

## DECLARATION OF CONDOMINIUM

~~Changes: 121~~

DECLARATION made this 14<sup>th</sup> day of February, 1980 by Devon Associates, Inc a Delaware corporation, hereinafter referred to as the Declarant. ~~This Declaration revised this nn day of January, 2020 by the Council of the Devon.~~

WHEREIN, the Declarant does, pursuant to the Unit Property Act, hereby declare on behalf of itself, its grantees, heirs, successors, and assigns, and all persons having or seeking to acquire any interest of any nature whatsoever in said Condominium Property, as follows:

### ARTICLE 1: Submission of Property:

The Declarant hereby submits the Property, described in Schedule A, and owned by the Declarant in fee simple absolute, to the provisions of the Unit Property Act, in order to create a plan of Condominium ownership in such Property.

### ARTICLE 2: Definitions:

A. Building: Means the high rise apartment building intended for residential and commercial use, erected on the land, as set forth in Schedule A and as shown on the Declaration Plan as the same may from time to time be amended.

B. Code of Regulations: Means such governing regulations as are adopted pursuant to the Unit Property Act for the regulation and management of the Property including such amendments thereof as may be adopted from time to time.

C. Common Elements: Means all the parts of the Property other than the Units as more fully set forth in Article 9 of this Declaration and Schedule A.

D. Common Expenses: Means:

- (1) All sums lawfully assessed against the Unit Owners by the Council or agreed upon as Common Expenses by the Unit Owners pursuant to the Declaration and Code of Regulations;
- (2) Expenses of administration, operation, maintenance, repair, and replacement of the Common Elements and common recreational facilities, including repair and replacement reserves as may be established;
- (3) Expenses declared Common Expenses by the provisions of the Unit Property Act or by this Declaration or the Code of Regulations.
- (4) Premiums for insurance policies required to be purchased by the Council pursuant to this Declaration or the Code of Regulations;
- (5) All valid charges against the Condominium as a whole.

E. Common Surplus: Means the excess of all receipts of the Council, including but not limited to Assessments, over the amount of Common Expenses.

F. Condominium Documents: Means this Declaration as amended from time to time, the schedules attached hereto, the Declaration Plan, the Code of Regulations, rules and regulations adopted by the Council, agreements for the sale of a Unit, Unit deeds and any other document required to be prepared and/or executed by or on behalf of the Declarant.

G. Council: Means the board of individuals who shall manage the business, operation and affairs of the Property on behalf of the Owners in accordance with this Declaration and the Code of Regulations.

H. Declaration Plan: Means the survey plan of the Property being contemporaneously recorded with this Declaration and the Code of Regulations in the Recorder of Deeds Office in and for New Castle County, Delaware, including amendments which may be made from time to time as permitted by the Unit Property Act and this Declaration. In the event of any one or more amendments to the Declaration Plan, thereafter, all references to the Declaration Plan (unless

otherwise specifically designated) shall mean the Declaration Plan as amended to the date of such reference.

**I. Land:** Means the real property specifically described in Schedule A.

**J. Majority of Unit Owners:** Means the Owners of more than 50% of the aggregate undivided proportionate interest in the Common Elements. Any specified percentage of the Owners means the Owners of such percentage of undivided proportionate interests in the Common Elements in the aggregate.

**K. Property:** Means the Land and the Building and all other improvements and structures thereon owned in fee simple and all easements, rights, and appurtenances belonging to the Land that have been or are intended to be submitted to the provisions of the Unit Property Act, and all articles of personal property intended for use in connection therewith.

**L. Proportionate Interest:** Means the proportionate undivided interest in the Common Elements expressed as a percentage and as assigned in this Declaration to each Unit and owned by each respective Unit Owner, as tenants in common, not subject to partition.

**M. Rules and Regulations:** Means those Rules and Regulations adopted from time to time by the Council that are deemed necessary for the enjoyment of this Condominium. The Rules and Regulations may not conflict with the Unit Property Act, this Declaration, and the Code of Regulations.

**N. Unit:** Means a part of the Property designed or intended for independent residential use that has a direct exit to a public street or way or to a Common Element or Elements leading to public street or way or to an easement or right of way leading to a public street or way and including the Proportionate interest which is assigned thereto in this Declaration.

**O. Unit Owner:** Means the person or persons owning a Unit, whether a natural individual, corporation, partnership, association, trustee or other legal entity. Should the Council hold title to a Unit pursuant to this Declaration or the Code of Regulations, the Council shall be deemed to be the Unit Owner subject to any other provision of this Declaration or the Code relating to the ownership of Units by the Council.

**P. Unit Property Act:** Means Title 25, Chapter 22 of the Delaware Code.

**ARTICLE 3: Description of Land:**

The Land hereby submitted to the Unit Property (Condominium) form of ownership and use pursuant to this declaration is set forth in Schedule A.

**ARTICLE 4: Building and Other Improvements:**

A description of the building and other improvements on the land described above are set forth in Schedule A.

**ARTICLE 5: Name of Property:**

The name by which the Property henceforth shall be known is The Devon.

**ARTICLE 6: Components of Property:**

**A. The Declarant,** in order to accomplish the plan of Unit Property (Condominium) ownership intended for the Property, hereby agrees and declares that the Declarant hereby divides the Property into separate component parcels consisting of Units and Common Elements, as said components are defined and described in this Declaration and as they are shown on the Declaration Plan prepared by Vandemark & Lynch, Inc., dated February 12, 1980, and recorded contemporaneously with this Declaration in the office for the recording of deeds in and for New Castle County, Delaware, in Microfilm number 5466.

**B. Every Unit,** together with its Proportionate Interest, shall for all purposes constitute a separate parcel of real property, and the Unit Owner shall be entitled to the exclusive ownership and possession of his Unit subject only to the covenants, restrictions, easements, Code of Regulations, rules, regulations, resolutions, and decisions adopted pursuant thereto as may be contained in the Condominium Documents or as may from time to time be adopted in accordance with this Declaration and the Code of Regulations.

**ARTICLE 7: Unit Designations, Types, and Proportionate Interest:**

**A. The Designation of Each Unit**, the location of the Unit within the building, its dimensions, its approximate area, its number of rooms, the Common Elements to which the Unit has immediate access and other data concerning the proper identification of the Unit are set forth in the Declaration Plan.

**B. Each Unit** is bounded as to horizontal and vertical boundaries by the interior surface of its perimeter walls, ceilings, and floors as shown on the Declaration Plan, subject to such encroachments as are contained in the Buildings, whether the encroachments now exist or may be caused or created later by construction, settlement or movement of the Buildings, or by permissible repairs, construction or alteration.

