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**DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
PDX COMMONS CONDOMINIUM**

**Declarant: Portlandia Cohousing LLC, an Oregon limited liability company**

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## **DECLARATION OF CONDOMINIUM OWNERSHIP FOR PDX COMMONS CONDOMINIUM**

This Declaration, to be effective upon its recording in Multnomah County, Oregon, pursuant to the provisions of the Oregon Condominium Act, is made by Portlandia Cohousing LLC, an Oregon limited liability company (“Declarant”).

Declarant proposes to create a condominium located in the City of Portland, Multnomah County, Oregon, to be known as PDX Commons Condominium, composed of 59 Units located in one building. The building consists of four floors above grade with no basement.

**PDX Commons Condominium is a cohousing community founded to create a sustainable community primarily consisting of active adults aged 55 years and older.** The purpose of this Declaration is to submit PDX Commons Condominium to the condominium form of ownership and use in the manner provided by the Oregon Condominium Act.

### 1. Definitions and Interpretation.

1.1 Definitions. As used in this Declaration, the Articles of Incorporation of PDX Commons Condominium Owners’ Association, its Bylaws, its Rules and Regulations, and any exhibits thereto, unless the context shall otherwise require, the following definitions shall be applied:

1.1.1 Act shall mean the Oregon Condominium Act, currently ORS 100.005 to 100.990, as amended from time to time.

1.1.2 Association shall mean the nonprofit corporate entity responsible for the administration, management and operation of the Condominium.

1.1.3 Association Property shall mean any real property or interest in real property acquired, held, or possessed by the Association pursuant to ORS 100.405.

1.1.4 Board shall mean the Board of Directors of the Association.

1.1.5 Bylaws shall mean the Bylaws of the Association, as amended from time to time.

1.1.6 Commercial Unit shall mean that certain Unit designated in Section 9 for commercial use

1.1.7 Common Elements shall mean all those portions of the Condominium exclusive of the Units.

1.1.8 Common Kitchen and Dining Room shall mean the common kitchen and dining area located on the 2<sup>nd</sup> floor, designated as a Limited Common Element in Section 6.

1.1.9 Condominium shall mean the Property that is hereby submitted to condominium ownership and all improvements thereon and all easements and rights appurtenant thereto.

1.1.10 Declaration shall mean this Declaration of Condominium Ownership for PDX Commons Condominium and any amendments thereto.

1.1.11 General Common Elements shall mean those Common Elements designated in Section 5.

1.1.12 Legal Requirements shall mean any and all laws, orders, rules, and regulations of any governmental entity.

1.1.13 Limited Common Elements shall mean those Common Elements designated in Section 6.

1.1.14 Mortgage shall include a deed of trust and a contract for the sale of real estate.

1.1.15 Mortgagee shall include a deed of trust beneficiary and a vendor under a contract for the sale of real estate.

1.1.16 Owner shall mean the owner or owners of a Unit, but shall not include a Mortgagee unless in possession of a Unit. A person or entity who does not own a Unit shall not be an Owner.

1.1.17 Plat shall mean the plat for the Condominium which is being recorded in the deed records of Multnomah County, Oregon, concurrently with this Declaration and any amendments to such plat subsequently recorded.

1.1.18 Property shall mean the property submitted to the provisions of the Act, as described more particularly in Section 2.

1.1.19 Residential Units shall mean those Units designated in Section 9 for residential use only.

1.1.20 Rules and Regulations shall mean those rules and regulations governing the use and enjoyment of the Condominium, as adopted by the Board or the Association pursuant to the Bylaws. The Rules and Regulations are sometimes referred to as "House Agreements."

1.1.21 Storage Units shall mean those Units designated in Section 9 for storage purposes as described in Section 9.

1.1.22 Turnover Meeting shall mean the meeting at which Declarant relinquishes control of the administration of the Association pursuant to Section 100.210 of the Act.

1.1.23 Units shall mean those parts of the Condominium designated in Section 4 and comprised of the spaces enclosed the boundaries described in Section 4 or any Supplemental Declaration; Unit shall mean any one of the Units.

1.2 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Condominium under the provisions of Oregon law. The terms used herein are intended to have the same meaning as may be given in the Act to such terms unless the context clearly requires otherwise or definition in this manner would have an unlawful consequence.

1.3 Mortgagee Approval. For purposes of determining the percentage of first Mortgagees approving a proposed decision or course of action in cases where a Mortgagee holds first Mortgages on more than one Unit, such Mortgagee shall be deemed a separate Mortgagee as to each such Unit.

1.4 No Fiduciary Standard. In no event shall Declarant be deemed to be a fiduciary of the Owners or be held to a fiduciary standard with respect to activities hereunder. The foregoing language does not apply to fiduciary responsibilities officers or directors of the Association appointed may otherwise have.

1.5 Original Owner of Units. Declarant is the original Owner of all Units and will continue to be deemed the Owner of each Unit until conveyances or other documents changing the ownership of specifically described Units are filed of record.

1.6 Captions and Exhibits. The captions given herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein and attached hereto shall be deemed incorporated herein by reference as though fully set forth where such reference is made.

1.7 Miscellaneous. All terms and words used in this Declaration, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. "And/or" when applied to two or more matters or things shall be construed to apply to any one or more or all thereof, as the circumstances then warrant. "Herein," "hereof," "hereunder," and words of similar import shall be construed to refer to this Declaration as a whole, and not to any particular section, unless expressly stated otherwise.

2. Property Submitted. The Property hereby submitted to the provisions of the Act is the land owned in fee simple by Declarant and described on the attached Exhibit A, together with all easements, rights, and appurtenances belonging thereto and all improvements now existing or hereafter constructed on such land.

3. Name. The name by which the Property is to be identified is the “PDX Commons Condominium.”

4. Units.

4.1 General Description of Building. The Condominium consists of one building of light steel and concrete construction with four stories above grade, including a parking garage. The building has cedar and cement fiber board shingle siding and a membrane roof.

4.2 General Description, Location, and Designation of Units. The Condominium consists of a total of 59 Units located on a predominantly level site as shown on the Plat, including 27 Residential Units, 24 Parking Units, seven Storage Units and one Commercial Unit. The Residential Units are designated as Units 1 through 27. The Commercial Unit is designated as Unit C1. The Parking Units are designated as Units P1 through P24. The Storage Units are designated as Units S1 through S7. The square footage of the Units is set forth on the attached Exhibit B and as shown on the Plat. The location of each Unit is shown on the Plat.

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NOTICE

THE SQUARE FOOTAGE AREAS STATED IN THIS DECLARATION AND THE PLAT ARE BASED ON THE BOUNDARIES OF THE UNITS DESCRIBED IN THIS DECLARATION AND MAY VARY FROM THE AREA OF UNITS CALCULATED FOR OTHER PURPOSES.

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4.3 Boundaries of Units.

4.3.1 Residential and Commercial Units. Each of the Residential and Commercial Units shall be bounded by the interior surfaces of its perimeter and demising stud walls, floors, ceilings, skylights (if any), window frames, exterior doors and door frames, and trim and window glass, and shall include both the interior surfaces so described (including the unexposed face of the sheetrock or similar material and the underside of the finished floor) and the air space and improvements so encompassed, such as non-bearing interior walls and stairs, and shall exclude those portions of the walls, floors or ceilings that materially contribute to the structural shear capacity of the Condominium. In addition, each Unit shall include the outlet of any utility service lines, including water, sewer, electricity, internet service or cable television, but shall not include any part of such lines themselves.

4.3.2 Parking Units. Each Parking Unit shall be bounded by the surface of the paved floor, a horizontal plane located at lowest surface of the ceiling, and a vertical plane at the boundary shown on the Plat. Regardless of the actual location of the painted striping for Parking Units, the boundaries of the Parking Units shall be as set forth herein and on the Plat.

4.3.3 Storage Units. Each Storage Unit shall be bounded by (i) the exterior surfaces of its doorway or face panel, including any fixtures thereon or attached thereto,



such as knobs, handles, and hinges and (ii) the interior surfaces of the side and back walls (or side and back panels), floor (or bottom panel), and ceiling (or top panel) of each Storage Unit, and shall include the air space so encompassed.

