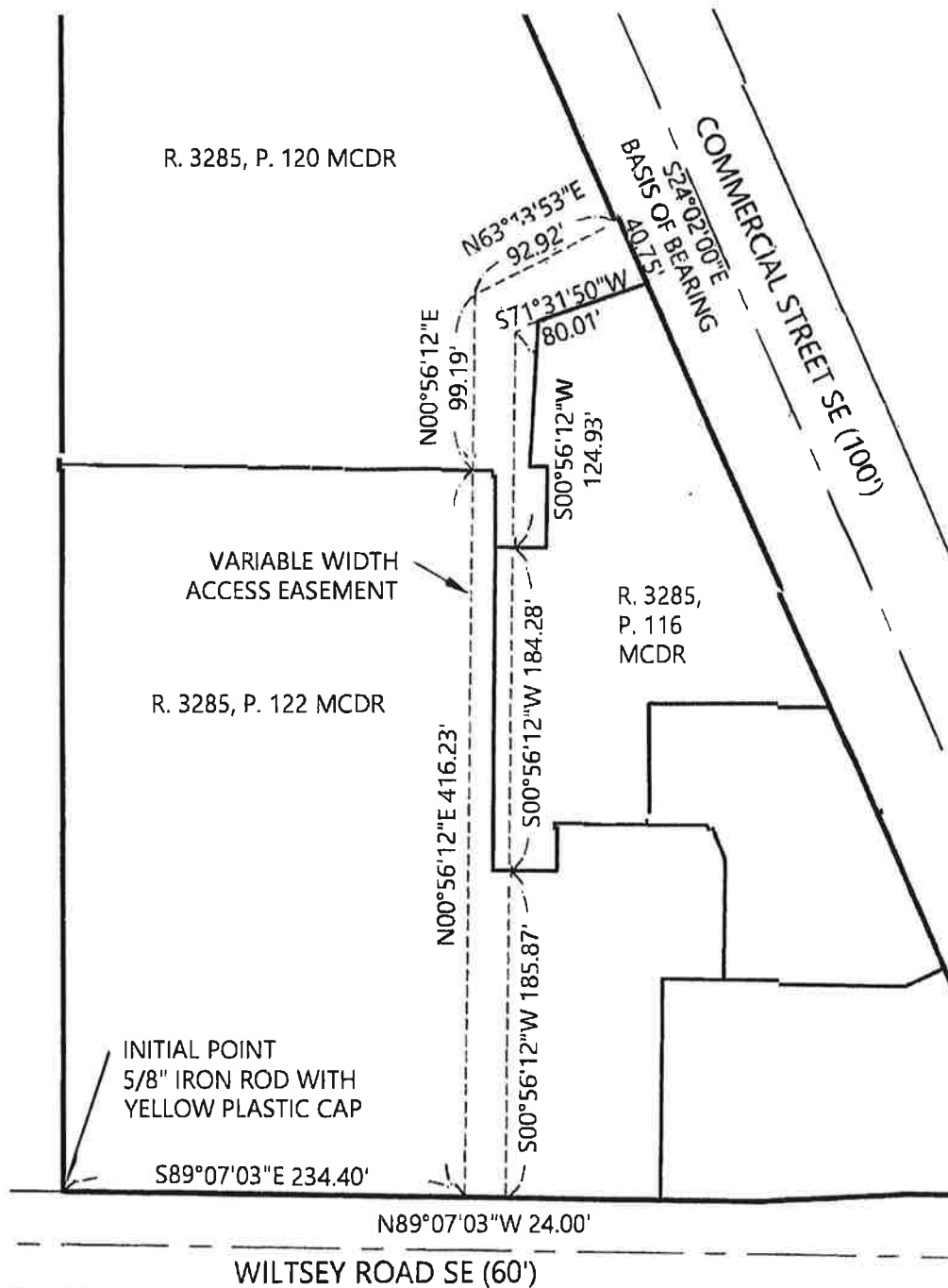
Basis of Bearing based of Anthony's Place Subdivision plat, South Right of Way line Commercial Street Southeast, South 24°02'00" East.



Exhibit D



1" = 100'  
01/12/2021  
#6837



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JULY 13, 2004  
ROBERT D. HAMMAN  
64202LS

EXPIRES: 6-30-2021

BY:  
MULTI/TECH ENGINEERING SERVICES, INC.  
1155 13TH ST. S.E. SALEM, OREGON 97302  
503-363-9227