**C. The Types** of Units and the square feet of floor area of each Unit type are set forth in Schedule B.

**ARTICLE 8: Unit Description:**

**A. Each Unit Consists of:**

- (1) The volumes or cubicles of space within its title lines as shown on the Declaration Plan enclosed by and measured horizontally from the unfinished inner back surfaces of the perimeter walls and walls dividing the Unit, and vertically from the unfinished inner surfaces of the ceiling and floor of the Unit: (see drawing 4, recorded on Microfilm #5466);
- (2) The front entrance door and any other entrance door of a Unit, the door to the patio or balcony of a Unit, all windows of a Unit, all interior partition walls, floors, and other partitions located within a Unit (including the space occupied by such walls, floors, partitions, and frames of any windows, doors or other openings in such walls, or partitions) excepting such part of the interior walls, floors, and partitions located within a Unit which may be load bearing and comprise part of the Common Elements;
- (3) The decorated inner surfaces of all said walls, ceilings, and concrete slabs, consisting of paint, plaster, plasterboard, wallpaper, carpeting, floor tiles, and other floor coverings, moldings and baseboards, railings, and all other finishing materials of a similar nature, affixed or installed;
- (4) All sinks, cabinets, water closets, bathtubs and showers, shelves, dishwashers, garbage disposal units, hoods, ranges and ovens, refrigerators, light fixtures and other appliances, if any, located in those Units situated on the second through sixteenth floor of the Building;
- (5) All pipes, wires, ducts, cables, conduits, and other electrical, plumbing, lighting, telephone, television, sewer, water, and other systems and equipment or installations serving such Unit commencing at the point of disconnection from the structural body of the Building as from utility lines, pipes or systems serving the Unit;
- (6) The Proportionate Interest in the Common Elements assigned to the Unit in this Declaration. Such interest is expressed as a percentage and the sum of such percentages equals 100%.

**B. Each Residential Unit** (those Units located on the second through sixteenth floor of the Building) shall have a refrigerator, stove, disposal, dishwasher, and all of which are a part of such Unit. In addition, each Unit shall have an exclusive right for the use of a storage locker which shall be assigned individually and bear a unique identifying number ~~the number of the Unit~~. Each Unit with an adjacent balcony or patio shall have an exclusive easement for the use of said adjacent balcony or the patio.

**C. Particular Units** may have, as an interest appurtenant to such Unit, the exclusive right to use for private passenger motor vehicle parking purposes a parking space, located in the underground garage portion of the Building, as identified on the Declaration Plan. This exclusive right may be assigned pursuant to the terms of Article 28 of this Declaration.

D. Excluded from each Unit shall be:

- (1) All pipes, ducts, wires, cables, conduits or other installations or systems serving more than one Unit.
- (2) All other apparatus and installations existing for common use which may be wholly or partially within a Unit but which in whole or in part serve one or more other Units or the Common Elements.
- (3) Structural parts and supports of any Unit

E. Nothing contained in this Article shall cause any Unit to be extended beyond the title lines of such Unit as shown on the Declaration Plan or any amendment thereto.

ARTICLE 9: Description of Common Elements and Interest:

A. The Common Elements consist of the general Common Elements and the limited Common Elements.

- (1) The general Common Elements consist of the entire Property (including all parts of the Building) other than the Units and the limited Common Elements, and include without limitation the following:
  - a) The Land;
  - b) The foundations, structural parts and supports, floors and ceilings (including the respective parts thereof expressly included within the units) main or structural walls, roofs, and roof framing of the Building and the Units and the spaces enclosed thereby, basements, halls, corridors, lobbies, stairways, stair towers constituting entrances to and exits from the Building, and the entrances and exits of the Building;
  - c) The yards, parking areas, driveways, walks, stairs and the other improvements as described in Schedule A;
  - d) Portions of the Land and Building used exclusively for the management, operation or maintenance of the Common Elements;
  - e) Except as and to the extent that all or parts of some systems are owned by the utilities supplying the respective services involved, all installations of and systems for central services and utilities serving more than one unit, which are located in or about the Building, including but not limited to, systems for electricity, plumbing, light, water, gas, community communications equipment, telephone equipments, sewer and drainage, and all other apparatus and installations existing for common use, including all pipes, ducts, wires, cables, and conduits used in connection therewith, except as and to the extent the same are located within and serve only a single Unit and all apparatus and installations existing for common use;
  - f) All other elements of the Building, other than the Units and the limited Common Elements, necessary or convenient to its existence, management, operation, maintenance, and safety or normally in common use;
  - g) Elevators, motors, pumps, tanks, boilers, mailboxes, security systems and any other equipment used to provide some service available for use by more than one Unit Owner;
  - h) Easements for access, maintenance, repair, reconstruction or replacement of the foregoing structural members, equipment, installations and appurtenances, and for all other services necessary or convenient to the existence, maintenance, safety and use of the Property;
  - i) Any Unit or interest therein standing in the Council's name for and during the period of time during which it is held by the Council;
  - j) All recreation areas (including the swimming pool and cabanas), laundry room, the Condominium management office; and
  - k) All air space above the surface of the land, excluding the air space as is enclosed within the title lines of each Unit as shown on the Declaration Plan.
- (2) The limited Common Elements consist of those Common Elements which are set forth in the Declaration Plan as reserved for the use of specific Units, to the exclusion of all other

Units, including but not limited to, balconies, terraces, patios, storage lockers, and the underground parking garage.

**B. The Proportionate Interest** in the Common Elements assigned to each type of unit, expressed in terms of percentage per Unit type is set forth in Schedule B.

**C. The Proportionate Interest** of a unit in the Common Elements and the easements and rights appurtenant to a Unit shall be inseparable from each Unit, and any conveyance, lease, devise or other disposition or mortgage or other encumbrance of any Unit shall extend to and include the Proportionate Interest in the Common Elements, whether or not expressly referred to in the instrument effecting the same. The Proportionate Interests of the Units in the Common Elements and the fee titles to the respective Units conveyed therewith, shall not be separately conveyed, transferred, alienated or encumbered and each of said Proportionate Interests shall be deemed to be conveyed, transferred, alienated or encumbered with its respective Unit notwithstanding the description in the instrument of conveyance, transfer, alienation or encumbrance may refer only to the fee title to the Unit and such interest is not referred to therein; except as otherwise herein permitted below.

**D. The Maintenance, Repair and Replacement** of the Common Elements and Limited Common Elements and the making of any additions or improvements thereto shall be carried out only as provided in this Declaration and the Code of Regulations.

**ARTICLE 10: Reallocation of Proportionate Interest:** The Proportionate Interest assigned to each type of Unit as set forth in Schedule B may be reduced, altered or changed by the recording of an amendment to this Declaration duly executed by all Unit Owners affected thereby, their agents or attorneys. Any alteration or change in the proportionate voting rights of any Unit Owner shall be made only in accordance with the provisions of the Code of Regulations.