5. Owner's Interest in Common Elements; General Common Elements. Each Parking Unit and Storage Unit shall be entitled to a .01% ownership interest in the Common Elements. The remaining 99.69 percent ownership interest in the Common Elements shall be allocated a percentage ownership interest determined by the ratio which the area of each Residential and Commercial Unit bears to the total area of all Residential and Commercial Units combined. The allocation of ownership interest in the Common Elements is set forth on Exhibit B. The general location of the Common Elements is shown on the Plat. The General Common Elements shall consist of all parts of the Condominium other than the Units and the Limited Common Elements and include, without limitation, the following:

5.1 All floor slabs, foundations, exterior windows, exterior doors, roof, columns, beams, supports, and bearing walls of the building.

5.2 Pipes, ducts, conduits, wires, and other utility installations, in each case to their respective outlets.

5.3 Ground level landscaping and irrigation system, trash and recycling enclosure, exterior walkways and driveways.

5.4 The land included in the Property, together with any rights or appurtenances related thereto.

6. Limited Common Elements. The Limited Common Elements shall consist of (i) outdoor balconies adjoining certain Residential Units, as shown on the Plat as "LCE Balcony", the use of which is reserved on an exclusive basis for the Owner of the adjacent Residential Unit; (ii) the Common Kitchen and Dining Room, courtyard on the second floor, rooftop deck and garden, guest suites, media room, storage areas, laundry room, lobby, library, corridors, drive aisle in the parking garage, trash/recycling room, bike storage room, stairwells, elevators, and exterior walkways on all levels other than the ground level, the use of which is reserved on an exclusive basis for the Residential Units, all of which are labeled as "LCE-R" on the Plat. The dimensions, designation, and location of the Limited Common Elements are shown on the Plat.

7. Allocation of Common Profits and Expenses; Enforcement of Assessments.

7.1 Method of Allocation. The common expenses of the Property shall be divided into residential expenses ("Residential Expenses"), shared residential and commercial expenses ("Shared Expenses") and parking expenses ("Parking Expenses"). The Residential Expenses are listed on the attached Exhibit C-1, the Shared Expenses are listed on the attached Exhibit C-2, and the Parking Expenses are listed on Exhibit C-3. The Residential Expenses shall be allocated among the Residential Units based on the ratio which the area of each Residential Unit bears to the total area of all Residential Units combined, as shown on the Plat and on Exhibit B attached hereto. The Shared Expenses shall be allocated among the Commercial and

Residential Units based on the ratio which the area of each Residential or Commercial Unit bears to the total area of all Commercial and Residential Units combined, as shown on the Plat and on Exhibit B attached hereto. The Parking Expenses shall be allocated equally among the Parking Units. The common profits shall be allocated among the Units based on each Unit's allocation of ownership interest in the Common Elements as set forth on Exhibit B. No common expenses shall be allocated to the Storage Units. The allocation of common profits and expenses, calculated in the foregoing manner, is set forth on the attached Exhibit D. Notwithstanding the foregoing, in the event an Owner of a Unit uses an unreasonably disproportionate amount of a service included in the common expenses, as determined by the Board in its sole discretion, such Owner will be required to bear the expense of such service individually (as, for example, by separate metering of utilities) and the common expenses incurred by the other Owners will be adjusted by the Board accordingly.

7.2 Commencement of Assessments. Assessments of common expenses shall commence upon closing of the first sale of a Unit, provided that Declarant may elect to defer the commencement of assessment of common expenses (other than assessments for reserves pursuant to Section 5.2 of the Bylaws) for a period of 60 days following such initial closing. Assessments for reserves pursuant to Section 6.2 of the Bylaws shall commence upon closing of the first sale of a Unit, subject to the right of Declarant to defer the payment of assessments for reserves pursuant to the Bylaws. Declarant shall give not less than 10 days' written notice to all Owners of the commencement of assessments of all common expenses. Until the commencement of assessments for all common expenses, Declarant shall be responsible for payment of all common expenses of the Association (other than assessment for reserves pursuant to Section 6.2 of the Bylaws). Except to the extent provided in the Bylaws, the common expenses of the Property shall be assessed on a monthly basis.

7.3 No Exception. No Owner may claim exemption from liability for contribution toward the common expenses by waiver by the Owner of the use or enjoyment of any of the Common Elements or by abandonment by the Owner of the Owner's Unit. No Owner may claim an offset against an assessment for common expenses for failure of the Board of Directors or Association to perform its obligations.

7.4 Default in Payment of Common Expenses. In the event of default by any Owner in paying to the Association the assessed common expenses (including, but not limited to, reserve assessments or any other special assessments) or any other amounts owing to the Association, such Owner shall be obligated to pay interest on such common expenses from the due date thereof, together with all expenses, including attorneys' fees, incurred by the Association in any proceeding brought to collect such unpaid expenses, or any appeal therefrom. No interest or late charges will be assessed on common expenses paid within thirty (30) days after the due date therefor. Delinquent payments of common expense assessments shall bear interest from the date thereof at a rate equal to 12 percent, but in no event higher than the maximum rate permitted by law. The Board of Directors may also establish and impose charges for late payments of assessments, if the charge imposed is based upon a resolution adopted by the Board of Directors that is delivered to each Unit, mailed to the mailing address of each Unit, or mailed to the mailing addresses designated by the Owners in writing. If the assessment is not paid within 30 days of its due date, the Board of Directors may declare any remaining

installments of assessments for the balance of the fiscal year immediately due and payable and may terminate the right to receive utility services paid for out of assessments or the right of access to and use of recreational and service facilities of the Condominium until assessments have been brought current. The Board of Directors shall have the right and duty to recover for the Association such common expenses, together with interest thereon, late charges, if any, and expenses of the proceeding, including attorneys' fees, by an action brought against such Owner or by foreclosure of the lien which the Board of Directors shall have upon such Owner's Units with respect to all such obligations. The Association's lien shall attach to all Storage Units owned by the defaulting Owner in addition to the Units for which assessments are billed.

7.5 Foreclosure of Liens for Unpaid Common Expenses. In any action brought by the Association to foreclose a lien on a Unit or Units because of unpaid assessments or charges, the Owner shall be required to pay a reasonable rental for the use of the Unit or Units during the pendency of the suit, and the plaintiff in such foreclosure suit shall be entitled to the appointment of a receiver to collect such rental. The Board of Directors, acting on behalf of the Association, shall have the power to purchase such Unit or Units at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the Unit or Units. An action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing any lien securing the same.

7.6 First Mortgages; Liability of Subsequent Purchaser. Any lien of the Association against a Unit or Units for assessments or charges shall be subordinate to tax and assessment liens and any first Mortgage of record, unless there has been compliance with all requirements of Section 100.450(7) of the Act. Where the purchaser or Mortgagee of a Unit or Units obtains title to the Unit or Units as a result of foreclosure of a first Mortgage or by deed in lieu of foreclosure, such purchaser or Mortgagee, his successors and assigns shall not be liable for any of the common expenses chargeable to such Unit or Units which became due prior to the acquisition of title to such Unit or Units by such purchaser or Mortgagee except to the extent provided in Section 100.475(2) of the Act; provided, in the case of a deed in lieu of foreclosure, that the Mortgagee complies with the requirements of Section 100.465(1) of the Act; and provided further, that any sale or transfer of a Unit pursuant to a foreclosure shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit or Units from the lien of, any common expenses thereafter becoming due. In a voluntary conveyance of a Unit or Units (subject to the restrictions of this Declaration), the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the Unit or Units to the time of grant of conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of a prospective purchaser, the Board of Directors shall make and deliver a statement of the unpaid assessments against the prospective grantor of the Unit or Units, and the grantee in such case shall not be liable for, nor shall the Unit or Units when conveyed be subject to, a lien filed thereafter for any unpaid assessments against the grantor in excess of the amounts therein set forth.

8. Voting Rights. As set forth in Section 2.1 of the Bylaws, consensus is the primary method of decision-making at all levels of Association governance, except where otherwise required by the Declaration, the Bylaws, or the Act. Subject to the provisions of Section 19 of

the Declaration and Section 3.8 of the Bylaws, one vote shall be allocated to each Residential and Commercial Unit.

