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WHEN RECORDED RETURN TO:
Barg Tom PC
Attn: Rebecca Biermann Tom
121 SW Morrison Street, Suite 600
Portland, Oregon 97204

Clackamas County Official Records
Sherry Hall, County Clerk

2012-066614



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\$25.00 \$5.00 \$16.00 \$17.00 \$10.00

**DECLARATION OF PARKING, ACCESS AND UTILITIES EASEMENT AND
MAINTENANCE AGREEMENT**

DATED: October 5, 2012

BETWEEN: HARVEY COMMERCIAL PROPERTIES LLC, an Oregon
limited liability company ("Declarant")
331 Warner Milne Road
Oregon City, OR 97045

Recitals:

Lawyers

A. Declarant owns those parcels of real property legally described Parcel 1 ("Parcel 1") and Parcel 2 ("Parcel 2") of that certain Partition Plat 2012- 051 recorded in the Plat Records of Clackamas County, Oregon (the "Plat"). Parcel 1 and Parcel 2 are referred to collectively herein as the "Parcels".

B. Declarant desires to create a reciprocal access easement for Parcel 1 and Parcel 2 (the "Access Easement"), a utilities easement on Parcel 1 for the benefit of Parcel 2 (the "Utilities Easement"), a parking easement on Parcel 1 for the benefit of Parcel 2 (the "Parking Easement") and a maintenance agreement, on the terms and conditions set forth in this Declaration of Parking, Access and Utilities Easement and Maintenance Agreement (this "Agreement").

Agreements:

1. Access Easement. Declarant hereby grants a permanent, non-exclusive, reciprocal Access Easement for the construction, use and perpetual maintenance of a private driveway system. The Access Easement area is depicted on the Plat.

The Access Easement area shall be used for the purposes of providing pedestrian and vehicular ingress to and egress from Parcel 1 and Parcel 2 to the public right of way adjacent to the south boundary line of both Parcels, and for the installation, use, maintenance, repair and replacement of the private driveway and any improvements located therein or thereon, subject to

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the restrictions contained in this Declaration.

All activities on and use of the Access Easement area as permitted by this Agreement shall be in compliance with all applicable laws, statutes, ordinances, rules, regulations, and requirements of any governmental authority ("**Laws**"). No vehicles shall be parked on any portion of the Access Easement area except for the parking spaces located within the Parking Easement area (defined below) on Parcel 1, and the Access Easement area shall be kept clear of any and all obstructions at all times, except for occasional temporary obstructions as may be required to accomplish the repair and maintenance rights and obligations contained in this Agreement.

2. Utilities Easement. Declarant hereby grants a permanent, non-exclusive Utilities Easement on Parcel 1 for the benefit of Parcel 2 in the area depicted on the Plat for the installation and maintenance of utilities, including, without limitation, sanitary sewer, storm drainage, water, natural gas, electricity, cable television and telephone utilities. The owner of Parcel 2 shall promptly repair at its expense any damage to the improvements in the Utilities Easement area caused by such activities.

3. Parking Easement. Declarant hereby grants a permanent, non-exclusive easement over and across the Parking Easement on Parcel 1 for the benefit of Parcel 2 for purposes of vehicular parking and the maintenance, repair and replacement of parking improvements thereon. Subject to the restrictions described in this Agreement, each Parcel owner and such owner's successors, assigns, agents, contractors, tenants, invitees, and licensees will have the right to use the Parking Easement area on a first come-first served basis. The location of the Parking Easement is depicted on the Plat.

The use of the Parking Easement shall be in compliance with all applicable Laws. The Parking Easement is restricted to use for parking of operative motor vehicles; no other items or equipment may be parked or kept in the parking spaces located in the Parking Easement area. No recreational vehicles or oversized trucks may be parked in the parking spaces in the Parking Easement area; provided that commercial trucks may utilize loading areas.

4. General. The Access Easement is granted as a benefit and right appurtenant to the Parcels. The Parking Easement and Utilities Easement are granted as a right and benefit appurtenant to Parcel 2. The easements are granted for the benefit of each owner of a benefitted Parcel and their successors, assigns, agents, contractors, tenants, invitees, and licensees (the "**Benefited Parties**").

