

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made as of this 26th day of June, 2023, by and between **POMEGRANATE SOLUTIONS, LLC**, a New York limited liability company having an address at c/o 20 Chevron Rd., Unit 201, Monroe, NY 10950 ("Pomegranate" and/or sometimes "Grantor"), and **DAVIDSON DRIVE HOLDINGS LLC**, a New York limited liability company having an address at 99 Forest Rd Unit 103, Monroe, NY 10950 ("Davidson" and/or sometimes "Grantee"). Pomegranate and Davidson may be referenced to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Pomegranate owns, in fee simple, certain real property consisting of a portion of Davidson Drive identified as Town of Chester SBL No(s). 17-1-45.1 as was published for Tax Year 2021 (sometimes referred to herein as the "North Access Road" and/or the "Easement Area") which property is more particularly described as set forth in Exhibit A hereto and made a part hereof; and

WHEREAS, Davidson owns, in fee simple, certain real property which abuts the Pomegranate Property and consists of approximately 16.07+/- acres located in the Town of Chester, Orange County, New York, further identified as Town of Chester SBL No.(s) 17-1-22.2, 22.3, 22.4, 22.5, 22.6, 22.7, 22.8 and 22.9 as was published for Tax Year 2021 (the "Davidson Property") and more particularly described as set forth in Exhibit B, attached hereto and made a part hereof and together with the North Access Road, collectively, the "Properties" and, individually, a "Property"; and

WHEREAS, Davidson intends to pursue site plan approvals from the Town of Chester (the "Town") Planning Board (the "Planning Board") for the development of a warehouse/distribution center with associated parking, drives, stormwater facilities, utilities and such other site improvements on the Davidson Property pursuant to a plan entitled "Site Plan & Lot Combination For Davidson Drive Holdings, LLC" as drawn by Arden Consulting Engineering, PLLC (the "Project"); and

WHEREAS, the Parties desire to establish certain easements and rights benefitting and burdening the respective Properties, as further described and upon the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the promises, easements, conditions and encumbrances contained herein, and One Dollar and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto do hereby agree as follows.

ARTICLE 1 GRANT OF EASEMENTS

Section 1.01 Grant of Easement in Favor of Davidson. Subject to the terms and

1 For the sake of clarity, attached as Exhibit C is the tax map depicting the Easement Area in the color red.

conditions of this Agreement, Pomegranate hereby grants to Davidson, for the benefit and use of the Davidson Property only, the following easements:

(a) *Right Of Way.* A perpetual, nonexclusive easement and right of way over the North Access Road from the Davidson property to Bellvale Road, for all normal and customary vehicular and pedestrian access, ingress and egress to and from the Davidson Property to Bellvale Road (including construction related vehicular access for the construction of the Project) (the “Right Of Way”) and a perpetual, nonexclusive easement and right of way over the North Access Road for all utility lines, poles and piping both underground and above-ground (collectively the “Utility Easement”). The Utility Easement shall not be subject to any additional payment from Davidson to Pomegranate. All construction costs and expenses associated with the construction of the Utility Easement shall be at Davidson costs.

Section 1.02 Intentionally Omitted.

Section 1.03 Easement Areas Defined. For the purposes of this Agreement, the term “Easement Area” shall mean, the North Access Road.

Section 1.04 Easements Defined. For the purposes of this Agreement, the term “Easement” shall mean, the Right Of Way.

Section 1.05 The Parties acknowledge and agree that Pomegranate shall retain ownership of any and all existing and future improvements to the North Access Road.

Section 1.06. The Parties acknowledge and agree that the maintenance, operation, repair and replacement of the North Access Road shall be shared as between the Parties on a 50/50 basis subject to the terms and conditions of this Agreement.

Section 1.07. The Parties acknowledge that Pomegranate shall be responsible for and pay all applicable real property taxes that may be applied to the North Access Road.