9. Use. The Residential Units are intended for residential use and limited commercial use, as described in Section 8.3 of the Bylaws. At least 80 percent of the Residential Units are to be occupied for the housing of persons 55 years of age or older in accordance with the restrictions set forth in Section 8.1 of the Bylaws, although younger persons are not restricted from occupying a Residential Unit along with a person 55 years of age or older so long as such co-occupancy is in compliance with Section 8.1 of the Bylaws. The Commercial Unit is intended for retail or office use, as described in Section 8.4 of the Bylaws. The Parking Units are intended for the parking of operative vehicles of Owners and occupants of Residential Units and, if applicable, a portion may be utilized for storage purposes as permitted for Storage Units if an Owner performs alterations pursuant to the terms of Section 8.7 of the Bylaws. The Storage Units are intended for the storage of items by Owners and occupants of Residential Units only.

10. Service of Process. The designated agent to receive service of process in cases described in Section 100.550(1) of the Act is named in the Condominium Information Report which will be filed with the Real Estate Agency in accordance with Section 100.250(1)(a) of the Act.

11. Authority Regarding Easements and Other Property Rights. The Association has the authority, pursuant to Section 100.405(5) and (6) of the Act, to execute, acknowledge, deliver, and record on behalf of the Owners leases, easements, rights of way, licenses, and other similar interests affecting the General Common Elements and to consent to vacation of roadways within and adjacent to the Condominium, in each case, which are reasonably necessary to the ongoing development and operation of the Condominium. The granting of any interest in General Common Elements pursuant to this Section 11 shall first be approved by Owners holding at least 75 percent of the voting power of the Association, unless otherwise allowed to be approved by the Board under ORS 100.405(6)(a)(B). The granting of any such interest in a Limited Common Element shall be approved by as provided in ORS 100.405(8). Owner approvals for purposes of this Section 11 may be solicited by any means the Board determines is reasonable and need not be at a meeting of the Association.

12. Right of First Offer; Restrictions on Alienation. This Declaration and the Bylaws impose no restrictions on the alienation of any Unit, except that Storage and Parking Units may be owned only by Declarant or an Owner of a Residential Unit, and except for the following restrictions:

12.1 Association's Right of First Offer to Purchase. In the event an Owner desires to sell, transfer, assign or convey the Owner's Unit and for so long as the Condominium has not terminated, the Association shall have the right of first offer to purchase the Unit before the Unit is offered for sale to a third party. Accordingly, each Owner desiring to sell the Owner's Unit (the "Selling Owner") must notify the Board of Directors in writing of the Selling Owner's intent to sell. If the Board elects to exercise the Association's right of first offer, the Board shall deliver a written offer to the Selling Owner in writing within 20 days after receipt of the notice from the Selling Owner. The Association may by written instrument assign its right to exercise

the right of first offer for a particular Unit to a person or persons on a waiting list maintained by the Board, if the Board so elects within the 20-day period after written notice from the Owner of its intent to sell such Unit. In the event of such an assignment, the assignee(s) shall assume the Association's right of first offer and may make a written offer to purchase the Unit within 20 days after the assignment. If the Association fails to exercise or assign its right of first offer during the 20-day period after receipt of the Owner's notice or, if the assignee(s) fail to exercise their right of first offer within 20 days after the date of assignment, the Selling Owner may proceed to offer its Unit for sale to third parties, *provided* that Selling Owner shall not execute a binding sale agreement until the prospective buyer has attended an orientation offered by the Association and agrees to comply with this Declaration, the Bylaws and House Agreements upon closing. Nothing in this Section 12.1 obligates an Owner to accept the terms of the offer made by the Association or its assignee, but the Owner and the Association or its assignee shall be obligated to bargain in good faith.

12.2 Restrictions on Alienation. No person or entity may own or shall be entitled to acquire a Parking or Storage Unit unless such person or entity owns or shall simultaneously acquire a Residential Unit, except Declarant or the Association. With the exception of a conveyance, transfer or other disposition to the Declarant or Association, any conveyance, transfer, lease, or other disposition ("Transfer") of a Parking or Storage Unit to a person or entity who does not own or who will not simultaneously acquire a Residential Unit is prohibited. In the case of a Transfer or attempted Transfer of a Parking or Storage Unit in violation of this Section 12.2, in addition to the Association's other rights under this Section 12, the person or entity making or attempting such Transfer shall indemnify and hold harmless the Association and its members from all cost, liability, and damage that the Association or its members may incur (including, without limitation, attorneys' fees and expenses) as a result of such Transfer or attempted Transfer. In the event a person or entity engages or attempts to engage in a Transfer of a Parking or Storage Unit in violation of this Section 12.2, the Association acting through the Board may, in its sole discretion, fine the offending person or entity in such amounts as it may determine to be appropriate, in addition to any other rights or remedies available to the Association under this Declaration, the Bylaws or applicable law or in equity including, without limitation, the remedies of specific performance and injunction.

12.3 Mortgagee Rights. The right of first offer set forth in Section 12.1 shall not adversely affect the rights of a Mortgagee or its assignee to:

12.3.1 Foreclose or take title to a Unit pursuant to the remedies set forth in the Mortgage;

12.3.2 Accept a deed or assignment in lieu of foreclosure in the event of a default by a mortgagor; or

12.3.3 Sell or lease a Unit acquired by the Mortgagee or its assignee.

12.4 Resale Guidelines. The Board may adopt further guidelines for the resale of Units, pursuant to Section 8.27 of the Bylaws.

12.5 Limit on Number of Units Owned. No more than 10 percent of Residential Units may be owned by one Owner, except by the Declarant during the initial sale period, or such larger percentage of Residential Units as may be allowed by the Federal National Mortgage Association (“FannieMae”) guidelines.

13. Rights of Access and Use.

13.1 In General. Each Owner shall have a perpetual right of reasonable access and use to, through, over, and of each other Unit and the Common Elements for ingress to and egress and from such Owner’s Unit or Units, including access for each Owner’s tenants and invitees; for the support of such Owner’s Unit or Units; and for the installation, operation, repair, maintenance, and replacement of utilities and other systems serving such Owner’s Units, including, but not limited to, water, natural gas, air conditioning, cable television, internet service, electrical power and wiring, light, or plumbing serving a Unit. The Owner shall use the foregoing rights only as necessary and shall exercise all due care in the exercise of such right and shall be responsible for and indemnify, defend and hold harmless the other Owners from any harm or damage resulting from the exercise of the Owner’s rights under this Section 13.1. The specific reference to or reservation of any rights of access and use in this Declaration does not limit or negate the general easement for Common Elements created by the Act.

13.2 Water Intrusion and Mold Inspection. The Board, acting on behalf of the Association, may authorize entry into any Owner’s Unit or Units to conduct a periodic inspection of the Owner’s Unit for water intrusion into the Unit and/or the appearance of mold or mildew within such Unit. Such inspection shall be made by an agent of the Association appointed by the Board of Directors and shall occur at such time as is reasonably convenient to the Owner (or Owner’s tenant) and the inspector. Nothing contained within this Section 13.2 is intended to modify the maintenance and repair obligations of any party as provided in the Bylaws and this Declaration.

13.3 Right of Entry. In addition to the rights granted to the Association elsewhere in this Declaration, the Bylaws, or by the Act, the Board, acting on behalf of the Association, or a managing agent, manager, or any other person authorized by the Board, shall have the right to enter any Owner’s Unit or Units in the case of any emergency originating in or threatening such Unit or Units or other Units or Condominium property or requiring repairs in such Unit or Units to protect public safety, whether or not the Owner is present at the time. Each Owner shall also permit such persons to enter the Owner’s Unit or Units for the purpose of performing installations, alterations, maintenance, cleaning, or repairs to any Common Element, preventing damage to the Common Elements or another Unit, performing the Association’s inspection and maintenance obligations, or inspecting the Unit or Units to verify that the Owner is complying with the restrictions and requirements described in this Declaration, the Bylaws, and/or the Rules and Regulations, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. For a period of 10 years following recording of this Declaration, Declarant shall have a right to inspect the Common Elements of the Condominium and the Association’s records regarding inspections and maintenance of the Condominium.

