

DECLARATION OF UNIT OWNERSHIP
OF PORT WARREN MOORAGE

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WHEREAS, the undersigned owner desires to submit the property described in this Declaration, together with all improvements now existing or hereafter to be constructed thereon, to the provisions, restrictions and limitations of the Oregon Unit Ownership Law, ORS 91.505 through ORS 91.675;

NOW, THEREFORE, it is declared as follows:

Section 1. Definitions.

As used herein, the term

1. "Association of Unit Owners" means all the unit owners acting as a group in accordance with this Declaration and the Bylaws of the Association of Unit Owners.
2. "Common Expenses" means expenses of administration, maintenance, repair or replacement of the general common elements, together with such expenses agreed upon as common by the Association of Unit Owners in the manner provided in the Bylaws.
3. "Manager" means the person or firm hired by the Board of Directors of the Association of Unit Owners to be in charge of the administration of and to manage the property.
4. "Property" means the leasehold interest in the land, improvements and structures thereon and all easements, rights and appurtenances belonging thereto which are hereby submitted to the provisions of the Oregon Unit Ownership Law.
5. "Lease" means the agreements with the State of Oregon signed and executed on February 1, 1978, recorded with Clatsop County on February 8, 1978 in Book 470, page 330A, for the use of submerged lands under the moorage facility.

Section 2. Name of the Property.

The property subject to this Declaration of Unit Ownership shall be known by the name Port Warren Moorage.

Section 3. Description of the Property.

This Declaration submit. to the provisions, restrictions and limitations of the Oregon Unit Ownership Law a leasehold interest in the land described on Exhibit "A" attached hereto, together with the units hereinafter described and all other improvements now existing or to be constructed on such land.

Section 4. General Description of Units & Statement of Use.

A. There shall be 55 units which unit designation, location and approximate area are shown on a diagram attached hereto marked Exhibit "B". The units are boat moorage slips situated within wharves with styrofoam floats and wood planking decking. The units include only the space for the moorage of a boat. No decking, floats, piling or other improvements are included in the units.

B. The moorage units are being designed, built and sold by the developer as permanent moorage for recreational and/or such other boats as owners may wish to have berthing for.

Section 5. Common Elements.

A. The general common elements shall consist of a leasehold interest in the above-described land; all foundations, piling, decking, floats, lights, utility lines and all other improvements on or above the above-described land and within the easement appurtenant to such land except for the limited common elements described in subsection B.

B. The limited common elements shall consist of cleats, bollards and similar mooring devices which may be installed by

owners on docks adjacent to their units and which shall be appurtenant to the units which they serve. Location of all such cleats, bollards and similar mooring devices shall be subject to approval of the Board of Directors of the Association which approval shall not be unreasonably withheld.

Section 6. Percentage of Interest in Common Elements.

Each unit owner shall have an undivided interest in the common elements as follows.

| <u>Unit Number</u> | <u>Percentage Interest</u> |
|--------------------|----------------------------|
| 1 through 10 | 0.81% |
| Number 11 | 0.78% |
| 13 through 16 | 1.03% |
| 17 through 20 | 1.25% |
| 21 through 28 | 1.46% |
| 29 and 30 | 1.41% |
| 33 through 36 | 2.15% |
| 37 through 44 | 2.13% |
| 45 and 46 | 2.21% |
| 49, 51, 53, & 55 | 2.85% |
| 50, 52, 54, & 56 | 3.40% |
| 57 and 59 | 2.84% |
| 58 and 60 | 3.38% |

Such undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

The common elements shall remain undivided and no unit owner shall bring any action for partition or division of any part thereof while the property is subject to this Declaration. Any covenant to the contrary is void.

Section 7. Ownership.

The leasehold interest in each individual unit, together with its undivided interest in the common elements, shall be held by the unit owner and may be individually transferred and encumbered and be the subject of possession, sale or other disposition as though it were solely and entirely independent of the other units, and the individual titles and the interests shall be recordable. Each unit owner shall be entitled to the exclusive ownership, possession and enjoyment of his unit.

Section 8. Taxation of Units.

Each unit, with its percentage of undivided interest in the common elements, shall be considered a parcel of real property subject to separate assessment and taxation by any taxing unit in like manner as other parcels of real property as required by ORS 91.640. The common elements shall not be considered a parcel for purposes of taxation.

Section 9. Voting Rights.

Each unit owner shall have a vote equal to his percentage of interest in the general common elements.

Section 10. Maintenance and Improvement of Units.

A unit owner shall make no repair or alteration or perform any other work on his unit which would jeopardize the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament unless the consent of all the other units owners affected is first obtained.

Section 11. Use and Maintenance of Common Elements.

Each unit owner may use the common elements in accordance with the purposes for which they are intended but may not hinder or encroach upon the lawful rights of the other unit owners.

