DECLARATION OF CONDITION COVENANTS AND RESTRICTIONS
(COMMON DRIVEWAY AND ACCESS MAINTENANCE
AND SHARED PARKING EASEMENT)

This Declaration of Condition Covenants and Restrictions ("Agreement") is executed effective as of __Feb. 14, 2018____, 2018, by BURCH FEERO, INC., an Oregon corporation, and BURCH-FEERO PROPERTY I, INC., an Oregon corporation as the owners of four parcels located in the County of Yamhill, Oregon.

RECITALS:

WHEREAS, BURCH FEERO, INC. (hereafter "BF, INC") is currently vested in fee title to three parcels of real property described as:

Parcels 1, 2 and 3 of Yamhill County Partition Plat No. 2007-12; and

WHEREAS, BURCH–FEERO PROPERTY I, INC., (hereafter "BFP I"), is currently vested in fee title to one parcel of real property described as:

Parcel 1 of Yamhill County Partition Plat No. 2001-40 (hereafter "Altimas Plaza"); and

WHEREAS, Parcels 1, 2 and 3 of Partition Plat 2007-12 and Parcel 1 of Partition Plat 2001-40 are collectively hereafter referred to as "the Parcels"; and

WHEREAS, All of the Parcels are currently served by access and utility easements as shown on recorded Yamhill County Partition Plats 2001-40 and 2007-12; and

WHEREAS, all four of the Parcels presently share reciprocal shared parking easements as delineated and set forth on Plats Nos. 2007-12 and 2001-40; and

WHEREAS, the Declarants desire to modify the existing shared parking easements, modify the usage of certain access easements shown on the Plat No. 2001-40, and set forth maintenance obligations for the shared primary access easement located on the northerly margins of Parcel 3 of Plat No. 2007-12 and Altimas Plaza; and

WHEREAS, this Agreement shall be binding upon and appurtenant to all of the Parcels and bind all present and future owners of the Parcels to the covenants, costs and responsibilities set forth in this Agreement; and
NOW THEREFORE the Owner declares as follows:

1. BF, INC and BFP 1 hereby reaffirm the existence of the shared parking easement for the benefit of Parcel 1 of Partition Plat 2001-40 located on Parcel 3 of Partition Plat 2007-12 but limited to and only to the extent of those existing parking spaces identified on Exhibit A attached hereto. All other current or future shared parking rights to parking spaces located on Parcel 1 of Partition Plat 2001-40 and Parcels 1, 2 and 3 of Partition Plat 2007-12 benefitting any and all of the Parcels are hereby terminated and shall be of no further force and effect.

2. The current or future owners of the Parcels shall each be responsible for and shall separately pay all costs associated with the maintenance, repairs, and replacement of parking spaces located on their respective parcels from and after the time each of such parcels has been developed.

3. The owner of Altimas Plaza may, but shall not have any obligation to undertake maintenance of existing shared parking spaces located on Parcel 3 of Partition Plat 2007-12, except that prior to the development of such Parcel 3 of Partition Plat 2007-12, it shall maintain such shared parking spaces in a like manner as it maintains its own adjacent parking area located on Altimus Plaza.

4. The owner of Altimas Plaza may, at such owner’s sole discretion, but shall not be required to or have any obligation to, undertake maintenance of the existing access roadway (“Access Road”) located on Altimas Plaza and the northerly margins of Parcel 3 of Partition Plat 2007-12, but not beyond the point where such access road turns to a northerly direction (referred to herein as the “Access Road Terminus”) prior to the development of Parcels 1, 2 and 3 of Partition Plat 2007-12. The parties understand and agree that the maintenance rights and responsibilities defined herein with respect to the Access Road apply only to the point of the Access Road Terminus and any maintenance requirements or responsibilities pertaining to such roadway beyond the Access Road Terminus shall be the responsibility of the property owners abutting the roadway beyond the Access Road Terminus. Absent an agreement to the contrary, the owner of the Altimas Plaza parcel shall have no obligation to repair or maintain any part of the Access Road which is not located on the Altimas Plaza parcel.

5. Upon the commencement of development of any of Parcels 1, 2 or 3 of Partition Plat 2007-12, maintenance, repair, and replacement of the Access Road shall be undertaken cooperatively by the owners of the parcels using the Access Road for primary access (including construction services) to their parcel, in accordance with the minimum access standards required by the City of McMinnville, Oregon for private access roadways. Said maintenance shall include maintenance of asphalt or other allowable surfaces, and other drainage and necessary improvements. The owners of the developed parcels shall meet and confer to approve any maintenance, repair, or replacement costs in excess of $5,000 prior to pursuing such work. The owner of a parcel who has not paid for any maintenance, repair or replacement of the Access Road shall reimburse the owner of the other parcel or parcels for the reimbursing owner’s share of costs within ten days after receipt of a billing (with reasonable backup documentation, including contractor invoices) therefor. Unpaid sums shall accrue interest at the rate of 10% per annum. After development of Parcels 1, 2 and 3 of Partition Plat 2007-12 the costs for Access Road maintenance, replacement and repair will be shared fractionally by those parcels which are using the Access Road for primary access.
access, i.e. 50/50 if one parcel develops, 33/33/33 when two of the parcels develop, and 25/25/25/25 when all three parcels develop and are using the Access Road as primary access.