13.4 Right of Access and Use for Declarant. Declarant and Declarant's agents, successors, and assigns shall have a right of access and use to, through, over, and of the Common Elements for the purpose of (i) planning, designing, developing, constructing, inspecting, maintaining or repairing structures on the Property, to the extent Declarant is required or authorized to conduct such activities (a) pursuant to this Declaration, the Bylaws, or the Plat, (b) under contracts of sale with purchasers of Units, (c) satisfying any warranty obligation of Declaration, (d) inspecting the Property for defects or to verify appropriate maintenance is being performed, or (e) under applicable law or regulations, and (ii) carrying out sales activities reasonably necessary for the sale of Units, including, without limitation, the right to use the Units owned by Declarant as model Units and the right to use a Unit owned by Declarant or a portion of the Common Elements as a sales office, until all Units have been conveyed to persons other than Declarant; provided, however, that Declarant shall restore the portions of the Property which it accesses or uses pursuant to this Section 13.44 to substantially the same condition that existed prior to such access or use (except to the extent Declarant has constructed improvements contemplated by this Section 13.4). The right of entry and inspection provided in this Section 4 shall not in any way obligate the Declarant or Declarant's agents, successors and assigns to make such an inspection, and the decision on whether to inspect Units and the frequency of such inspections, if any, shall be solely within the discretion of the Declarant or its successors and assigns.

14. Encroachments.

14.1 Each Unit and all Common Elements shall have an easement over all adjoining Units and Common Elements for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting, or other movement of any portion of the Property, or any other similar cause, and any encroachment due to building overhang or projection as long as the physical boundaries of the Units are in substantial accord with the description of those boundaries that appears in the Declaration. There shall be a valid easement for the maintenance of the encroaching Units and Common Elements so long as the encroachment shall exist and, except as otherwise provided in Section 14.2, the rights and obligations of Owners shall not be altered in any way by the encroachment.

14.2 The easement described in Section 14.1 does not relieve an Owner of liability in case of willful misconduct of an Owner or relieve the Declarant or any contractor, subcontractor, or materialman of liability for failure to adhere to the Plat.

14.3 The encroachments described in Section 14.1 shall not be construed to be encumbrances affecting the marketability of title to any Unit.

15. Notices to Mortgagees. The Association shall provide timely written notice of the following matters to any Mortgagee, or any Mortgage insurer or guarantor, who makes a written request therefor to the Association:

15.1 Any condemnation or casualty loss that affects either a material portion of the Condominium or a Unit in which it holds an interest;

15.2 Any delinquency of 60 days in the payment of common expenses assessed to a Unit in which it holds an interest;

15.3 A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

15.4 Any proposed action that requires the consent of a specified percentage of Mortgages under this Declaration or the Bylaws.

16. Operating Entity. PDX Commons Condominium Owners' Association, an Oregon nonprofit corporation, has been organized to administer the operation and management of the Condominium and to undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and the Bylaws. The Bylaws, which have been adopted by the Declarant as required by Section 100.410(1) of the Act, are attached hereto as Exhibit E. The Owner of each Unit shall automatically become a member of the Association upon such Owner's acquisition of an ownership interest in any Unit and the membership of an Owner shall terminate automatically upon such Owner's being divested of all of such Owner's ownership interest in the Units, regardless of the means by which such ownership interest is divested. Each Owner shall be entitled to vote and participate in decision-making in the manner prescribed in the Articles of Incorporation of the Association and the Bylaws. Until the Turnover Meeting, the members of the Board need not be Owners. No person or entity holding any Mortgage, lien, or other encumbrance on any Unit shall be entitled, by virtue of such Mortgage, lien, or other encumbrance, to membership in the Association or to any of the rights or privileges of such membership, except as specifically described in this Declaration. In the administration of the operation and management of the Condominium, the Association shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments, and to adopt, promulgate, and enforce Rules and Regulations in the manner provided herein and in the Bylaws. Acquisition of an ownership interest in a Unit by an Owner shall constitute appointment of the Association as that Owner's attorney-in-fact in connection with proceedings, negotiations, settlements, and agreements arising from condemnation, destruction, liquidation, or termination of the Condominium, subject to the rights of the Owners described in the Bylaws.

17. Managing Agent. Subject to the rights of the Association to terminate such agreement entered into prior to the Turnover Meeting without penalty or cause upon not less than 30 days' written notice given within 60 days after the Turnover Meeting, the Board shall have the authority, on behalf of the Association, to enter into a management agreement with respect to the Condominium prior to the Turnover Meeting for a term not to exceed three years. Any such management agreement shall be terminable by the Association upon not more than 90 days' nor less than 30 days' written notice thereof. On behalf of the Association, the Board may, after the Turnover Meeting, employ or contract for a managing agent or manager in accordance with the Bylaws at a compensation to be established by the Board. The Board may delegate to the managing agent or manager such duties and powers as the Board may authorize. In the absence of such appointment, the Board shall act as manager of the Condominium.



18. Taxation of Units. Each Unit, together with the undivided percentage interest in the Common Elements allocated to such Unit, shall be considered a parcel of real property subject to separate assessment and taxation by any taxing authority in a manner comparable to the taxation of other parcels of real property. The Common Elements shall not be considered a separate parcel for purposes of taxation.

19. Administrative Control. Except as otherwise provided in this Declaration or in the Bylaws, Declarant reserves control until the earlier to occur of the date that is three years after the date on which the first Unit is conveyed or the date at which 75 percent of all 59 Units have been conveyed to persons other than the Declarant, during which time:

19.1 Declarant may appoint and remove officers and members of the Board;

19.2 Declarant shall have three times the number of votes allocated in Section 8 to with respect to each Unit owned by it, notwithstanding the provisions of Section 8;

19.3 Declarant shall have the right to exercise all powers of the Association, the Board, or the Condominium officers under this Declaration, the Bylaws, and the Act, except that Declarant may not bind the Association to any management agreement, service contract, employment contract, lease of recreational areas or facilities, or contract or lease (other than a ground lease) to which Declarant is a party, which is made prior to the Turnover Meeting unless the Association or the Board is granted therein a right of termination thereof which is exercisable without cause or penalty upon not less than 30 days' written notice given to the other party thereto not later than 60 days after the Turnover Meeting.

20. Casualty.

20.1 Responsibility of Association. The Association shall be responsible for repairing, reconstructing, or rebuilding all damage or destruction of the Common Elements by casualty and, to the extent of the Association's insurance coverage, all such damage or destruction to the Units. Each Owner shall be responsible for the repairing, reconstructing, or rebuilding of his or her Units to the extent not covered by the Association's insurance and to the extent of any deductible under the Association's insurance. The Association shall rebuild and restore the damaged or destroyed portions of the Common Elements, and, to the extent of the Association's insurance coverage, of the Units, so that the Property is rebuilt and restored to substantially the same condition in which it existed prior to such damage or destruction, unless Owners of at least 75 percent of the Units and 75 percent of all first Mortgagees of Units agree that the Property shall not be rebuilt or restored. The Association shall represent the Owners in any proceeding, negotiation, settlement, or agreement relating to the payment of proceeds under any insurance policies held by the Association. Any such proceeds shall be payable to the Association to the extent of its interest therein. If the Property is to be rebuilt and restored and the proceeds of the insurance policies held by the Association are insufficient to fund the full cost of rebuilding and restoration, the difference between the amount of such proceeds and such cost may be charged to all Owners as a common expense. If the required number of Owners of Units and first Mortgagees agree that the Property shall not be rebuilt and restored, the Property shall be considered removed from the provisions of the Act in accordance with Section 100.605

thereof, and any proceeds resulting from such removal shall be distributed in accordance with Section 100.615 of the Act.

20.2 Responsibility of Owner. If, due to the act or neglect of an Owner, or of a member of his or her family or his or her household pet or of a guest, servant, invitee, employee, renter, or other authorized occupant or visitor of such Owner, damage shall be caused to the Common Elements or to a Unit owned by others, or maintenance, repairs, or replacements shall be required which would otherwise be a common expense, then such Owner shall pay for such damage and such maintenance, repairs, and replacements as may be determined by the Association, to the extent not covered by the Association's insurance, including specifically any deductible for such claim under the Association's insurance policy.

21. Condemnation.

21.1 Total Condemnation. In the event of condemnation of the whole of the Condominium, the compensation to be paid to Owners of Units shall be negotiated and finalized, including, if required, by representation in any proceeding, by the Association, subject to ratification of such compensation by the Owners of at least 75 percent of the Units at a special meeting called for that purpose, whether or not proceedings are necessary, and compensation, less expenses involved, if any, in obtaining the compensation shall be paid to the Association and then distributed among the Owners of Units in equitable proportions and payable to any Mortgagee to the extent required to obtain a discharge of Mortgage. Notwithstanding the award for the condemnation of the whole Condominium, the rights of each Owner of a Unit shall be separate to negotiate and finalize his personal compensation for improvements made to the Unit or Units, cost of moving, and other similar items personal to each Owner.