**ARTICLE 11: Restrictions on Use:** Those Units located on the second through sixteenth floor of the Building shall be used for residential purposes only. Those Units located on the ground floor of the Building may be used for any purpose permitted under the City of Wilmington Zoning Code for R-5-B zoning districts as of the date of the filing of this Declaration. Every Unit Owner by the acceptance of the deed, and their heirs, successors and assigns, covenant that they will faithfully observe all of the terms, covenants and conditions wherever imposed in the Condominium Documents. Each Unit Owner, the Unit Owner's heirs, successors and assigns, further covenant and agree:

**A. The Unit Owner** will not use, cause or permit the Unit to be used other than as provided in the Condominium Documents, nor will the Unit Owner use, cause or permit the Unit to be subdivided, changed or altered without first having obtained the approval of the Council.

**B. Subject to The Exception** provided in Section C hereof, all Units, except for those Units located on the ground floor of the Building which may be used as provided above, shall be used and occupied as residential units and for no other purpose. No Unit shall be occupied by more persons than is permitted by the applicable Housing Codes.

**C. Anything Herein to the Contrary Notwithstanding,** at any time and from time to time, the Council may designate a Unit to be used for office purposes or to house a resident manager. In such event, the said Unit may be used by an independent manager as his or its office, and may be used by a resident maintenance person as living quarters. Said office may be used by such party to conduct his or its regular business therefrom so long as all necessary governmental approvals have been secured for the conduct of said business at such location, so long as such regular business causes no nuisance on the Property and, in the case of an independent manager, so long as the conduct of such other business does not interfere with his duties as the independent manager of this Condominium.

**D. No Unit Owner** may at any time bring or maintain any action at law or equity, for partitioning of any Unit; nor bring or maintain any proceeding to subdivide any Unit pursuant to any Subdivision and Land Development Laws applicable thereto.

- E. No Limited Common Element that is a balcony, patio, terrace, or other space directly accessible only by or through a given Unit, or other portion of the Common Elements that have been specifically allocated to any Unit shall be used or entered upon other than with the consent of the Unit Owner of such Unit.
- F. No Common Element area intended for parking purposes shall be used for parking any form of transportation prohibited by the Council. This prohibition is intended to permit the Council to restrict the parking of mobile homes, mobile campers, boats, boat trailers, taxi cabs, and other special purpose vehicles that would detract from the residential building appearance of the Property.
- G. The Unit Owner Will Not Use, permit or allow the Unit or any part thereof to be used for an offensive or unlawful purpose nor will the Unit Owner permit or allow any nuisance within the Unit nor will the Unit Owner use, permit or allow the Unit to be used in a manner which will be a source of annoyance or which is in any way interferes with the peaceful possession, enjoyment and proper use of the Property by the other Unit Owners.
- H. The Unit Owner Will Not Obstruct, post or decorate any Common Element or use any Common Element other than for the purposes for which such Common Element is intended, unless the written authorization of the Council has first been obtained.
- I. If Two or More Adjacent Units are owned by the same Unit Owner, the Unit Owner may, with the prior written consent of the Council, move or remove the common wall or walls or other divisions between the Units provided, however, that such action shall be in conformity with all applicable building codes and governmental regulations and shall not endanger the soundness or safety of the Property, including the Units. Furthermore, no such action shall encroach upon any space belonging to another Unit not owned by the same Owner, or to any Common Element, nor shall it sever, move, or otherwise interfere with pipes, ducts, cables, wires, conduits, public utilities lines or other such Common Elements serving Units owned by others. The Unit Owners shall be responsible for accomplishing and paying the costs of any amendments to the Declaration Plan and this Declaration as may be required by such action.

**ARTICLE 12: Common Elements and Common Interest:**

- A. Each Unit has appurtenant to it a Proportionate Interest in the Common Elements as set forth in Article 8-A in this Declaration and Schedule B.
- B. Except as provided in Section 2239 of the Unit Property Act, the Common Elements shall not be divided nor partitioned. Nothing herein contained shall be deemed to prevent ownership of a Unit by the entireties, jointly, or in common.
- C. Each Unit Owner shall use the Common Elements according to the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other Unit Owners.
- D. The Council Shall, on behalf of the Unit Owners, have the irrevocable right, to be exercised by the Council or its designee, of access to each Unit for the purpose of inspecting and making repairs, replacements or improvements to the Common Elements and to the Unit itself or any other Unit where the responsibility therefore is upon the Council, contained therein or elsewhere in the Building or to prevent damage to the Common Elements or other Units, or to abate the violation of any laws, orders, rules or regulations of Governmental authorities having jurisdiction, or to correct any condition which is a violation of the provisions of any mortgage covering another Unit. The costs of removing, correcting or abating any such violations and of making any such repairs, to any such Unit, shall be paid by the Unit Owner thereof to the Council on demand. Requests for access shall be made in advance and shall be during reasonable hours except in cases of emergency when such rights of access shall be immediate, whether or not the Unit Owner is present.
- E. If Any Question Arises, the Council shall determine the purpose for which a Common Element is intended to be used. The said Council shall have the right to promulgate rules and regulations limiting the use of the Common Elements to Unit Owners, their families, guests, invitees, and employees as well as to provide for the exclusive use by a Unit Owner and his guests for special

occasions of any facility. Such use may be conditioned, among other things, on the payment by the Unit Owner seeking such use, of such Assessment as may be established by the Council for the purpose of defraying the costs thereof.

F. The Maintenance, Repair, Replacement, Management, Operation and Use of the Common Elements shall be the responsibility of the Council, but nothing contained herein shall be construed to preclude the Council from delegating these duties to a manager or agent or to other persons, firms or other associations.

G. The Cleaning and Sanitation of the Limited Common Elements appurtenant to a Unit and all expenses incurred in connection therewith shall be the responsibility of said Unit's Owner.

H. The Expenses Which Have Been Incurred or shall be incurred for the maintenance, repair, replacement, management, operation and use of the Common Elements shall be collected from the Unit Owners and assessed as Common Expenses by the Council.

I. *Whenever, in the Sole Opinion of the Council the Common Elements shall require an addition, alteration, or improvement costing in excess of Fifty Thousand Dollars (\$50,000), and where the primary purpose is to create a new Common Element, such expense must be approved by a majority of the Unit Owners; Any such expense costing Fifty Thousand Dollars (\$50,000) or less, or any expense where the primary purpose of the addition, alteration, or improvement is to maintain, repair, or replace the existing Common Elements, may be made by the Council without the approval of Unit Owners. (Approved by Owner Vote: 11/14/12 and Recorded Need citation*

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J. No Unit Owner Shall Do Any Work which affects or alters any of the Common Elements or impairs any easement or hereditament therein without the prior express written approval of the Council.