5. Maintenance, Repair, and Replacement of Driveway Improvements. The owners of the Parcels shall be jointly and severally be obligated to maintain, repair, and keep the driveway improvements located on the Access Easement area in good condition, reasonable wear and tear excepted, and in compliance with all Laws. The owners of the Parcels shall each pay a portion of such expenses based on the relative square footage of useable building space on each Parcel, as determined in accordance with BOMA standard ANSI/Z65.1-1996, as revised from time to time. In the event one Parcel owner pays more than its share of such costs, the owner of

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the other Parcel will reimburse such owner for its proportionate share of the costs incurred for the maintenance, repair, and replacement of the driveway improvements and parking improvements. Such reimbursement shall occur within fifteen (15) days after written demand for reimbursement, accompanied by copies of invoices and other evidence of the incurred costs. Notwithstanding the foregoing, in the event that any covered parking improvement or driveway improvement is damaged by the act or omission of one of the Parcel owners or such owner's invitee, licensee, contractor or agent, such owner shall be responsible for the repair of such damage at such owner's sole expense.

6. Maintenance and Repair of Parking Improvements; Taxes; Insurance. The owner of Parcel 1 shall maintain, repair, and keep the parking improvements located on the Parking Easement area in good condition, reasonable wear and tear excepted, and in compliance with all Laws. The owner of Parcel 2 shall reimburse the owner of Parcel 1 for a portion of such maintenance expenses, for a portion of insurance premiums for commercial general liability insurance for insuring Parcel 1 in such amounts of coverage as the owner of Parcel 1 deems commercially reasonable, and for a portion of the ad valorem real estate taxes and governmental assessments assessed on Parcel 1 for the Parking Easement area (as reasonably determined by the owner of Parcel 1). The reimbursement amount shall be based on the relative square footage of useable building space on Parcel 1 in comparison with Parcel 2, as determined in accordance with BOMA standard ANSI/Z65.1-1996, as revised from time to time. Such reimbursement amount plus a management fee of 10% of the reimbursement amount shall be paid within fifteen (15) days after written demand, accompanied by copies of invoices and other reasonable evidence of the incurred costs. Notwithstanding the foregoing, in the event that any covered parking improvement is damaged by the act or omission of the Parcel 1 owner or such owner's invitee, licensee, contractor or agent, such owner shall be responsible for the repair of such damage at such owner's sole expense.

7. Lien Rights. If an owner of a Parcel fails to reimburse the other Parcel owner for any amounts payable under Sections 5 or 6 above, within thirty (30) days of receipt of a reimbursement request, then the Parcel owner requesting such reimbursement shall have the immediate right to record a lien against the other owner's Parcel in the amount of such reimbursement request plus the 10% management fee. The amount of the lien shall include interest at a rate of fourteen percent (14%) per year and all attorney's fees and costs incurred by such owner in connection with the enforcement of the other Parcel owner's obligations under this Agreement. The parties agree that any such lien shall be treated as a construction lien pursuant to ORS Chapter 87 or any successor statutes, subject to foreclosure and priority as set forth in such construction lien statutes.

8. Liability Insurance. All workers undertaking maintenance, repair or replacement work described in this Agreement shall have standard liability insurance in a reasonable amount from a reputable insurance company which protects the owners of Parcels 1 and 2.

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9. General Provisions

9.1 Easements to Run with Land; Binding Effect. The easements described in this Agreement shall run with the land as to all property benefited and burdened thereby, including any partition or division of such property. The rights, covenants, and obligations contained in this Agreement shall bind, burden, and benefit Declarant and its respective successors, assigns, lessees, mortgagees, and beneficiaries under any deeds of trust.

9.2 Notices. Any notice or demand required under this Agreement shall be made by hand delivery or certified mail, and shall be deemed received on actual receipt or two (2) days after being sent by certified mail, whichever occurs first. Any required notice or demand shall be sent to the address of the party's property subject to this Agreement; provided, however, that an address may be changed by notice to all parties.

9.3 Attorneys' Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights hereunder, the prevailing party shall be entitled to recover its attorneys', paralegals', accountants', and other experts' fees and expenses and all other fees and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

9.4 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, Declarant has executed this Agreement as of the date first set forth above.

DECLARANT:

HARVEY COMMERCIAL PROPERTIES LLC, an
Oregon limited liability company

By:

Its:

Bryan Harvey
MEMBER

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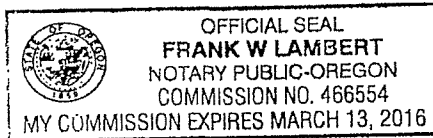
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STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was acknowledged before me on OCTOBER 5, 2012
by Bryan Harvey, DDS, in his capacity as member of HARVEY COMMERCIAL PROPERTIES
LLC, an Oregon limited liability company, on behalf of and as the act and deed of said limited
liability company.



Notary Public for the State of Oregon
My Commission Expires: _____



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