

**PROMISSORY NOTE**

\$20,000.00  
Salem, Oregon

\_\_\_\_\_, 2016

FOR VALUE RECEIVED, the undersigned (“Borrower”), jointly and severally, promises to pay to the order of The City of Salem, an Oregon municipal corporation, at 555 Liberty Street SE, Salem, Oregon 97301, or to another person and at another place that the holder of this Note may designate (“Lender”), the principal sum of Twenty Thousand dollars and no cents (\$20,000.00) payable in the manner and on the terms set forth in this Note:

**1. Interest Rate.** Except as set forth in Section 5 of this Note, the outstanding principal balance will bear no interest.

**2. Payment.** Borrower shall make forty (40) consecutive monthly payments in the amount of Five Hundred dollars and no cents (\$500.00) beginning December 15, 2016. Any payment will be applied first to any expenditure advanced by Lender under this Note; second, to the payment of any late charges; third, the balance to principal. Checks will constitute payment only when collected.

**3. Prepayments.** Borrower has the right to prepay this Note, in whole or in part, at any time with no prepayment penalties.

**4. Default and Acceleration.** If any payment due is not paid per Section 2 above, all principal and any interest due shall become immediately due and collectible at the option of the holder of this note. Any default of this Note shall also be construed as default on Borrower’s Lease dated November 1, 2016 of premises located at 3763 Market St. NE.

**5. Default Interest Rate.** In the event of a default, Lender will have the right, in addition to any other remedy set forth in this Note, to immediately begin applying an interest rate of five percent (5%) per annum from such default and until the default is cured or until the Note is paid in full.

**6. Attorney Fees; Costs.** If the holder of this Note takes any action, judicial or otherwise, to enforce this Note, the holder of this Note will be entitled to recover from Borrower all expenses that the holder of this Note may reasonably incur in taking such action, including, but not limited to, costs and expenses provided by statute or otherwise, as well as reasonable attorney fees determined by the court, whether incurred in a suit or an action or on appeal from a judgment or decree, in connection with any bankruptcy proceeding, or in connection with a nonjudicial action. Upon demand, Borrower will reimburse the holder of this Note for expenses so incurred, together with interest from the date of invoice to Borrower until repaid at the rate specified in Section 1.

**7. Governing Law; Severability.** This Note is to be governed by and construed in accordance with the laws of Oregon. If any provision or clause of this Note is construed by a court of competent jurisdiction to be void, invalid, or unenforceable, that construction will not affect other provisions of this Note that can be given effect without the void, invalid, or unenforceable provision, and to this end the provisions of this Note are declared to be severable.

**8. Waiver of Protest.** Borrower and each present or future maker, surety, endorser, and signatory to this Note, in whatever capacity, waives presentment, demand, protest, notice of dishonor, and all suretyship defenses, and agrees that Lender may exercise its rights under the Note in any order and at any time. Without notice to any such person (except for any notice to borrower specified in this Note and without the need to obtain further consent from any party), and without in any way diminishing the obligations of any person, Lender may (a) deal with any such person with reference to this Note by way of forbearance, extension, modification, compromise, or otherwise; (b) extend, release, surrender, exchange, compromise, discharge, or modify any right or obligation secured by or provided in this Note, or any other document securing this Note; and (c) take any other action that the holder may deem reasonably appropriate to protect its interest in the Note.

**9. Time Is of Essence.** Time is of the essence under this Note.

**10. Limitation of Interest.** In no event will any payment of interest or any other sum payable under this Note exceed the maximum amount permitted by applicable law. If it is established that any payment exceeding lawful limits has been received, the holder and payee of such amount will refund such excess or, at its option, credit the excess amount to principal. Such payments will not affect the obligation to make other payments required under this Note that do not cause the lawful limits to be exceeded.

**11. Bankruptcy.** Borrower agrees that, notwithstanding ORS 73.0602 and 73.0604, any payment under this Note that is avoided in a later bankruptcy proceeding or otherwise will not be deemed a payment, and Borrower's obligations under the Note will be reinstated and/or supplemented to the extent of any payment so avoided. In that event, Borrower will not be discharged even if this Note has been canceled, renounced, or surrendered.