ARTICLE 2 TERM OF AGREEMENT

Section 2.01 Effective Date. This Agreement shall be deemed effective thirty (30) days after Davidson receives the site plans signed off by the Chairman provided no appeal has been filed, or, if an appeal is filed upon decision of said appeal provided the decision upholds the approval of the Project site plan (the “Effective Date”).

Section 2.02 Benefit and Burden. The Easement shall continue in perpetuity as allowed by applicable law, shall run with the land and shall inure to the benefit of and be binding upon the Parties and their respective heirs, successors and assigns, including, without limitation, all subsequent owners of the Properties, and any portion(s) thereof. Any transferee of the Properties or any portion(s) thereof shall automatically be deemed, by acceptance of the title to such Property or any portion thereof, to have assumed any and all obligations provided herein with respect to the

Easements and the real property(ies) affected thereby.

The foregoing notwithstanding, Davidson shall have no rights to assign the Easement rights for use by any other user other than the owner of the Davidson property for the purpose shown on that certain site plan for the project as approved by the Town of Chester Planning Board being a warehouse use.

ARTICLE 4 CONSTRUCTION

Section 4.01 Initial Construction Work. The Parties acknowledge and agree that construction of the North Access Road is substantially complete and there remains only the installation of the top coat of wearing surface and miscellaneous curbing. Davidson shall pay Pomegranate the first One Hundred Fifteen Thousand Dollars (\$115,000.00) for the final construction of the North Access Road at such time as Pomegranate is required pursuant to its site plan approval to install the top coat in order to receive a Certificate of Occupancy or to remain in compliance with the municipal approval for its site plan project and that the parties will then share any final costs of completion above and beyond the \$115,000.00 contribution by Davidson of the North Access Road on a 50/50 basis. The final Construction Work shall include the following:

(a) Construction of the North Access Road to the degree required by the Town Planning Board site plan approvals for each of the parties respective site plan approvals.

(b) On a 50/50 cost basis, the parties will pave, maintain, and repair the North Access Road consistent with the Town Planning Board site plan approvals for the Project;

(c) Pomegranate agrees to obtain at least two (2) bids for the work and based thereupon shall using its best business discretion to secure said work upon which the parties shall pay their respective 50% share of the costs.

Section 4.02 General Construction.

(a) Each Party agrees that, prior to commencing any work within the Easement Area (the "Work"), such party shall send written notice of the proposed Work to the other Party, together with reasonably detailed plans and specifications therefor. The other Party shall have a period of fifteen (15) business days after receipt of said notice within which to request any changes to the plans and specifications for said Work, in the reasonable exercise of such other Party's discretion.

(b) In connection with any Work, the Party performing such Work shall, at its sole cost and expense, (i) erect and/or employ such fencing, signage and other safety measures as shall be reasonably sufficient to protect all persons on the Properties and the Easement Area; (ii) limit all work to solely the Easement Area; (iii) when reasonably requested by the other Party, permit the other Party, by and through its employees, agents and contractors, to inspect the Work being performed at all stages; (iv) intentionally omitted; (v) promptly remove all cut brush, cut trees, construction debris, and temporary stormwater controls, and also remove all construction

equipment and material from the Easement Area promptly after completing said Work; (vi) generally restore the area affected by the Work to the condition it was in immediately prior to said Work exclusive of the improvements made by such Work, including grading areas disturbed by the Work at an elevation similar to the grade that existed immediately prior thereto, and restoring or replacing any and all lawns, trees, flowers, shrubs, sidewalks, driveways, curbing, light poles, signage, concrete planters, surface and pavements or other appurtenances or property which are removed, disturbed or damaged by the Work; (vii) pay all of its costs and expenses related to the Work, and not permit any mechanic's, materialmen's or other liens to be filed or asserted against the other Party's property or assets; and (viii) cause all Work to be completed in a good and workmanlike manner, free of defects, during reasonable hours, without unreasonable interference to or any interruption of the other Party's use of, or operations on, its Property.