K. During Such Time as the Property remains subject to this Declaration and the Unit Property Act, and except as expressly provided to the contrary in this Paragraph K, the Common Elements shall not be abandoned, sold, encumbered, or transferred, nor shall any lien of any nature arise or be created against the Common Elements without the unanimous consent of all the Unit Owners, except such liens as may arise or be created against the several Units and their respective Common Interests under the Unit Property Act, this Declaration, or the Code of Regulations. Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, shall be subject to the provisions of this Declaration and the Unit Property Act, and every such agreement shall so confirm.

(1) Anything contained in this Paragraph K or elsewhere in this Declaration to the contrary notwithstanding, nothing shall impair the power of a majority of those Unit Owners present (in person or by absentee ballot) and voting at a duly noticed meeting of the Association of Owners at which a quorum was achieved, to approve, for execution and any necessary recordation by Council (i) documents affecting the Common Elements, which documents are required to keep the condominium in conformity with requirements of a statute, ordinance, regulation, executive decree, or court order, or reasonable and necessary to effectuate any settlement or judgment in an eminent domain proceeding, or (ii) a lease of a portion of the Common Elements, or (iii) an easement encumbering a portion of the Common Elements.

L. All Common Expenses Received or to be received by the Council and the right to receive such funds shall constitute trust funds for the purpose of paying the cost of labor and materials furnished to the Common Elements at the express request or with the consent of the manager, managing agent, or Council and the same shall be expended first for such purpose before expending any part of the same for any other purpose. Nothing herein contained shall require the Council to keep such charges in a separate bank account and no violation of said trust shall arise by reason of the co-mingling of the funds held by the Council in one bank account.

M. Each Unit Owner Shall have an easement in common with all other Unit Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements serving his Unit, regardless of the location of such Common Elements. Each Unit shall be subject to an

easement in favor of all other Unit Owners to use the pipes, ducts, cables, wires, conduits, public utility lines, and other Common Elements serving such other Units and located in such Unit. Each Unit shall have an easement, to the extent necessary, for structural support in favor of every other Unit. The foregoing easements shall run with the Property and inure to the benefit of and be binding upon the Council and each Unit Owner, mortgagee, lessee, occupant, or other person having any interest in any Unit or in the Common Elements at the time of reference. The easements herein provided shall terminate upon the effectiveness of any termination pursuant to Article 34 hereof.

**N. All Repairs and Replacements** shall be of comparable quality as in the original construction and installation.

**ARTICLE 13: Units – Their Maintenance and Repair:**

**A. No Unit Owner** shall do or cause to be done any work affecting his Unit which would jeopardize the soundness or safety of the Property, reduce the value thereof, or impair any easement or hereditament therein. The Unit Owner shall cause any work being performed on the Unit, which in the sole opinion of the Council violates this Section, to be stopped immediately and he shall refrain from recommencing or continuing the same without the consent in writing of the Council. He shall not repair, alter, replace, or move any of the Common Elements which are located within his Unit without the prior consent in writing of the Council. He shall not repair, alter, replace or perform work of any kind on the exterior of the Unit or Building, including patios, balconies, and entrance doors, or excavate an additional basement or cellar without in every such case first obtaining in writing the consent of the Council. He shall not alter or replace any walls except those non-bearing partition walls which are wholly within his Unit.

**B. It Shall Be the Responsibility** of the Council to maintain, repair or replace:

- (1) All portions of the Unit that contribute to the support of the Building, including main bearing walls, but excluding painting, wallpapering, decorating or other work on the interior surfaces of walls, ceilings, and floors with the Unit.
- (2) All portions of the Unit that constitute a part of the exterior of the Building.
- (3) All Common Elements within the Unit.
- (4) All incidental damage caused by work done by direction of the Council.
- (5) In the performance of any labor or in the furnishing of any material to a Unit, under the direction of the Council, no lien shall be established or give rise to the basis for filing a mechanic's lien against the Unit Owner except such work performed for emergency repair. Nothing herein contained shall prevent such mechanic's lien being filed against a Unit Owner who expressly consents and requests in writing that the work be done.

**C. It Shall Be the Responsibility** of the Unit Owner:

- (1) To maintain, repair or replace at his own expense all portions of the Unit which may cause injury or damage to the other Units or to the Common Elements except the portions of the Unit mentioned and described in Article 13-B hereof.
- (2) To paint, wallpaper, decorate, and maintain the interior surfaces of all walls, ceilings, floors, doors, door frames, windows, window frames, and vents within the Unit.
- (3) To perform his responsibilities in such a manner and at such reasonable hours so as not to unreasonably disturb other Unit Owners in the Building.
- (4) To refrain from repairing, altering, replacing, painting, or otherwise decorating or changing the appearance of any portion of the Common Elements without first obtaining the written consent of the Council and to refrain from repairing, altering, replacing, painting, decoration or changing the exterior of the Unit or any exterior appendages whether exclusively used by the Unit Owner or otherwise, without first obtaining the written consent of Council.
- (5) To maintain, repair, and replace all sinks, cabinets, water closets, bathtubs and showers, shelves, dishwashers, garbage disposal units, hoods, ranges and ovens, refrigerators, light



fixtures, and appliances installed for the sole and exclusive use of his Unit and all non-load bearing walls, floors and partitions and windows and doors in such Unit.

- (6) To pay the expenses incurred by the Council in making repairs or replacements of the Common Elements caused by his willful or negligent act or failure to act or that of his family, guests, invitees, employees, agents, lessees or licensees.
- (7) To pay any increase in insurance rates occasioned by use, misuse, occupancy or abandonment, of a Unit or its appurtenances. Nothing contained in this Declaration, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.
- (8) To maintain a minimum temperature of 50 degrees in the Unit and to repair or replace at his own expense any damage resulting from his failure to maintain the aforesaid minimum temperature.
- (9) To notify promptly the Council or its agent of all work that the Unit Owner intends to perform or repair of any kind, the responsibility for the remedying of which lies with the Council. Any consent by the Council to the performance of such work by the Unit Owner shall not constitute an assumption by the Council to pay therefor. Also, the failure of the Council to take action on the notice shall not be deemed a waiver by it of its rights and shall also not constitute a consent by the Council of an assumption by it to pay for any work performed by the Unit Owner. Any consent given by the Council may set forth the terms of such consent and the Unit Owner shall be required to abide thereby.

D. Nothing contained in this Article shall be construed so as to impose a personal liability upon any of the members of the Council for the maintenance, repair or replacement of any Unit or Common Element or give rise to a cause of action against them. The members of the Council and the Council as such shall not be liable for damages of any kind except for willful misconduct or bad faith.

E. In the Event of Damage to or destruction of one or more of the improvements comprising part of the Property, the damage shall be repaired and such improvement or improvements restored as required or permitted in this Declaration and the Code of Regulations, except that in the case of the substantially total destruction of the Building, the same need not be rebuilt and restored except as provided in this Declaration and Code of Regulations.