The necessary work to maintain, repair or replace the common elements and additions or improvements to the common elements shall be the responsibility of the Board of Directors and shall be carried out as provided in the Bylaws. If the mortgagee of any unit owner determines that the Board of Directors are not providing an adequate maintenance, repair and replacement program for the project, such mortgagee, at its option, may deliver a written notice to the Board of Directors by delivering the same to the registered agent, required pursuant to ORS 91.635 setting forth

the particular defects which it believes exist in the maintenance, repair and replacement program. If the specified defects be not corrected within 90 days subsequent to the receipt of such notice, then, and in that event, the mortgagee upon written notice to the registered agent that it is exercising its proxy rights thereafter shall have the right to attend at succeeding annual or special meetings of the Association of Unit Owners and to cast a vote for each unit on which it holds a mortgage lien on all business coming before such meeting, which said proxy right shall continue until the defects listed on the aforementioned notice are corrected.

The Association of Unit Owners shall have the right, to be exercised by the Board of Directors, or the manager employed by the Board of Directors, to have access to each unit as may be necessary for the maintenance, repair or replacement of the common elements.

Section 12. Management of Affairs of Association of Unit Owners.

The affairs of the Association of Unit Owners shall be managed by a board of directors and by officers consisting of a Chairman, a Secretary and a Treasurer. The Board of Directors shall adopt administrative rules and regulations governing the details of the operation, maintenance and use of the property and to prevent unreasonable interference with the use of the respective units and of the common elements by the several unit owners. The Board of Directors shall retain an individual or firm to act as manager of the property.

Section 13. Adoption of Bylaws.

The undersigned lessee of the property, subject to this Declaration, has adopted, pursuant to the requirements of the Oregon Unit Ownership Law, the Bylaws attached hereto, marked Exhibit "C", to govern the administration of the property.

The Bylaws may be amended from time to time as provided therein.

Section 14. Compliance with Bylaws and Other Restrictions.

Each unit owner shall comply with the Bylaws and with the administrative rules and regulations adopted pursuant thereto and with the covenants, conditions and restrictions in this Declaration or in the deed to his unit. Failure to comply therewith shall be grounds for an action maintainable by the Association of Unit Owners or by an aggrieved unit owner, in addition to other sanctions which may be provided by the Bylaws or by the administrative rules and regulations.

Section 15. Person to Receive Service of Process in Certain Cases.

Service of process in any action relating to the common elements or to more than one unit in cases provided in subsection (1) of ORS 91.635 shall be made upon William G. Weller, Route 4, Box 374, Astoria, Oregon 97103.

Section 16. Apportionment of Receipts and Expenses.

The receipts of the property shall be distributed among and the common expenses shall be charged to the unit owners according to their respective percentages of interest in the general common elements. Receipts by unit owners for rental of their unit shall not constitute common receipts. No unit owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

Section 17. Liability Upon Conveyance for Common Expenses.

In a voluntary conveyance of a unit the grantee shall be jointly and severally liable with the grantor for all unpaid charges against the grantor for his proportionate share of the

common expenses up to the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Upon request of the prospective purchaser, the manager shall make and deliver a statement of the unpaid charges against the grantor, and the grantee in that case shall not be liable for, nor shall the unit when conveyed be subject to, a lien filed thereafter for any unpaid charges against the grantor in excess of the amount therein set forth.

Section 18. Lien of Association Against Unit.

Whenever the Association of Unit Owners acting through its manager furnishes to a unit any services, labor or material lawfully chargeable as common expenses, the Association of Unit Owners, upon complying with this section, shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for the reasonable value of such common expenses allocable to such unit, and the lien shall be prior to all other liens or encumbrances upon the unit, except:

- (a) tax and assessment liens, and
- (b) a first mortgage or trust deed of record

Each assessment shall be a separate and personal debt and obligation of the unit owner against whom the same is assessed at the time the assessment is made and shall be collectible as such. The Board of Directors shall cause to be filed a notice of lien claim pursuant to ORS 91.580 with respect to any assessment which has not been paid within 60 days from the mailing of the notice of assessment. The notice of lien claim shall be filed within 10 days following the expiration of such 60-day period. The Association shall be entitled to recover, in any suit to foreclose or action to recover a money judgment for unpaid common expenses, interest on the delinquent assessment at the rate of 10 percent per annum and

costs, including reasonable attorney's fees in such suit or action, or any appeal therefrom.

In case of foreclosure, the unit owner shall be required to pay a reasonable rental for the unit; and the plaintiff in the foreclosure suit shall be entitled to the appointment of a receiver to collect the rental, without regard to the value of the security. An action to recover a money judgment, together with reasonable attorney's fees for unpaid common expenses, may be maintained without foreclosing or waiving the lien securing the claim for common proceeds.

Section 19. Power of Property Manager to Bid at Foreclosure Sale.