In addition to the foregoing, in the event Davidson proposes to do any Work for its sole benefit it shall deposit in escrow with Pomegranate's attorney pursuant to a standard escrow agreement, the estimated cost of such work plus fifteen percent (15%) thereof as security for the completion of said Work by Davidson. And, in the event they fail to do so within a time frame accorded thereto or fail to complete the Work in such a manner that the terms of this Easement Agreement are violated, then Pomegranate shall have the right but not the obligation to use the escrow for the completion of the Work without further claim by Davidson. In the event that Davidson does the Work within a time frame accorded thereto and completes the Work in such a manner that the terms of this Easement Agreement provide, it shall promptly receive the escrowed funds per the escrow agreement.

Section 4.03 Permits and Approvals. Each Party agrees that it shall, on a 50/50 basis pay the costs and expenses, obtain and at all times maintain any and all permits and approvals necessary to perform any Work or to otherwise fulfill its obligations and liabilities hereunder, and provide copies thereof to the other Party upon request.

The foregoing notwithstanding, if any work is for the sole benefit of only one party that party shall be responsible for the costs and expenses, obtain and at all times maintain any and all permits and approvals necessary to perform such Work or to otherwise fulfill its obligations and liabilities hereunder.

Section 4.04 Compliance with Laws. Each Party shall, at its sole cost and expense, comply with all the applicable laws, ordinances, order, rules and regulations of the United States, State of New York, or any departments, bureaus, authorities or commissions and of the municipalities applicable to such Party, including, without limitation, any and all requirements of the Permits.

ARTICLE 5 USE OF EASEMENT AREAS

Section 5.01 General Limitations on Use.

(a) Pomegranate reserves the right to appropriately and reasonably limit and condition the performance of any Work within or access to the Easement Areas on its Property by the other Party, including, without limitation, reasonably restricting the time during which any such Work

may be performed, as well as reasonably limiting where access on the non Easement Areas may be made to the Easement Areas.

(b) Neither Party shall, directly or indirectly, other than with the prior written consent of the other Party (which consent shall not be unreasonably withheld or delayed) at any time and except for the performance of the Work (i) locate or store within the boundaries of the Easement Areas any construction or other vehicles, equipment, supplies, materials, tools, apparatus, goods or other property of any kind; (ii) locate or store on the Easement Areas any improvements, fixtures, facilities or installations of any kind other than the required signage or related fixtures or improvements as may be required by their respective site plan approvals from the Planning Board; (iii) locate or store on the Easement Areas any hazardous materials, wastes, oil, petroleum, chemicals or any other noxious materials; (iv) materially alter, relocate, close or impair ingress to and from the Properties from and to the Easement Areas; or (v) subject to the terms and conditions hereof, erect a barrier, fence, curb, wall, ditch, barricade or other structure or obstacle within the Easement Area.

Section 5.02 Non-interference; Reserved Use and Enjoyment. The Parties shall utilize the Easement Area in a manner consistent with the terms and conditions herein stated, and further agree that, subject to the provisions of this Article 5, they shall not obstruct, impede, or interfere with the other Party's use and enjoyment of the rights herein in a material manner. Consistent therewith, each Party reserves the right to use and enjoy their respective Property, including the Easement Area, for any and all purposes that are not inconsistent with the easement rights granted herein.

Section 5.03 No Dedication to Public. Nothing contained herein shall be deemed to be a gift or dedication of any portion of any tract of property to the general public or for any public use or purpose whatsoever, it being the intention of the Parties hereto that this Agreement be for the exclusive benefit of the Parties hereto and their respective heirs, successors and assigns, including, without limitation, all subsequent owners of the Properties, and that nothing herein, express or implied, shall confer upon any person or entity, other than the Parties hereto and their respective heirs, successors and assigns, including, without limitation, all subsequent owners of the Properties, any rights or remedies under or by reason of this Agreement.