F. All Repairs and Replacements shall be of comparable quality as in the original construction and installation.

**ARTICLE 14: Council first Members and Duties:**

A. The Council Shall be a board of natural persons, all of whom shall be Unit Owners of the Devon. The Code of Regulations shall specify the number of members of the Council and their other qualifications subject to the provisions of Article 32 of this Declaration.

B. The Affairs of the Condominium shall be governed and controlled by the Council. The Council shall have charge of and be responsible for and is authorized to manage the affairs of the Condominium, the Common Elements and other assets held by it on behalf of the Unit Owners except as herein otherwise limited. It shall have all the powers, rights, duties, and obligations wherever set forth in this Declaration, the Code of Regulations or the Rules and Regulations of the Unit Owners. It shall adopt any measure and execute any action necessary to promote the interests of the Condominium. It shall affix charges, Assessments and fees, as well as the rents of property owned by the Council. It shall hold all of the foregoing funds or other assets of the Condominium and administer them as trustees for the benefit of the Unit Owners. It shall keep accurate records and audit and collect bills. It shall contract for all loans, mortgages, leases, and purchases or sales of Units in the Condominium acquired by it or its designee on behalf of all of the Unit Owners, where applicable. It shall approve or disapprove of sales of Unit as herein specified. It shall direct all expenditures, select, appoint, remove, and establish the salaries of employees and fix the amount of any bonds for officers, Council members, and employees. It shall license or lease any concessions and installation of vending machines. It shall maintain the

Common Elements and other portions of the Buildings as hereby specified paying for services and supervising repairs and alterations. It shall pass upon the recommendations of all committees and adopt rules and regulations as in its judgment may be necessary for the management, control, and orderly use of the Common Elements, and in general, it shall manage the Property as provided herein and in the Code of Regulations, but nothing herein shall prevent the Council from employing and delegating such powers as it deems advisable to professional management.

C. In Order to Limit the liability of the Unit Owners, and the members of the Council or its designee, any contract or other commitments made by the Council, or a designee in its behalf, shall contain the following statement: "The Council, its members, managing agent, manager of other designee, as the case may be, in executing this instrument, is acting only as agent for the Unit Owners, and that the members of the Council, its managing agent, manager, or other designee shall have no personal liability on any contract or commitment (except as Unit Owners), and that the liability of any Unit Owner on any such contract or commitment (except as Unit Owners), and that the liability of any Unit Owner on any such contract or commitment shall be limited to such proportionate share of the total liability as the Proportionate Interest of each Unit Owner bears to the aggregate Proportionate Interest of all Unit Owners." The Council and its members shall have no liability to the Unit Owners for error of judgment or otherwise, except for willful misconduct or bad faith. It is discretionary with the Council whether its members shall be bonded for this purpose.

D. The Council Shall Insure the Building against loss or damage by fire and such hazards as are required by the Code of Regulations, without prejudice to the right of each Unit Owner to insure his own Unit for his own benefit. The premiums for such insurance on the Building shall be deemed a Common Expense.

#### ARTICLE 15: Charges, Surplus, Assessments and Their Enforcement:

A. No Unit Owner May exempt himself from the liability with respect to the Common Expenses by waiver of the use of enjoyment of any of the Common Elements or by abandonment of his Unit or otherwise.

B. The Common Surplus of the Property shall be distributed among, and the Common Expenses shall be charged to, the Unit Owners according to each Unit Owner's Proportionate Interest as set forth in this Declaration and any amendments thereto.

C. All Sums Assessed against a Unit by resolution duly adopted by the Council for the share of Common Expenses chargeable to that Unit shall constitute the personal liability of the Owner of the Unit so assessed and shall, until fully paid, together with interest thereon as provided by law, constitute a charge against such Unit which shall be enforceable as provided in Section 2234 of the Unit Property Act.

D. Any Assessment Against a Unit may be enforced by the Council acting on behalf of the Unit Owners in an action at law; provided that each action, when filed shall refer to the Unit Property Act and to the Unit against which the Assessment is made and to the Unit Owner thereof. Any judgment against a Unit and the Unit Owner shall be enforceable in the same manner as is otherwise provided by law.

E. Any Assessment which may be levied against the Property as a whole before separate Assessments for each Unit are made, shall be paid by the Council and shall be included in the budget and paid by the Unit Owners as a Common Expense.

F. All Liens Against the Common Elements of any nature including taxes and special Assessments levied by any governmental authority may be paid by the Council and shall be assessed by it against the Unit or Units in accordance with their respective Proportionate Interest or to the Common Expenses account, whichever in the judgment of the Council is appropriate.

G. All Other Assessments, either for emergencies or otherwise, shall be made by the Council in accordance with the provisions of the Unit Property Act and the Condominium Documents and if the time of payment is not set forth therein, the same shall be determined by the Council.

H. Fuel for Heating and providing hot water to each Unit and the Common Elements, gas supplied to each Unit for cooking, the cost of air-conditioning each Unit and the Common Elements, electricity to each Unit and the Common Elements, water and sewer service charges to each Unit and the Common Elements and telephone service to the office or manager shall be paid as part of the Common Expenses.

ARTICLE 16: Unpaid Assessments at Time of Voluntary Sale of a Unit: Upon the voluntary sale or conveyance of a Unit the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments for Common Expenses which are a charge against the Unit as of the date of the sale or conveyance but such joint and several liability shall be without prejudice to the grantee's right to recover from the grantor the amount of any such unpaid Assessments which the grantee may pay and until any such Assessments are paid they shall continue to be a charge against the Unit which may be enforced in the manner set forth in Section 2234 of the Unit Property Act. Provided, however, that any first mortgagee who obtains a title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's unpaid dues or charges which accrue prior to the acquisition of title to such Unit by the mortgagee. Any person who shall have entered into a written agreement to purchase a Unit shall be entitled to obtain a written statement from the Treasurer setting forth the amount of unpaid Assessments charged against the Unit and its owners and if such statement does not reveal the full amount of the unpaid Assessments as of the date it is rendered neither the purchaser nor the Unit shall be liable for the payment of an amount in excess of the unpaid Assessments shown thereon. Any such excess which cannot be promptly collected from the former Unit Owner may be reassessed by the Council as a Common Expense to be collected from all of the Unit Owners including the purchaser, his heirs, personal representatives, successors and assigns.