6. The owners of Parcels 1, 2 and 3 of Partition Plat 2007-12 and Altimas Plaza shall be separately responsible for any costs connected with construction, reconstruction, repair or replacement of any utilities placed by them in the Access Road, or damage to the Access Road from such utility activities, and it shall be the responsibility of such owner undertaking such utility work or utility activity to pay all costs associated with repairing and restoring the Access Road to its present condition existing prior to the undertaking of such utility construction, reconstruction, repair or replacement.

7. The owners of Parcels 1, 2 and 3 of Partition Plat 2007-12 and Altimas Plaza shall have the right to improve, at their sole and separate expense, all or any portion of the Access Road, provided that any other parcel owner subject to this Agreement shall not be required to bear any of the costs for the improvement of such roadway beyond the minimum standards required by the City of McMinnville for a private access roadway unless mutually approved in advance. Upon completion of any such improvement, the owners of the developed parcels shall be responsible in accordance with Section 6 above, for maintenance and upkeep of the improved Access Road, to maintain such roadway surface in such improved condition.

8. The access and utility easement across the southerly margin of Altimas Plaza for the benefit of parcels 1, 2 and 3 of Partition Plat 2007-12, is hereby modified as to the access portion of such easement. Hereafter, such access easement across the southerly margin of Altimas Plaza shall be restricted to access for fire and emergency access purposes only, as well as for utility access purposes, and the owner of Altimas Plaza shall be entitled to install signage consistent with such access restrictions and, subject to compliance with City of McMinnville requirements, to install traffic limiting devices and barriers.


   a. Successors and Assigns. The obligations and covenants set forth in this Agreement shall run with the Parcels and shall be a lien on the parcels regardless of who may own said Parcels at the time of such operation, maintenance, repair and/or replacement of the common driveway or utilities.

   b. Enforcement: The owners of, mortgagee of or parties lawfully in possession of the Parcels bound by this Agreement shall have the right to enforce all of the covenants, conditions and responsibilities now or hereinafter imposed by any of the provisions of this Agreement as may pertain specifically to such parties or owners by any proceeding at law or in equity. Failure by any owner, party in possession or mortgagee to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter.

   c. Severability. Invalidation of any one of these covenants, conditions or responsibilities by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

   d. Duration. The easements, covenants, conditions and restrictions of this Declaration shall be perpetual and shall run with and bind Parcels 1, 2 and 3 of Partition Plat 2007-12 and Altimas Plaza in accordance with the terms hereof.
e. **Indemnification.** The owner of a parcel shall defend, indemnify and hold the owner of the other parcel harmless from and against any claim, loss or liability (including reasonable attorneys’ fees) to the extent arising out of or in connection with an owner’s use of the easement area or failure to comply with the terms, restrictions and provisions of this Agreement.

f. **Attorneys’ Fees.** In the event either Owner shall resort to a court or arbitration to enforce any covenant, term or provision of this Agreement, the prevailing party, on trial or appeal or petition for review or other proceedings, including, without limitation, any arbitration or bankruptcy case or proceedings, shall be entitled to recover from the party not prevailing, in addition to court costs and disbursements therein or damages or awards, such attorneys’ fees as the court or arbitrator may adjudge reasonable.

g. **Notices.** Notices under this Agreement shall be in writing and shall be effective when actually delivered. If mailed, a notice is deemed effective when delivered to the Owner’s address, as registered or certified mail, postage prepaid, at the address(es) to which notices of property tax assessments affecting the subject property are mailed by the County Tax Assessor’s Office according to the assessor’s records, or to such other address as the Owner may designate by written notice to the other.

In Witness Whereof, the said parties have hereunto set their hand and seals on the 

16th day of FEB, 2018.

Burch Feero, Inc. an Oregon
Corporation

By: [Signature]
President

By: [Signature]
Secretary

Burch Feero Property I,
INC., an Oregon corporation

By: [Signature]
President

By: [Signature]
Secretary

STATE OF FLORIDA

COUNTY OF LEE

On this 16th day of February, 2018, before me, a Notary Public in and for said County, appeared Steven Burch, who being duly authorized executed the foregoing instrument on behalf of the company and acknowledged the same on behalf of Burch Feero, Inc. as said corporation’s free act and deed.

[Stamp and signature]

Notary Public
Lee County, Florida
My Commission Expires: 2/10/2021
STATE OF FLORIDA

COUNTY OF LEE

On this 16th day of February, 2018, before me, a Notary Public in and for said County, appeared Steven Burch, who being duly authorized executed the foregoing instrument on behalf of the company and acknowledged the same on behalf of Burch-Feero Property I, Inc. as said corporation's free act and deed.

[Stamp]
Notary Public
Lee County, Florida
My Commission Expires: 2/10/2021

STATE OF FLORIDA

COUNTY OF LEE

On this 16th day of February, 2018, before me, a Notary Public in and for said County, appeared Kurt Feero, who being duly authorized executed the foregoing instrument on behalf of the company and acknowledged the same on behalf of Burch Feero, Inc. as said corporation's free act and deed.

[Stamp]
Notary Public
Lee County, Florida
My Commission Expires: 2/18/2021

STATE OF FLORIDA

COUNTY OF LEE

On this 16th day of February, 2018, before me, a Notary Public in and for said County, appeared Kurt Feero, who being duly authorized executed the foregoing instrument on behalf of the company and acknowledged the same on behalf of Burch Feero, Property I, Inc. as said corporation's free act and deed.

[Stamp]
Notary Public
Lee County, Florida
My Commission Expires: 2/18/2021