21.2 Partial Condemnation. In the event of a partial condemnation of the Condominium which includes some Units and/or Limited Common Elements, each Owner whose Unit or Units or associated Limited Common Elements are condemned shall deal with the condemning authority with regard to compensation therefor, and the compensation for such Unit or Units or Limited Common Elements shall be paid to such Owner (or the Mortgagee of that Owner's Unit). The Association shall negotiate compensation relating to any General Common Elements (except as provided above). The cost, if any, of restoring the balance of the Condominium so that it may be used shall be determined by the Association and the Association shall negotiate with the condemning authority with regard to compensation for this expenditure and shall, unless the Condominium is terminated within 30 days after the receipt of such compensation in accordance with the Act, reconstruct the Condominium, using the funds received for such reconstruction. Any moneys received by the Association for any such reconstruction shall be held in trust by the Association for the purpose of such reconstruction.

22. Fidelity Bond. The Board of Directors shall require that any person or entity, including, but not limited to, employees of any professional manager, who handles or is responsible for Association funds, whether or not such person or entity receives compensation for services, shall furnish a fidelity bond as the Board of Directors deems adequate under this Section 22. In no event, however, may the aggregate amount of such insurance be less than the sum equal to three months' aggregate assessments on all Units plus reserve funds. Such bonds

shall name the Association as the obligee and shall cover the maximum funds that may be in the custody of the Association or any manager at any time while such bonds are in force but, in any event, not less than the sum of three months of common expense assessments on all Units. Any such bond shall include a provision requiring not less than 10 days' written notice to the Association and any Mortgagee of a Unit requesting a copy thereof and each servicer on behalf of the Fannie Mae before cancellation or substantial modification of the bond for any reason. The premiums on such bonds shall be paid by the Association.

23. Amendment.

23.1 Approval by Owners. Amendments to the Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding 30 percent or more of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment. Except as may otherwise be provided in this Declaration or by the Act, this Declaration may be amended if such amendment is approved by Owners holding at least 75 percent of the votes of the Association and the consent of Declarant, for so long as Declarant owns a Unit; provided that any amendment to the provisions of this Declaration that relates solely to, or that imposes additional burdens upon or takes away rights particular only to, the Commercial Unit shall, in addition to the voting requirements stated previously in this sentence, require the approval of the Owner of the Commercial Unit. The unanimous approval of all Owners of Units shall be required for amendments of Sections 11 and 15 of this Declaration. Except as otherwise provided in the Act, no amendment may change the allocation of undivided interest in the Common Elements, method for determining liability for common expenses, the method of determining the right to common profits, or the method of determining the voting rights of or with respect to any Unit unless such amendment has been approved by the Owners of the affected Units.

Voting on any amendment to this Declaration shall be without regard to Declarant's enhanced voting power under Section 19.2, except for an amendment to approve a plat amendment, or to correct any provision of or exhibit to this Declaration, whether such correction is required due to a surveyor's error, factual error, miscalculation, omission or to comply with the requirements of any applicable statute, ordinance, regulation or guideline of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon, or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for condominiums or to comply with the Act. For a period of 10 years after the date of the Turnover Meeting, the Bylaws, the Rules and Regulations, and this Declaration may not be modified, added to, amended, or repealed so as to eliminate, change, or impair any rights, privileges, easements, licenses, or exemptions granted therein or herein to Declarant or its designee, or otherwise so as adversely to affect Declarant or such designee, without Declarant's or such designee's prior written consent in each instance.

23.2 Regulatory Amendments. Until the Declarant has turned over control of the Association to the Owners, Declarant shall have the right to amend this Declaration in order to comply with the requirements of any applicable statute, ordinance, regulation or guideline of the Federal Housing Administration, the United States Department of Veterans Affairs, Rural Development or the Farm Service Agency of the United States Department of Agriculture, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Oregon or any corporation wholly owned, directly or indirectly, by the United States or the State of Oregon that insures, guarantees or provides financing for a condominium or units in a condominium. If the need to amend this Declaration arises after turnover of the Association to the Owners, the amendment must be approved by the Association in accordance with the requirements of this Declaration and the Act.

23.3 Approval by Mortgagees. Except when a greater percent is required by the Declaration or Bylaws, or a greater or lesser percent is required by the Oregon Condominium Act, the consent of the Owners holding at least 67 percent of the voting rights and the approval of Mortgagees holding mortgages on Units that have at least 51 percent of the voting rights of the Units subject to Mortgagee Mortgages shall be required for any amendments of a material nature to the Declaration or Bylaws. Any amendment to the Declaration or Bylaws that changes any of the provisions of such documents governing the following shall constitute a material change:

23.3.1 Voting rights;

23.3.2 Increases in assessments that raise the previously assessed amount by more than 25 percent, assessment liens or the priority of such liens;

23.3.3 Reduction in reserves for maintenance, repair and replacement of the Common Elements;

23.3.4 Responsibility for maintenance and repairs;

23.3.5 Reallocation of interests in the General or Limited Common Elements, or rights to their use;

23.3.6 The boundaries of any Unit, except as otherwise provided in Section 28.4;

23.3.7 Convertibility of Units into Common Elements or of Common Elements into Units;

23.3.8 Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;

23.3.9 Hazard or fidelity insurance requirements;

23.3.10 Imposition of any restrictions on the leasing of Units;

23.3.11 Imposition of any restriction on the right of an Owner to sell or transfer his or her Unit;

23.3.12 A decision by the Association to establish self-management when professional management had been required previously by this Declaration, the Bylaws or a Mortgagee;

23.3.13 Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than specified in this Declaration or the Bylaws;

23.3.14 Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or

23.3.15 Any provisions that expressly benefit Mortgage holders, insurers or guarantors.

In addition, except as otherwise provided in the Act, no amendment to this Declaration may change the allocation of undivided interest in the Common Elements, method for determining liability for common expenses, right to common profits, or voting rights of or with respect to any Unit unless such amendment has been approved by the holders of any Mortgages on the affected Units. Any approval of a Mortgagee required under this Section 23.3 may be presumed by the Association if such Mortgagee fails to submit a response to a written proposal for an amendment to this Declaration within 60 days after it receives notice of such proposal by certified or registered mail, return receipt requested.

23.4 Approval by Governmental Authorities. The Association shall use reasonable efforts to obtain the approval of an amendment to this Declaration by a governmental authority engaged in the guaranty of, or the issuance of insurance with respect to, Mortgages, if required by such authority.

23.5 Recordation. Amendments to this Declaration shall be effective upon recordation of the Declaration as amended, or of the amendment thereto, in the deed records of Multnomah County, Oregon, certified by the chairperson and secretary of the Association as being adopted in accordance with this Declaration and the provisions of the Oregon Condominium Act and approved by the county assessor and the Oregon Real Estate Commissioner, if required by law.

24. Termination. Termination of the Condominium shall be effected in accordance with Section 100.600 and any other applicable provision of the Act, but in no event shall be consummated, other than in connection with the substantial destruction or condemnation of the Property, without the prior written consent of at least 67 percent of those holders of first Mortgages on Units (based upon one vote for each first Mortgage held) who have given written notice to the Association requesting notification of any proposed action that requires the consent of a specified percentage of eligible Mortgagees. The common profits and expenses of the Property following termination of the Condominium shall be allocated in accordance with the Act.