ARTICLE 17: Unpaid Assessments At Time of Execution Sale Against a Unit: In the event that title to a Unit is transferred by sheriff's sale pursuant to execution upon any lien against the Unit, the Council may give notice in writing to the sheriff of any unpaid Assessments for Common Expenses which are a charge against the Unit but have not been reduced to lien pursuant to Section 2234 of the Unit Property Act and the sheriff shall pay the Assessments of which he has such notice out of any proceeds of the sale which remain in his hands for distribution after payment of all other claims which he is required by law to pay but prior to any distribution of the balance to the former Unit Owner against whom the execution issued. The purchaser at such sheriff's sale and the Unit involved shall not be liable for unpaid Assessments for Common Expenses which became due prior to the sheriff's sale of the Unit. Any such unpaid Assessments which cannot be promptly collected from the former Unit Owner may be reassessed by the Council as a Common Expense to be collected from all of the Unit Owners including such purchaser, his heirs, personal representatives, successors, and assigns. To protect its right to collect unpaid Assessments which are a charge against a Unit, the Council may, on behalf of the Unit Owners, purchase the Unit at sheriff's sake provided such action is authorized by the affirmative vote of a majority of members of Council and if it does so purchase, the Council shall thereafter have the power to hold, sell, convey, mortgage, or lease such Unit to any person whatsoever. Notwithstanding any foreclosure, tax sale, judicial, or other forced sale of a Unit, all applicable provisions of the Condominium Documents shall be binding upon any purchaser of such sale to the same extent as they would bind a voluntary grantee, except that such purchaser shall not be liable for unpaid Assessments chargeable to such Unit which became due prior to such sale except as otherwise provided in this Article.

ARTICLE 18: Taxation

A. Each Unit and Its Proportionate Interest in the Common Elements as determined by this Declaration and any amendments thereof, shall be assessed and taxed for all purposes as a separate parcel of real estate entirely independent of the Building or Property of which the Unit is a part. Neither the Building, the Property, nor any of the Common Elements, shall be assessed or taxed separately after this Declaration and the Declaration Plan are recorded nor shall the same be subject to Assessment or taxation except as the Units and their Proportionate Interest are

assessed and taxed pursuant to the provisions of the Unit Property Act. Each Unit Owner shall be solely responsible for the payment of all taxes, municipal claims and charges assessed against his Unit and its Proportionate Interest.

**B. In the Event** that any taxing authority having jurisdiction over the Property shall impose a real estate tax on the Property as a whole, responsibility for payment thereof shall be allocated as follows:

- (1) Payment of the total tax bill shall be the responsibility of the Owners of the Units, each such Unit Owner to pay that proportion of the tax that his Proportionate Interest in the Common Elements bears to the total Proportionate Interest of all Unit Owners in the Common Elements.
- (2) The tax, allocated in accordance with such determination, shall be chargeable and collectible as a Common Expense.
- (3) Any expense incurred by the Council pursuant to this Article shall be charged as a Common Expense of the Property.

**ARTICLE 19: Units Subject To Declaration, Code of Regulations and Rules:**

**A. All Present and Future Owners**, lessees, occupants, and mortgagees of the Units shall be subject to and shall comply with the restrictions, covenants, conditions, and provisions of the Act, this Declaration, the Declaration Plan, the Deeds to the Units, the Code of Regulations and the rules governing the details of the use and operation of the Property and the Common Elements, as such rules may be duly adopted or amended from time to time pursuant to the Code of Regulations.

**B. All Provisions of the Condominium Documents** shall be construed to be covenants running with the land and with every part thereof and interest therein, including but not limited to every Unit and the appurtenances thereto; and every Unit Owner, occupant, lessee, mortgagee, and claimant of any interest or estate in the Property, in any Unit or in any part thereof, and his heirs, executors, administrators, successors, and assigns shall be bound by all the provisions of the Condominium Documents.

**ARTICLE 20: Encroachments:**

**A. If Any Portion of Any Unit** or of the Common Elements hereafter encroaches upon any Unit or upon any other portion of the Common Elements as a result of:

- (1) Settling or shifting of the Building, other than as a result of the purposeful or negligent act or omission of the Owner of the encroaching Unit, of of the Council in the case of encroachment of the Common Elements.
- (2) Deviations arising from the original construction; or
- (3) Alterations, repairs, or minor additions to any Unit or to any portion of the Common Elements, a valid easement shall exist appurtenant to such encroachment for the maintenance of the same so long as the Building stands.

**B. In the Event That the Building** shall be partially destroyed as a result of fire or other casualty or as a result of a taking by the power of or a power in the nature of eminent domain or by an action or deed in lieu of condemnation then, if the Building shall be rebuilt, encroachments of parts of the Common Elements upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Elements, where such encroachments are necessary to complete such rebuilding or are not a result of the purposeful or negligent act or omission of the Unit Owner of the encroaching Unit or of the Council, shall be permitted, and valid easements appurtenant to the encroaching Unit or Common Element for each such encroachment and the maintenance thereof shall exist so long as the Building shall stand.

**C. The Foregoing Easements** shall run with the Property and inure to the benefit of and be binding upon the Council, each Unit Owner and each mortgagee, lessee, occupant or other person having any interest in any Unit or in the Common Elements at the time of reference.

**D. The Easements Provided in this Article** shall terminate upon the effectiveness of any termination pursuant to the terms of this Declaration.

**ARTICLE 21: Repair and Reconstruction After Fire or Other Casualty:**

**A. In the Event of Damage to or Destruction** of the Building as a result of fire, or other casualty or the exercise of the power of eminent domain (unless there is substantially total destruction or other loss of the Building and if seventy-five percent (75%) of the Unit Owners directly affected thereby duly resolve, at a meeting called within ninety (90) days after the occurrence of the casualty, not to proceed with repair or restoration), the Council shall arrange for and supervise the prompt repair and restoration of the Building (including any damaged Units, and any floor coverings or any kitchen or bathroom fixtures initially installed therein by the Declarant, and replacements thereof installed by the Unit Owners, but not including any other furniture, furnishings, fixtures or equipment installed by the Owners in the Units.)

- (1) Immediately after a fire or other casualty causing damage to the Building, the Council shall obtain reliable and detailed estimates of the cost of repairing and restoring the Building (including any damaged Units and any floor coverings and kitchen and bathroom fixtures initially installed by the Declarant, but not including any other furniture, furnishings, fixtures or equipment installed by the Owner in the Unit) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Council deems to be necessary.
- (2) If the proceeds of insurance are not sufficient to defray the said estimated costs of reconstruction and repair as determined by the Council, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, Assessments shall be made against the Owners directly affected by the damage or destruction, in proportion to their respective Proportionate Interest in sufficient amounts to provide payment of such costs.
- (3) Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Building was originally constructed.
- (4) Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction is substantially in accordance with the Declaration Plan under which the Property was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed Building shall stand.

**B. If There Is Substantially Total Destruction** of the Building and if seventy-five percent (75%) of the Unit Owners directly affected thereby duly resolve, at a meeting called within ninety (90) days after the occurrence of the casualty, not to proceed with repair or reconstruction then, and in that event, the salvage value of the substantially destroyed Building shall be subject to a suit for partition at the suit of any Unit Owner directly affected thereby, in which event the net proceeds of the sale, together with the proceeds of insurance policies shall be considered as one fund and shall be divided among the Unit Owners directly affected in proportion to their respective Proportionate Interest after discharging out of the respective shares of the Unit Owners directly affected thereby (to the extent sufficient for the purposes), all liens against the Units of such Unit Owners.