**12. Nonrecourse Provisions.**

12.1 Notwithstanding anything to the contrary contained in this Note, or any other loan document made in connection with this Note (the "Loan Documents"), Borrower hereby agrees, except as set forth below, that Borrower will be personally liable for the payment and performance of the indebtedness and obligations evidenced or arising under this Note and the Loan Documents. In other words, except as set forth below, any judicial proceedings or enforcement of the remedies under this Note and the Loan Documents brought by Lender against Borrower will not be limited to the preservation, protection, enforcement, and foreclosure, or any proceedings in respect thereof, of the liens, estates, assignments, titles, rights, and security interests now or at any time hereafter acquired by Lender in the property described in the Loan Documents (the "Property"), and no judgment, attachment, execution, or other writ of process

will be sought, issued, or levied on the assets, property, or funds of the Borrower other than the Property and the rents, revenues, income, and proceeds thereof.

12.2 Nothing contained in Section 12.1 will relieve Borrower from personal liability for the payment and performance of the indebtedness and obligations evidenced or arising under this Note and the Loan Documents, including, without limitation, all costs and expenses incurred by Lender in enforcing its rights and remedies under the Loan Documents, if any of the following events or conditions occur:

(a) Fraud or material misrepresentation made by Borrower, or any partner, officer, agent, or employee of Borrower, in any writing provided to Lender or contained in any of the provisions of the Loan Documents;

(b) Borrower's failure to pay to Lender all gross receipts (minus normal operating and maintenance expenses of the Property that are paid to persons or entities who are not affiliates of Borrower) from rental, occupancy, or operation of all or any portion of the Property received or applicable to any period after monetary default by Borrower and before any foreclosure of the Property, including, without limitation, security deposits and advanced or prepaid rents or receipts;

(c) Any conduct or action or attempted conduct or action by Borrower, or any general partner or officer of Borrower, including, without limitation, the filing of any bankruptcy proceedings by Borrower, or any general partner of Borrower, to prevent Lender from exercising, or to hinder, delay, or impede Lender in exercising, foreclosing, or otherwise realizing on its security interest in the Property; however, if the bankruptcy petition or proceeding is dismissed or otherwise resolved to allow Lender to exercise, foreclose, or otherwise realize on its security interest in the Property within 90 days after the initial filing thereof, the personal liability of the Borrower will be limited to an amount equal to all sums due under the Note during the pendency of the proceeding (including attorney fees and expenses incurred from the proceeding); or

(d) The sale, transfer, or other conveyance of all or any part of Borrower's interest in the Property, or of any ownership or equity interests in Borrower or in any constituent owner of Borrower at any tier, without Lender's written consent, if and to the extent that consent is required under the Loan Documents.

12.3 In addition, nothing contained in any provision of Section 13 will relieve Borrower from personal liability for the payment and performance of the indebtedness and obligations evidenced or arising under this Note and the Loan Documents, but only to the extent of the damages, losses, costs, or expenses suffered or incurred by Lender as specified below, including, without limitation, all costs incurred by Lender in enforcing its rights and remedies, if any of the following events or conditions occur:

(a) Borrower's failure to pay Lender (i) proceeds paid under any insurance policy by reason of damage, loss, or destruction to any portion of the Property or (ii) proceeds or awards resulting from a condemnation or other taking in lieu of condemnation, relating to any portion of the Property; to the full extent that the insurance proceeds or condemnation proceeds or awards are payable to Lender or should be paid to Lender under the terms of the Loan Documents;

(b) Borrower's failure to cause to be maintained on the Property any insurance coverage that may be required under the Loan Documents; to the full extent of damages, losses, costs, or expenses suffered or incurred by Lender therefrom;

(c) Borrower's failure to (i) keep the Property in substantially good condition and repair, including, without limitation, maintaining all structures on the Property free of any liquid

water and/or water vapor intrusion in amounts that could support the growth of fungus and/or mold inside the structures and free of any sites of growing fungus or mold inside the structures, or (ii) comply with all laws and ordinances affecting the Property; to the full extent of damages, losses, costs, or expenses suffered or incurred by Lender therefrom;

The undersigned caused this Note to be duly executed on the day and year first written above.

**BORROWER:**  
Mitchell K. Davidson  
dba Precision Auto Care

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