25. Dispute Resolution.

25.1 Required Procedure. Except as provided in Section 25 below, to the fullest extent allowed by law, if a dispute arises, all claims, controversies, or disputes, whether they are statutory, contractual, tort claims, and/or counterclaims between or among Declarant, Declarant's successors and assigns, the Association, and/or Owner(s) (collectively, the "Parties" and individually, a "Party") which arise out of or are related to the Condominium, the Act, this Declaration, the Bylaws, the Articles of Incorporation of the Association, or the Rules and Regulations, or which relate to the interpretation or breach of the Act, this Declaration or the Bylaws, the Articles of Incorporation of the Association, or the Rules and Regulations (collectively referred to as "Claims") shall be resolved in accordance with the procedures specified herein. Except as otherwise required by the Act, the following matters are excluded from this dispute resolution clause and do not constitute Claims: (i) judicial or non-judicial foreclosure or any other action or proceeding to enforce assessments, fines, interest or a trust deed, mortgage, Association lien, or land sale contract; (ii) a forcible entry and detainer action; or (iii) actions by the Association pursuant to Section 6.6 of the Bylaws prior to summary abatement and removal of a structure or other condition that violates this Declaration, the Bylaws or any Rules and Regulations; (iv) actions for the appointment of a receiver pursuant to Section 6.9 of the Bylaws; (v) provisional remedies such as injunctions or the filing of a lis pendens, or (vi) the filing or enforcement of a mechanic's lien. The filing of a notice of pending action (lis pendens) or the application to any court having jurisdiction thereof for the issuance of any provisional process remedy described in Rules 79 through 85 of the Oregon Rules of Civil Procedure (or corresponding federal statutory remedies), including a restraining order, attachment, or appointment of receiver, shall not constitute a waiver of the right to mediate or arbitrate under this Section, nor shall it constitute a breach of the duty to mediate or arbitrate. The proceeds resulting from the exercise of any such remedy shall be held by the Party obtaining such proceeds for disposition as may be determined by an agreement of the Parties pursuant to a mediation or by the arbitration award.

25.2 Negotiated Resolution. The Parties will seek a fair and prompt negotiated resolution of Claims and shall meet at least once to discuss and to seek to resolve such claims, but if this is not successful, all disputes shall be resolved in small claims court, by mediation or by binding arbitration as set forth in Sections 25.3, 25.4 and 25.5 below, as applicable.

25.3 Mediation. Prior to mediation of any Claim, the Parties shall have endeavored to resolve disputes through the process set forth in Section 25.2 above. All Claims that are not resolved by such process shall be subject to mediation as a condition precedent to arbitration, including, without limitation, claims related to the design or construction of the Condominium that is not resolved by any repair by Declarant. The request for mediation may be made concurrently with the filing of a demand for arbitration as set forth in Section 25.5 below, but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the Parties. All mediation shall be held in Multnomah County, Oregon and shall be in accordance with the rules of procedure of any dispute resolution program available in Multnomah County, Oregon that is in substantial compliance with the standards and guidelines adopted under ORS 36.175, as it may be amended. The foregoing requirement does

not apply to circumstances in which irreparable harm to a Party will occur due to delay or litigation or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines.

25.4 Small Claims. All Claims that have not been resolved by mediation and which are within the jurisdiction of the Small Claims Department of the Circuit Court of the State of Oregon shall be brought and determined there, and all Parties waive their right to a jury trial with respect to such claims.

25.5 Arbitration. Prior to arbitration of any Claim, the Parties shall have endeavored to resolve disputes through the processes set forth in Section 25.2, 25.3 and 25.4 above, as applicable. All Claims that have not been resolved by such processes shall be resolved by binding arbitration. Such arbitration shall be conducted by and pursuant to the then effective arbitration rules of the Arbitration Service of Portland, or another reputable arbitration service selected by Declarant. If Declarant is not a Party to such dispute, the arbitration service shall be selected by the Association. Any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

25.6 Limitations on Actions. Notwithstanding any other provision of this Declaration or the Bylaws, the Association shall not expend or commit to expend in excess of \$2,500 for attorneys' fees and costs for any specific litigation or claim matter or enter into any contingent fee contract on any claim in excess of \$20,000 unless first approved by at least 75 percent of the outstanding votes of the Owners. The foregoing limitation shall not apply to actions for delinquent assessments or other charges under the Declaration or the Bylaws, for actions initiated by the Association during Declarant's period of administrative control pursuant to Section 19 of the Declaration; for actions challenging ad valorem taxation or condemnation proceedings; initiated against any contractor or vendor hired by the Association or supplier of goods and services to the Association; to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it; actions to appoint a receiver pursuant to Section 6.8 of the Bylaws; actions to summarily abate and remove a structure or condition that violates the Declaration or these Bylaws; or for the defense of the Association of an action or proceeding brought against the Association (except for non-mandatory counterclaims).

25.7 Confidentiality. The Parties shall keep all discussions of disputes, all settlements and arbitration awards and decisions confidential and shall not disclose any such information, whether directly or indirectly, to any third parties unless compelled to do so by an order of a court of competent jurisdiction. The Parties agree in the event a Party breaches its confidentiality obligation that the other Party or Parties to the dispute shall be entitled to seek and obtain any and all equitable remedies, including injunctive relief and specific performance and each Party hereby waives any claim or defense that the other Party has an adequate remedy at law for any such breach and the Parties agree that the aggrieved Party shall not be required to post any bond or other security in connection with any such equitable relief.

25.8 No Attorneys' Fees. Except as specifically provided for in this Declaration or the Bylaws and to the extent allowed by law, no Party in the arbitration, mediation or other proceeding shall be entitled to recover costs or attorneys' fees in connection therewith.

26. Warranties, Releases and Waivers of Claims.

26.1 Warranty. In each unit sales agreement, Declarant, as seller, provided to each owner purchasing a Unit from Declarant a one-year warranty on the Unit, Limited Common Elements and General Common Elements as required by the Oregon Condominium Act set forth in the unit sales agreement (the One-Year Warranty”). Declarant is not obligated to provide to Owners any warranty other than the One-Year Warranty.

26.2 Personal Property. Declarant as seller has given no warranty with respect to any appliances, equipment, and other consumer products as defined in the Magnusson-Moss Warranty Act or the Uniform Commercial Code installed in the Condominium, if any, are those of the manufacturer or supplier only, that Declarant has not warranted such items, and that, to the extent assignable, these manufacturers' or suppliers' warranties and any rights or claims against the manufacturer or supplier relating to any insufficiency in such products have been assigned to Owner, effective on the closing date of such Owner's purchase of the Unit from Declarant or to the Association, at or prior to the Turnover Meeting. Declarant shall reasonably cooperate with any such claims Owners or the Association may elect to pursue against the manufacturers, provided there is no cost or liability to Declarant. Declarant has not represented or guaranteed the existence or validity of any manufacturer or supplier warranties or the performance by any manufacturer or supplier of its warranty obligations. Declarant has not represented or guaranteed the existence or validity of any manufacturer or supplier warranties or the performance by any manufacturer or supplier of its warranty obligations. With respect to any manufactured products, each Owner has expressly assumed the risk, as opposed to Declarant, that such products may be defective. Each Owner has warranted that Owner had adequate opportunity to investigate the condition of the manufactured products installed in his or her Unit, and Owner has relied solely on this independent investigation in purchasing the Unit.

26.3 No Other Warranties. TO THE FULLEST EXTENT ALLOWED BY LAW, DECLARANT HAS MADE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES REGARDING CONSUMER PRODUCTS AS DEFINED IN THE MAGNUSSON-MOSS WARRANTY ACT OR THE UNIFORM COMMERCIAL CODE, WITH RESPECT TO THE BUILDING, THE UNIT, COMMON ELEMENTS, OR ANY OTHER PART OF THE CONDOMINIUM (THE "PROPERTY") OTHER THAN THOSE EXPRESSLY DESCRIBED IN EACH UNIT SALES AGREEMENT. WITHOUT LIMITATION TO THE FOREGOING, AND EXCEPT FOR THE EXPRESS WARRANTY OF THE UNIT SALES AGREEMENTS, DECLARANT HAS MADE NO REPRESENTATION OR WARRANTY REGARDING (I) COMPLIANCE WITH APPLICABLE BUILDING CODES, (II) ACOUSTICS, CONSISTENCY OF FLOOR SLOPE, OR SOUND TRANSFERENCE WITHIN THE CONDOMINIUM, (III) LIGHT, AIR OR VIEW, OR (IV) THE ABILITY OF THE BUILDING ENVELOPE OR ANY COMPONENTS OF THE CONDOMINIUM TO WITHSTAND WATER INTRUSION. Declarant shall not be responsible for damage to the Unit, Common Elements, or the Condominium (i) caused by normal wear and tear; (ii) caused by Owner, the Association or other parties, whether by misuse, abuse, failure to maintain the Unit and/or Common Elements or otherwise; (iii) for damage exacerbated by



Owner, the Association, or other parties, or allowed by Owner or the Association to be exacerbated, including, without limitation, damages exacerbated by Owner or the Association, as applicable, failing to allow Declarant access to the Unit or Condominium, as applicable, to perform warranty work; or (iv) related to work performed in or on the Unit, Common Elements, or the Condominium by or on behalf of the Owner, Association, or parties other than Declarant; or (v) any other items covered by a manufacturer's warranty. Declarant made no warranty that views from the Condominium will remain available and makes no warranty regarding soundproofing of units and transmission of sounds between units and other areas of the Condominium shall not be considered a construction defect.