**C. Each Unit Owner Specifically Acknowledges** and agrees by becoming a Unit Owner:

- (1) That each Unit in the Devon Condominium Apartments is an integral part of the Building;
- (2) That in order for any Unit Owner to receive and enjoy the full benefits of ownership, it is necessary to repair and maintain each Unit in the Building in a condition of good and proper order; and
- (3) That in the event of the substantially total destruction of any one or more Units in the Building, all of the Unit Owners in the Building are directly affected thereby.

**ARTICLE 22: Consequences of Eminent Domain:** In the event that all or any portion of the Property is threatened by exercise of the power of eminent domain or becomes the subject of condemnation proceedings, each Unit Owner whose Unit, exclusive of his Proportionate Interest in

the Common Elements, is directly threatened shall have the right to demand and receive compensation for his Unit, including his interest in the Common Elements. No Unit Owner whose interest only in the Common Elements is threatened shall have a similar right, but the Council alone with respect to such Common Elements shall demand and receive compensation, which sums may be retained by the Council as a reserve or may be used in the maintenance and operation of the Condominium Property.

**ARTICLE 23:** Leases of Units: *A Unit may be rented as whole, but not in part, from time to time by the Unit Owner thereof to any person or entity, but no transient tenants or occupants may be accommodated therein. All lessees and sublessees of any Unit, during their respective tenancies thereof, shall be jointly and severally liable with the Unit Owner of said Unit for all liabilities and for the performance of all obligations of the Unit Owners which may arise under the Unit Property Act, this Declaration, the Code, the Rules, the deed to such Unit or any other pertinent instrument. Such liabilities or obligations may be enforced at any time during or after the term of such tenancy. The Council may, by incorporation same into its Rules, determine from time to time the procedures by which it can enforce the types entitled for failure to comply with any lease of a Unit or with this Declaration, Code of Regulations or Rules. See rental rules. Re word so only the owner is responsible.*

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**ARTICLE 24:** Right of First Refusal:

- A. If Any Unit Owner Desires to Sell or Lease His Unit or any interest therein, and shall have received a bona fide offer for such sale or lease, the Council shall be given written notice thereof, together with an executed copy of such offer containing a full description of the terms thereof. The Council shall have the right to purchase or lease such Unit or interest therein, as the case may be, upon the same terms and conditions as set forth in the offer therefore, provided written notice of such election is given to the Unit Owner and a matching down payment or deposit (if such is required by the terms of such offer) is provided to the Unit Owner within fifteen (15) days following the delivery to Council of such notice and a copy of such offer.
- B. In The Event That Council shall elect to purchase any Unit or any interest therein, title shall close on the date specified in the bona fide offer to purchase, or if no date is specified in said offer, on a date ninety (90) days after the giving of notice by Council of its election to purchase said Unit.
- C. In The Event That Council Elects To Lease Any Unit, the Unit Owner shall execute and deliver to Council, upon demand, a lease, between the Unit Owner as Landlord and Council as Tenant, containing terms and conditions set forth in the bona fide offer to lease.
- D. The Sale or Lease of Any Unit By a Unit Owner to His Spouse, his children, his parents, the parents of his spouse, his brothers or sisters or to the brothers and sisters of his spouse shall not be subject to Council's right of first refusal.
- E. The Failure or Refusal by Council to exercise its right of first refusal set forth in this Paragraph 24 with respect to any particular bona fide offer to purchase or lease a particular Unit shall not constitute a waiver of such right with respect to any subsequent bona fide offer to purchase or lease the particular Unit or any other Unit.
- F. If Any Unit Owner Attempts to Sell or Lease his Unit without giving Council the right of first refusal set forth in this Paragraph 24, such sale or lease shall be void and shall confer no title or interest whatsoever upon the intended purchases or lessee.
- G. On March 1, 1981, Council's Right of First Refusal as set forth in Paragraph 24 shall now vest in the Council.
- H. This Paragraph 24 shall not apply to the assignment of a Parking Space pursuant to the terms of this Declaration.

**ARTICLE 25:** Priority of Liens: The lien against each Unit for Assessment of Common Expenses shall have priority over all other liens except first mortgages held by institutional lenders, regardless of priority in time.

**ARTICLE 26: Mechanics Liens:** Any Mechanics Liens arising as a result of repairs to or improvements of a Unit by a Unit Owner shall be liens only against such Unit. Any Mechanics Liens arising as a result of repairs to or improvements of the Common Elements, if authorized in writing pursuant to duly adopted resolution of the Council, shall be paid by the Council as a Common Expense and until so paid shall be liens against each Unit in a percentage equal to the Proportionate Interest of the Common Elements relating to such Unit.

**ARTICLE 27: Designation of Nominee by the Council:** At any time, the Council may designate a nominee to hold title to any property of any nature acquired by the Council, to undertake on behalf of the Council and in the name of the Council any actions which the Council may undertake in its own name and may so direct, and to carry out such functions as the Council may from time to time determine. The Council shall have power to engage employees as appropriate agents and to define their duties and to fix their compensation.

**ARTICLE 28: Assignment of Parking Space:** The exclusive right to the use of the certain garage parking space which is appurtenant to a Unit may be assigned to such Unit Owner (the "Assignor Unit Owner") to another Unit Owner (the "Assignee Unit Owner"). The Assignor Unit Owner and the Assignee Unit Owner shall execute and file with the Council a form assignment agreement provided by the Council. If either or both Units are mortgaged, as indicated on the Council register, the Holder of such mortgage shall also execute the assignments agreement. Such agreement shall set forth the terms and conditions of any assignment as the Council may from time to time determine. The assignment agreement shall provide (i) that no portion of the Assignor Unit Owner's right, title and interest in and to the Unit and appurtenant Proportionate Interest in the Common Elements is conveyed thereby; (ii) that the Assignor Unit Owner shall not be relieved of any liability for his share of Regular Assessments and/or Special Assessments by virtue of the assignment.

**ARTICLE 29: Voting By Unit Owners:**

**A. At Any Meeting of Unit Owners,** each Unit Owner shall be entitled to the same number of votes as the Proportionate Interest in the Common Elements assigned to him in this Declaration.

**B. The Right to Cast The Votes Applicable** to a particular Unit shall be established by the record title of such Unit. Thereafter:

- (1) Except as hereinafter provided as to a Unit owned by a husband and wife, if a Unit is owned by more than one individual, the individual entitled to cast the votes for the Unit shall be designated by a certificate signed by all the recorded Owners of the Unit and filed with the Secretary of the Council;
- (2) If a Unit is owned by a corporation, the individual entitled to cast the votes for the Unit shall be designation by a certificate of appointment signed by the president or vice-president, under its corporate seal, and attested by the secretary or assistant secretary of the corporation and filed with the Secretary of the Council; and
- (3) If a Unit is owned by a partnership, the individual entitled to cast the votes for the Unit shall be designated by a certificate signed by all partners and filed with the Secretary of the Council.