Section 5.04 The foregoing notwithstanding, Davidson shall have no rights to assign the Easement rights conveyed hereby to any other user other than as shown on that certain site plan for the Project as approved by the Town of Chester Planning Board it being the intention of the parties that the Easement rights granted Davidson are only for the warehouse use as depicted on the Site Plan and no others.

ARTICLE 6 MAINTENANCE; ALTERATION AND RELOCATION

Section 6.01 Maintenance. Subject to Section 6.02 below, , each party shall on a 50/50 basis, share the cost of and be responsible for the maintenance, repair and replacement (including, without limitation, plowing, sanding, patching, and resurfacing) of the North Access Road in a good and workmanlike manner, so as to keep the same at all times in good and functional condition

in compliance with all applicable laws, ordinances, codes, rules and regulations.

Pomegranate shall have the right to reasonably determine what maintenance, repair and replacement (including, without limitation, plowing, sanding, patching, and resurfacing) of the North Access Road is required and shall notify Davidson of same. Upon such notice, Davidson shall pay its 50% share of the cost to Pomegranate within fifteen (15) business days of such Notice.

Section 6.02 Alteration and Relocation. Upon completion of the Construction Work, neither Party shall, without the prior written consent of the other Party (which consent shall not be unreasonably withheld or delayed): (i) materially alter, materially relocate, close or otherwise materially impair ingress and egress via the Easement Areas; (ii) make any adverse change to the methods of ingress and egress, direction of traffic, lighting or curbing within the North Access Road; (ii) make any changes (either temporary or permanent) to the physical layout of the North Access Road which materially and adversely affects the access, ingress to, or egress from, the respective Properties from and to Bellvale Road.

ARTICLE 7 INSURANCE; INDEMNIFICATION

Section 7.01 Requirements. Davidson shall, at all times that the Easement remains in effect, liability insurance and including the following coverage: (a) comprehensive general liability (including contractual liability) with a per occurrence limit of not less than Two Million Dollars (\$2,000,000) for bodily injury and Two Million Dollars (\$2,000,000) for property damage; (b) automobile liability with a per occurrence limit of not less than One Million Dollars (\$1,000,000) for bodily injury and One Million Dollars (\$1,000,000) for property damage; and (c) such other insurance as is required by law. In the event that Davidson is performing the Construction Work or any Work it further agrees to cause any and all contractors, subcontractors, consultants or other agents employed or retained by such Party in connection therewith to maintain liability insurance in customary form and amounts reasonably acceptable to Pomegranate, in the reasonable exercise of its discretion. The contracts of insurance required by this Article 7 shall contain standard loss payable clauses in favor of the Parties as their respective interests may appear, and shall name the other Party as an additional insured on a non-contributing basis.

Section 7.02 Evidence. Each Party shall, promptly after request by the other Party, provide copies of policies and endorsements evidencing the insurance required hereby including, without limitation, proof that all contractors, subcontractors, consultants and or other agents satisfy the same.

Section 7.03 Non-cancellation. The contracts of insurance required by this Article 7 shall contain a provision requiring thirty (30) days advance written notice to the other Party of any proposed cancellation of such insurance.

Section 7.04 Indemnification.

(a) Davidson agrees to indemnify, defend and hold Pomegranate harmless from and against any and all suits, actions, losses, liabilities, claims, demands, damages, costs and expenses

(including but not limited to reasonable attorneys' fees), liens, charges or encumbrances (collectively, the "Expenses") resulting from or relating to (i) Davidson's use of the Easement Areas or its exercise of any rights granted herein, (ii) Davidson's breach or violation of any term or condition hereof, or (iii) the negligence, intentional actions or omissions of Davidson or Davidson's employees, contractors, agents, consultants and representatives, arising from injury to person or property as a result of or in connection with Davidson's exercise of its rights hereunder, or Davidson's breach hereof.

(b) Any Party that defaults or fails to fulfill its obligations under this Agreement shall bear the costs and reasonable attorney's fees of the non-defaulting Party to obtain monetary damages or otherwise enforce the terms of this Agreement.