26.4 Defects. As used in this Section 26, “defect(s)” or “defective” means a flaw in the materials or workmanship used in constructing the Unit or Common Elements that: (i) materially affects the structural integrity of the Unit or Common Elements; (ii) has an obvious and material negative impact on the appearance of the Unit or Common Elements; or (iii) jeopardizes the life or safety of the occupants of the Unit. So long as the Unit was completed substantially in accordance with Declarant’s plat and specifications, minor deviations and variations therefrom such as, without limitation, paint color, window and floor coverings, countertops and cabinets, appliances, plumbing and electrical fixtures, hardware and other decorations, and other finish work shall not be considered “defects.” Deficiencies inherent in the quality of a particular component or element of the Unit or Common Elements shall not be considered defects due to workmanship or materials. Wood grains, veining or other patterns inherent in natural materials such as wood or stone may vary and such variances shall not be considered a “defect.” Conditions caused by or resulting from the failure of Owner or the Association to perform normal and routine maintenance of the Unit and Common Elements, as applicable, shall not be considered “defects.”

26.5 Limitation on Other Claims. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, ANY CLAIMS (OTHER THAN EXPRESS WARRANTY CLAIMS PURSUANT TO A UNIT SALES AGREEMENT) WHICH EACH OWNER MAY HAVE, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR NEGLIGENCE, MISREPRESENTATION, BREACH OF CONTRACT, CONSTRUCTION DEFECTS, OR ANY OTHER NONWARRANTY THEORY, MUST BE BROUGHT ON OR BEFORE THE EARLIER OF (A) EXPIRATION OF THE APPLICABLE STATUTE OF LIMITATIONS, OR (B) WITHIN ONE (1) YEAR FROM THE DATE OF THE TURNOVER MEETING AS DESCRIBED IN THE BYLAWS, WHETHER SUCH CLAIMS ARISE FROM STATUTE, CONTRACT, TORT OR OTHERWISE FOR DAMAGES TO PROPERTY OR PERSONAL INJURY NOW EXISTING OR ARISING AFTER THE DATE OF THIS AGREEMENT AND RELATING TO OR ARISING IN OR FROM ANY OF THE FOLLOWING: (A) DEFECTS, REPAIRS, REPLACEMENTS OR MODIFICATIONS TO THE UNIT OR COMMON ELEMENTS EXCEPT AS SPECIFICALLY COVERED BY THE ONE-YEAR WARRANTY; (B) FAILURE TO COMPLY WITH CODE, NONCOMPLIANCE WITH PLAT AND SPECIFICATIONS, DEFECTIVE CONSTRUCTION, NEGLIGENT CONSTRUCTION AND/OR NON-WORKMANLIKE CONSTRUCTION; (C) TORT AND/OR UNLAWFUL TRADE PRACTICES VIOLATIONS, EMOTIONAL DISTRESS, FRAUDULENT, INTENTIONAL, NEGLIGENT OR INNOCENT MISREPRESENTATION, NEGLIGENCE OR GROSS NEGLIGENCE, NUISANCE, AND/OR TRESPASS; (D) BREACH OF CONTRACT,

BREACH OF EXPRESS WARRANTY AND/OR BREACH OF IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF PROFESSIONAL CONSTRUCTION AND REASONABLE WORKMANLIKE CONSTRUCTION; (E) BREACH OF FIDUCIARY DUTY BY DECLARANT PRIOR TO OR AFTER THE DATE CONTROL OF THE ASSOCIATION IS TURNED OVER TO THE UNIT OWNERS; (F) WATER INTRUSION, WATER INFILTRATION, OR WATER PENETRATION; (G) PRODUCTS OR SUBSTANCES FOUND IN OR USED IN THE UNIT OR COMMON ELEMENTS, INCLUDING, FOR EXAMPLE PURPOSES ONLY, RADON; (H) THE CONDITION OF THE UNIT AND/OR COMMON ELEMENTS; (I) OWNER'S LOSS OF USE OF THE UNIT AND/OR COMMON ELEMENTS AND/OR THE LOSS OF VALUE THEREOF; AND (J) CONSEQUENTIAL DAMAGES OR EXPENSES FOR ATTORNEY FEES AND/OR RESULTING FROM THE RELOCATION OF OWNER, IF ANY, SUCH AS LODGING, COMMISSIONS, INTEREST RATE FLUCTUATIONS, STORAGE, MOVING, MEALS OR TRAVEL EXPENSE. ANY SUCH CLAIMS NOT BROUGHT WITHIN THIS TIME PERIOD WILL BE DEEMED FULLY WAIVED BY OWNER, REGARDLESS OF WHEN OWNER ACTUALLY DISCOVERED THE ALLEGED BASIS FOR THE CLAIM. FOR PURPOSES OF THIS SECTION 26.5, A CLAIM IS "BROUGHT" WHEN (A) FOR MATTERS WITHIN THE SMALL CLAIMS COURT JURISDICTION, A COMPLAINT WAS FILED IN THE APPROPRIATE SMALL CLAIMS COURT AND SERVED PROMPTLY ON DECLARANT OR (B) FOR MATTERS NOT WITHIN THE SMALL CLAIMS COURT JURISDICTION, THE DECLARANT HAS ACTUAL RECEIPT OF A FILED COMPLAINT OR REQUEST FOR ARBITRATION BY OWNER. THIS SECTION 26.5 SHALL NOT BE DEEMED TO EXPAND AN OWNER'S RIGHT TO ASSERT ANY CLAIMS OTHER THAN EXPRESS WARRANTY CLAIMS, WHICH RIGHT DECLARANT DENIES.

To the fullest extent allowed by law, this limitation shall be binding upon each Owner, buyers from each Owner and all successor buyers, the Association and their respective employees, contractors, property managers, brokers, heirs, successors, assigns, guests and invitees and shall apply to potential claims brought directly by Owner, by Owner through the Association or by the Association against Declarant. Each Owner acknowledges that it has read and understands this limitation and that it has had an opportunity to seek and consult counsel regarding this waiver.

26.6 Covenants Running with the Land. The provisions of this Section 26 are intended to touch and concern the Condominium and shall be deemed covenants running with the land. Each and every term of this Section 26 shall, to the fullest extent allowed by law, bind each Owner, the Association and each subsequent owner or transferee of a Unit.

27. Special Declarant Rights. As more particularly provided in this Section, Declarant, for itself and any successor Declarant, has reserved the following special Declarant rights:

27.1 Completion of Improvements. Declarant and its agents, employees, and contractors shall have the right to complete improvements and otherwise perform work that is: (i) authorized by this Declaration; (ii) indicated on the Plat; (iii) authorized by building permits; (iv) provided for under any unit sales agreement between Declarant and a Unit purchaser;

(v) necessary to satisfy any express or implied warranty obligation of Declarant; or (vi) otherwise authorized or required by law. In addition, Declarant reserves the right to create additional Common Elements, although not substantial recreational amenities.

27.2 Sales Facilities of Declarant. Declarant and its agents, employees, and contractors shall be permitted to maintain during the period of sale of the Condominium upon such portion of the Property as Declarant may choose, such facilities as in the sole opinion of Declarant may be required, convenient, or incidental to the construction or sale of Units and appurtenant interests, including but not limited to, a business office, storage area, signs, model units, sales office, construction office, and parking areas for all prospective purchasers of Declarant. The provisions of this Section are subject to the provisions of other state law and to local ordinances. The number, size, location, and relocation of such facilities shall be determined from time to time by Declarant in the exercise of its sole discretion; *provided*, that the maintenance and use of such facilities shall not unreasonably interfere with an Owner's use and enjoyment of the Unit and those portions of the Common Elements reasonably necessary to use and enjoy such Unit.