**C. Unit Owners** shall be entitled to vote in person or by absentee ballot. A Unit Owner may appoint an agent to vote on his behalf and such authority shall continue in effect until revoked by said Unit Owner by written notice to the Council

**D. Any Such Certificate** shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the individual entitled to cast the vote of a Unit may be revoked by any Unit Owner thereof.

**E. If a Unit shall be Owned By a Husband and Wife,** then they may, but shall not be required to, execute a certificate designating an individual to cast the votes for their Unit. If such a certificate shall not be executed and if both of them are unable to agree as to the manner in which the votes applicable to their Unit shall be cast, then the votes applicable to such Unit shall not be counted, provided, however, that if only one of them shall be present at a meeting of the Unit Owners, the spouse present may cast the votes applicable to the Unit unless prior thereto the

other spouse, by written notice to the Secretary, shall deny authorization of the spouse present to cast such votes.

**ARTICLE 30: Code of Regulations and Rules:** The first members of the Council have adopted a Code of Regulations for the administrative regulation and management of the Property which has been recorded contemporaneously with the recording of this Declaration and the Declaration Plan in the office for the Recording of Deeds for New Castle County, Delaware in Deed Record F, Volume 109, Page 52. Each Unit Owner shall comply with the Code of Regulations and with any rules governing the details of the use and operation of the Property and the use of the Common Elements as may be in effect from time to time and with the covenants, conditions, and restrictions set forth in the Declaration or in the Deed to his Unit or in the Declaration Plan.

**ARTICLE 31: Interpretation, Severability and Enforcement:**

**A. The Provisions for This Declaration** shall be liberally construed in order to effectuate Declarant's desire to create a uniform plan for development and operation of a Unit Property (condominium) project. The headings preceding the various paragraphs of this Declaration are intended solely for the convenience of readers hereof and shall not be deemed relevant in the interpretation of this Declaration.

**B. This Declaration and The Code of Regulations** shall to all reasonable extent be deemed to be consistent with and supplementary to the provisions of the Unit Property Act. Any conflict between this Declaration and the Code of Regulations and the Unit Property Act, shall be controlled by the provisions of the Unit Property Act. ~~Any conflict between this Declaration and the Code of Regulations shall, if not otherwise resolvable, be resolved in favor of this Declaration.~~

**C. The Unconstitutionality, Illegality, Invalidity or Non-conformance** with the Unit Property Act of any provisions of this Declaration or the Code of Regulations shall not affect the remaining portions thereof which shall thereupon be deemed of continuing validity, force, and effect.

**D. Any Provisions of This Declaration or The Code of Regulations** which may not be directly or indirectly provided for or permitted by the Unit Property Act, ~~but~~ which is not specifically prohibited by the Unit Property Act, or by any other statute or rule of law, shall, if not enforceable under the Unit Property Act, be deemed to be a contractual undertaking and obligation, voluntary assumed, by each and every Unit Owner, as the entirety of Unit Owners may be constituted from time to time, and such contractual undertaking and obligation shall be in consideration of the said assumption by each and every other Unit Owner, and same may be enforced by the Council in its own name or on behalf of any one, more or all of the Unit Owners, or if the Council declines to act, by any more or more Unit Owners in the same manner as any other contractual undertaking and obligation.

**E. No Provisions in This Declaration or The Code of Regulations** shall be deemed invalid, waived, abrogated or no longer enforceable by reason of the passage of time or of any failure to enforce same, irrespective of the length of time passed or the number of failure of enforcement of one or more of such provisions.

**F. If Any Provision of The Declaration or The Code of Regulations** would otherwise violate the rule against perpetuities or any other rule, statute or law imposing time limits, such provisions shall be deemed to remain in effect until the death of the last surviving member of the original Council named herein plus 18 years thereafter.

**ARTICLE 32: Termination:** ~~+~~

he Property may be removed from the provisions of the Unit Property Act by a revocation expressing the intention to so remove property previously made subject to the provisions of the Unit Property Act. No such revocation shall be effective unless the same is executed by all of the Unit Owners and by the holders of all mortgages, judgments or other liens affecting the Units and is duly recorded.

When the Property, subject to the provisions of the Unit Property Act has been removed as provided in Section 2229 of the Unit Property Act, the former Unit Owners shall at the time such



removal becomes effective, become tenants in common of the Property. The undivided interest in the Property owned in common which shall appertain to each Unit Owner at the time of removal shall be the Proportionate Interest previously owned by such person in the Common Elements.

The removal of the Property from the provisions of the Unit Property Act shall not preclude such Property from being resubmitted to the provisions of that Act in the manner provided therein.

**ARTICLE 33: Amendment of Condominium Documents:**

**A. This Declaration May be Amended** by the vote of a majority of the Unit Owners, cast in person or by absentee ballot at a meeting duly held in accordance with the provisions of the Code of Regulations, provided, however, that any such proposed amendment shall have been approved in writing by the Mortgagee or Mortgagees holding mortgages constituting first liens on more than 50% of the Units subject to mortgages. No such amendments shall be effective until duly recorded. Provided, however, the Proportionate Interests shall not be changed except by unanimous consent of all the Unit Owners affected thereby, which change shall be evidenced by an appropriate amendatory declaration to such effect, duly recorded.

**ARTICLE 34: Number and Gender:** Whenever used, the singular number shall include the plural, and the plural number shall include the singular. The use of any gender shall include all genders.

**ARTICLE 35: Effective Date:** -The date when this Declaration, the Declaration Plan, and the Code of Regulations are recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware is the effective date of the Condominium. From and after the date of such recording, the Property herein described shall be and continue to be subject to each and all the terms hereof until this Declaration and this Condominium are terminated or abandoned according to the provisions of the Unit Property Act and of this Declaration.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed, the day and year aforesaid.

Devon Associates, Inc.

Signed by Alfred Baderak, President and Jerome Milgrim, Secretary

BE IT REMEMBERED, That on this 14<sup>th</sup> day of February, A.D., 1980, personally came before me, the Subscriber, a Notary Public for the State of Delaware, Alfred Baderak, President of Devon Associates, Inc., a corporation existing under the laws of the State of Delaware, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be his act and deed and the act and deed of said corporation, that the signature of the President thereto is in his own proper handwriting and the seal affixed is the common and corporate seal of said corporation, and that his act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the Board of Directors of said corporation. Given under by Hand and Seal of office the day and year aforesaid.

Donald Nelson Isken

Notary Public My Commission Expires: January 26, 1981