In any suit to foreclose a lien of the Association against a unit, the Board of Directors or the manager, acting on behalf of the unit owners, shall have power to bid on the unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. The Board of Directors or the manager, acting on behalf of the unit owners, is prohibited from bidding on or otherwise acquiring a unit in any other foreclosure suit.

Section 20. Damage or Destruction.

The Board of Directors shall obtain and keep in effect at all times:

1. Public liability insurance in a form and amount to adequately protect the Association and its members from loss for injury or accident occurring in or on the common areas of the condominium.
2. Fire and extended coverage insurance in one company for the full insurable replacement value of all units and the common elements and such other insurance as the Board of Directors may direct. Such policy shall name as insured the unit owners and their mortgagees as their respective interests may appear; and

shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each unit. Such policy shall be written by a company licensed to do business in the State of Oregon, shall grant to the Board of Directors exclusive rights of adjustment, shall provide that the proceeds of the insurance shall be paid solely to the Board of Directors and shall waive all subrogation against the Board of Directors, the manager, the unit owners and their respective servants, agents and guests. The proceeds from the aforementioned insurance shall be disbursed at the direction of the Board of Directors in accordance with Section 21 hereof.

The insurance obtained by the Board of Directors as required by this section shall be a common expense.

Section 21. Repair and Reconstruction.

If a portion of the common elements within the property is damaged or destroyed by causes covered by insurance, the Board of Directors shall immediately proceed to rebuild and restore the common elements so damaged or destroyed so that the same will be returned to substantially the same condition in which such common elements existed prior to such damage or destruction, with each unit and the general and limited common elements having substantially the same vertical and horizontal boundaries as before. If the insurance proceeds be insufficient to repair and reconstruct, the unit owners shall be liable for assessment for any deficiency as a common expense. However, if all the common elements within the property are destroyed or substantially destroyed by causes covered by insurance and 90 percent of the units by respective owners vote at an Association meeting not to repair or rebuild, but to take the insurance proceeds in cash, such insurance proceeds shall be applied by the Board of Directors first to satisfy the interests of the mortgagees of the various units; second to the

costs of removing the destroyed structures, and the remaining proceeds divided among the unit owners according to their proportionate share of the common elements as to their undivided interests set forth in Section 6; provided, however, the amount paid to satisfy mortgages or liens on an individual unit shall be deducted from the unit owner's share of such insurance proceeds.

Section 22. Easements for Encroachment.

If any part of the common elements now or hereafter encroaches upon any unit or if any unit now or hereafter encroaches upon any other unit or upon any portion of the common elements, an easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. In the event all or a portion of the common elements shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the common elements upon any unit, any unit upon any other unit, or upon any portion of the common elements due to the construction shall be permitted; and easements for such encroachments and the maintenance thereof shall exist.

Section 23. Mortgage Protection.

The liens created hereunder upon any unit shall be subject to and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage or deed of trust (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Section 18 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as unit owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

No amendment to this section shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

Section 24. Limits on Use of Units of Common Elements.

Nothing shall be done or kept in any unit or in the common area which will increase the rate of insurance on the project without the prior written consent of the Board of Directors. No owner shall permit anything to be done or kept in his unit which will result in the cancellation of the insurance on any part of the property. The Board of Directors shall have the power to adopt rules and regulations for use of the common area and there shall be no violation of such rules.

Section 25. Amendment.

The percentage of undivided interest of each unit owner in the common elements, as expressed in this Declaration, shall not be altered unless all unit owners having an interest in the particular common element agree thereto and record an amendment to the declaration setting forth the altered percentage of each unit owner having an interest.

Except as hereinabove provided, this Declaration of Unit Ownership may be amended consistent with the provisions of the Oregon Unit Ownership Law by the affirmative vote of the unit owners owning 75 percent of the general common elements at the annual meeting of the Association of Unit Owners or at any special meeting called for such purpose, such amendment to be effective upon the recordation of an instrument executed and acknowledged by such unit owners or by the authorized officers of the Association with the Clatsop County Recording Officer, setting forth such amendment in full.

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Unit Ownership this 16th day of April, 1976.

PORT WARREN DEVELOPMENT CORPORATION

By Keith E. Cook
Vice President

By Judith A. Bates
Secretary

The foregoing Declaration of Unit Ownership is approved pursuant to ORS 91.535 this ____ day of _____, 1976.

Clatsop County Assessor

Clatsop County Tax Collector

STATE OF OREGON)
County of Washington) ss.

On this 21st day of April, 1976, before me, a notary public in and for said county and state, personally appeared the within named Keith E. Cook and Judith Bates, to me known, who, being first duly sworn, did say that he, Keith E. Cook is the Vice-President, and she is the Secretary of PORT WARREN DEVELOPMENT CORPORATION, the corporation hereinbefore named, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and said Keith E. Cook and Judith Bates acknowledged the execution of said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the date first hereinabove written.



[Signature]
Notary Public for Oregon
My commission expires: Sept. 10, 1977