ARTICLE 8 DEFAULT

Section 8.01 Default. In the event of any breach of this Agreement by one of the Parties, the non-breaching Party shall have the right to exercise any and all rights and remedies provided at law or in equity, including, without limitation, (a) the right to an injunction or other appropriate equitable relief in order to restrain such breach, without the requirement of showing or proving actual damages to the non-breaching Party, and (b) the right (but not the obligation) to take any and all such actions, and to otherwise exercise self-help, in order to cure or remedy such breach, in which case the breaching Party shall pay upon demand all costs and expenses incurred in connection therewith.

Section 8.02 Remedy. In addition to the foregoing, upon thirty day written notice to cure, in the event that Davidson fails to pay its fair share of the costs of construction, maintenance and repair of the Easement Area or otherwise defaults on its obligations as set forth herein, Pomegranate shall have the right without court order or any other legal process to block, barricade or to otherwise prohibit the access and egress by Davidson upon the North Access Road until such time as Davidson remedies its default in payment.

ARTICLE 9 NO MERGER; QUIET ENJOYMENT

Section 9.01 Merger. Notwithstanding the fact that at any future point in time any subsequent owner of any of the parcels affected hereby may acquire ownership of more than one of such parcels (or portions thereof), the Easements granted hereunder shall nevertheless burden and benefit each of the parcels individually, without merger, termination or extinguishment solely as a result of such common ownership, and upon conveyance of any of the parcels (or any portion thereof) so that one or more parcels cease to be under common ownership, neither the owner conveying said parcel (or portion thereof) nor the owner acquiring said parcel (or portion thereof) shall need to execute additional documentation to evidence the existence of said easement, and said easement shall relate back to and shall be deemed to have been created as of the date this Agreement is recorded in the Orange County Clerk's Office. Davidson may at any time in writing cancel the Easement at which point in time his obligation under this Agreement shall come to an

end provided Davidson provides a copy of a recorded release of Easement to Pomegranate showing that all easement rights hereby granted are released of record and further provided that Davidson shall remain responsible for any unpaid and/or unfinished Work and further provided that Davidson shall remain liable for any and all payments required hereunder incurred prior to such termination of Easement rights.

Section 9.02 Quiet Enjoyment. Subject to the terms and conditions hereof, the Parties covenant and agree that, at all times during the term of this Agreement, the other Party's respective use and enjoyment of the Easement Areas pursuant hereto shall not be disturbed, altered or impaired in any material manner by any act or omission of such Party, nor of any person or entity acting by, through or under the authority of such other Party.

ARTICLE 10 MISCELLANEOUS

Section 10.01 Modification and Termination. This Agreement may be modified or terminated only by the mutual agreement of all Parties hereto or owning all affected parcels (or any portion thereof) affected hereby, their successors and assigns, evidenced by a writing in recordable form.

Section 10.02 Entire Agreement. This Agreement, including the recital sets forth above and all exhibits hereto, all of which are incorporated herein and shall be deemed a material part hereof, constitutes the entire agreement between the Parties hereto with respect to the transactions contemplated herein, and it supersedes all prior discussions, understandings or agreements between the parties hereto.

Section 10.03 Governing Law. This Agreement shall be governed by the laws of the State of New York without regard to such State's conflict of law principles, and any dispute arising hereunder, except as provided for herein, shall be litigated in the Supreme Court, Orange County, New York. **THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE USE AND OF THE EASEMENT AREA.**

Section 10.04 Waiver. The waiver of a breach of one covenant or condition of this Agreement shall not be deemed a waiver of the breach of others, or of subsequent breach of a covenant previously waived. The Parties hereby waive the defense of laches to any breach of any covenant or provision of this Agreement.