27.3 Right to Attend Board of Directors Meetings; Access to Minutes. Declarant shall have the right from turnover meeting until the 10-year anniversary of the date Declarant ceases to own any Units to (i) attend, or have a representative or agent of Declarant attend, any meeting of the Board of Directors which is open to all owners of Units (an "Open Meeting"), and (ii) receive a copy of the minutes of any Open Meeting. If Declarant does not attend an Open Meeting, or have any representative or agent attend the Open Meeting, the Board shall deliver a copy of the minutes of the Open Meeting to Declarant by fax, email or certified mail, return receipt requested. The minutes shall be delivered to Declarant addressed as follows (or as the Board of Directors is otherwise instructed by Declarant):

Portlandia Cohousing LLC  
c/o Urban Development Partners, LLC  
116 NE 6<sup>th</sup> Avenue  
Suite 400  
Portland, OR 97232

27.4 Inspection Rights; Inspection Reports. Declarant, and Declarant's contractors, consultants and advisors, shall have the right (but not the obligation) from the date of this Declaration until the 10-year anniversary of the date Declarant ceases to own any Units to enter each Unit, and the Common Elements at reasonable times to inspect, identify and/or correct any conditions for which Declarant could potentially be responsible under the law. A copy of any inspection report, study or test received or obtained by any Unit Owner or the Association indicating the presence of any condition of the Common Elements, any Unit for which Declarant could potentially be responsible under law shall be delivered by the Association or the Owner ordering such report, test or study, as the case may be, within five days after the foregoing receives such report. The report shall be delivered in the manner provided for deliveries under Section 27.3.

27.5 Declarant's Easements. Declarant has a non-exclusive easement to, through, and over the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising special Declarant rights, whether arising under the Act or reserved in this Declaration.

27.6 Approval of Amendments. Declarant shall have the right to approve amendments proposed by the Owners to this Declaration, the Bylaws, the Plat, and the Rules and Regulations for so long as Declarant owns a Unit or for 10 years from the date this Declaration is recorded, whichever is latest.

27.7 Right of Review. Upon reasonable advance notice to the Board, Declarant shall have the right to review all inspection and maintenance records of the Association, including, without limitation, changes to the suggested maintenance schedule prepared by Declarant, if any. In addition, upon request from Declarant, the Board shall provide Declarant at Declarant's cost copies of all inspection reports, proposed Plat for alterations and copies of all warranty claims. As provided in Section 8.5 of the Bylaws, the Board shall provide Declarant with copies of submissions for alteration requests, advance notice of the Board's inspections of such alterations, and an opportunity for Declarant, its contractors or agents to accompany the Board's professional advisors on any such inspection.

27.8 Termination of Declarant Rights. Except as otherwise provided in this Declaration, the special Declarant rights set forth in this Section 27 shall continue for so long as (i) Declarant is completing improvements which are within or may be added to this Condominium or (ii) Declarant owns any Units; *provided*, that Declarant may voluntarily terminate any or all of such rights at any time by recording an amendment to this Declaration, which amendment specifies which right is thereby terminated.

28. Miscellaneous.

28.1 Severability. Each provision of this Declaration and the Bylaws shall be deemed independent and severable, and the validity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision of this Declaration or the Bylaws.

28.2 No Impairment. The creation of this Condominium shall not be impaired and title to the Unit and Common Elements shall not be rendered unmarketable or otherwise affected by reason of any insignificant failure of this Declaration or the Plat or any amendment thereto to comply with the Act.

28.3 No Partition. Except where permitted by the Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of interest in the Common Elements made without the Unit to which that interest is allocated is void.

28.4 Relocation of Boundaries. Pursuant to ORS 100.130, the Owner or Owners of any two adjoining Units may apply to the Board of Directors of the Association for permission to change the sizes of their Units by adjusting the common boundary between the two

Condominium Units or to consolidate the two Units into one Unit by deleting the common boundary. Any such application shall identify the Units involved, state any reallocations of the affected Unit's interest in common elements, or of Unit Owners' voting rights, liability for common expense, and right to receive common profits. The Board of Directors shall approve such an application unless it determines within 45 days (i) that the proposed reallocations are unreasonable, (ii) that the proposed relocation or deletion would impair the structural integrity or mechanical systems of the Condominium or would reduce the support of any portion of the Condominium, or (iii) that the proposed relocations or deletions would trigger any requirement for seismic upgrades of common elements under applicable building codes or any modification of the common elements will be required under applicable building codes or other applicable laws as a result of such relocations or deletions. The Board may require the Owners of the affected Units to submit an opinion of a registered architect or registered professional engineer that the proposed relocation or elimination will not impair the structural integrity or mechanical systems of the Condominium or lessen the support of any portion of the Condominium. The Board or an agent appointed by the Board may supervise the work necessary to effect the boundary relocation or elimination. If approved, a proposed change would become effective on recording in the appropriate records of Multnomah County, Oregon, of an amendment to this Declaration and to the Plat, both setting forth the change, executed by the Owners and Mortgagees of the affected Units and certified to by the chairperson and secretary of the Association, together with any governmental approvals required by law. All costs in connection with such amendments shall be paid by the applicants.

28.5 No Waiver of Strict Performance. The failure of the Board in any one or more instances to insist upon the strict performance of this Declaration, or of the Bylaws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such term, covenant, condition, or restriction, but such term, covenant, condition, or restriction shall remain in full force and effect. The receipt by the Board of any assessment from an Owner, with knowledge of any such breach, shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

28.6 Liability for Utility Failure, Etc. Except to the extent covered by insurance obtained by the Board pursuant to this Declaration and the Bylaws, neither the Association nor the Board nor Declarant shall be liable for: (i) any failure of any utility or other service to be obtained and paid for by the Board; (ii) injury or damage to person or property caused by the elements, or (iii) inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of common expense assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

28.7 Rule Against Perpetuities. The rule against perpetuities may not be applied to defeat any provisions of this Declaration or the Bylaws or Rules and Regulations.

28.8 Transfer of Declarant's Powers. Declarant, at any time in the exercise of its sole discretion, may sell, assign, transfer, encumber, or otherwise convey to any person, upon

such terms and conditions as Declarant may determine, all of Declarant's rights, powers, privileges, and authority arising hereunder by virtue of Declarant's capacity as Declarant (which rights, powers, privileges, and authority are in addition to those arising from Declarant's ownership of one or more Units).

28.9 Sound Transmission Disclosure. Where condominium units are built either above or below each other, or side by side, it is normal to experience some transmissions of sound between those units from music, heels on noncarpeted floors, water traveling in drains, cupboard doors, and similar causes. On occasion these sounds are heard in normal conditions with typical noise levels. Owners should expect some transmission of sound between units, common elements or from outside of the Condominium. Declarant makes no warranty regarding soundproofing of units and transmission of sounds between units, common elements or from outside of the Condominium shall not be considered a construction defect.

[Signature Page Follows]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this  
\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

PORTLANDIA COHOUSING LLC, an Oregon  
limited liability company

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

The instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_,  
201\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Portlandia Cohousing LLC,  
an Oregon limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public for the State of Oregon  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )

The instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_,  
201\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Portlandia Cohousing LLC,  
an Oregon limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public for the State of Oregon  
My Commission Expires: \_\_\_\_\_

The foregoing Declaration is approved pursuant to ORS 100.110 this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, and in accordance with ORS 100.110(8), this approval shall automatically expire if this Declaration is not recorded within one (1) year from this date.

GENE BENTLEY  
Oregon Real Estate Commissioner

By: \_\_\_\_\_  
Michael B. Hanifin

\_\_\_\_\_  
County Assessor

\_\_\_\_\_  
County Tax Collector



**EXHIBIT A**

Property Description

**EXHIBIT B**

Area of Units and Allocation of Interest in Common Elements

<u>Unit</u>	<u>Area (sq. ft.)</u>	<u>Allocation of Common Element Interest</u>
<b>Total</b>		<b>100.00%</b>

**EXHIBIT C-1**  
Residential Expenses

**EXHIBIT C-2**  
Shared Expenses

**EXHIBIT D**

Allocation of Common Profits and Expenses

<u>Unit</u>	<u>Area (sq. ft.)</u>	<u>Allocation of Residential Expenses &amp; Profits</u>	<u>Allocation of Shared Expenses &amp; Profits</u>
<b>Total</b>		<b>100%</b>	<b>100.00%</b>

**EXHIBIT E**

Bylaws of PDX Commons Condominium Owners' Association