Section 10.05 Notice. Any notice or other communication ("Notice") required or permitted to be given hereunder shall be in writing and shall be sent to each Party at their addresses set forth above, or to such other address as a Party shall designate in a writing delivered pursuant to this Section, by (a) hand delivery, (b) express overnight delivery service, or (c) certified mail, postage prepaid, return receipt requested. Any such notice shall be deemed to be given and received and shall be effective (i) on the date on which the notice is delivered, if notice is given by hand delivery, or (ii) on the date on which it is received or rejected as reflected by a receipt if given

by overnight delivery service or United States mail, addressed and sent as aforesaid

Section 10.06 Invalidity. Should any provision of this Agreement be deemed invalid or unenforceable, the remainder of the Agreement shall not be affected, and each term and condition shall be valid and enforceable to the extent permitted by law.

Section 10.07 Negotiated Agreement. All of the Parties to this Agreement have participated in the negotiation and preparation hereof, and, accordingly, this Agreement shall not be more strictly construed against any one of the Parties hereto.

Section 10.08 Joint Venture. The Parties hereto shall not be deemed, in any way or for any purpose, to have become, by the execution of this Agreement, or any action taken under this Agreement, partners, partners in business or otherwise, or a member of any joint enterprises with one another. Further, nothing in this Agreement shall be construed to create any joint venture between the Parties.

Section 10.09 Captions. The captions contained herein are for convenience and reference only and shall not be deemed a part of this Agreement or construed as in any manner limiting or amplifying the terms and provision to which they relate.

Section 10.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 10.11 Recording Easement. This Agreement shall be recorded by Davidson in the Orange County Clerk's Office at Davidson's cost and expense. A copy of this Agreement once recorded shall be delivered to Pomegranate.

Section 10.12 Successors and Assigns. The rights and obligations of the Parties pursuant to this Agreement will and shall be binding upon and shall inure to the benefit of the successors, heirs, executors, administrators, and assigns of the Parties and shall run with the lands hereby encumbered.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement on the day and year first set forth above.

POMEGRANATE SOLUTIONS, LLC


By: JOEL WESS
Its: Manager

DAVIDSON DRIVE HOLDINGS LLC


By: JOSEPH HERSKOVITZ
Its: Member/Manager

STATE OF NEW YORK)
COUNTY OF ~~Queens~~ ^{Kings}) ss.:
~~Queens~~ ^{of}

On the 26 day of June in the year 2023, before me, the undersigned, a notary public in and for said state, personally appeared **JOSEPH HERSKOVITZ**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

DANIEL GIL
Notary Public - State of New York
NO. 01GI6422907
Qualified in Kings County
My Commission Expires Oct 4, 2025

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:
)

On the 30 day of JUNE in the year 2023, before me, the undersigned, a notary public in and for said state, personally appeared JOEL WEISS personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

ISAAC S. SCHEINER
Notary Public, State of New York
No. 02SC6049209
Qualified in Rockland County
Commission Expires October 10, 2026

EXHIBIT A

DESCRIPTION OF DAVIDSON DRIVE/EASEMENT AREA/NORTH ACCESS ROAD
[Town of Chester SBL No(s). 17-1-45.1]

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Chester, County of Orange and State of New York, being shown as "Davidson Drive" on Map "Final Plan Sugar Loaf Industrial Park" dated 05/02/1988, last revised 10/23/1990 and filed in the Orange County Clerk's Office on 12/20/1990 as Map No. 10111.

EXHIBIT B

DESCRIPTION OF DAVIDSON PROPERTY

[Town of Chester SBL No. 17-1-22.2, 22.3, 22.4, 22.5, 22.6, 22.7, 22.8 and 22.9]

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate lying and being in the Town of Chester, Orange County, State of New York, shown and designated as Lots No. 1, 2, 3, 4, 5, 6, 7 and 8 and all of the streets and road widenings shown on the final subdivision plat entitled "Lake Station Industrial Park, Town of Chester, Orange County, New York" made by John Lehman, P.E. Consulting Engineer, dated February 28, 1989 and filed in the Orange County Clerk's Office on December 8, 1989 as Map No. 9755.

EXHIBIT C

TAX MAP DEPICTING EASEMENT AREA



