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BURNEFAE CONDOMINIUMS AT WILTON

DECLARATION OF CONDOMINIUM

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EXHIBITS:

EXHIBIT "A" - Metes and Bounds Description  
EXHIBIT "B" - Declaration Plan - Site Plan of the  
Property

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BURNBRAE CONDOMINIUMS AT WILTON

DECLARATION OF CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM, hereinafter "Declaration", made this \_\_\_\_\_ day of \_\_\_\_\_, 1987, by Berman Properties, Inc., a Delaware corporation, having an office located at 901 South Troupers Road, P. O. Box 712, Valley Forge, Pennsylvania 19482 (hereinafter referred to as the "Grantor").

WHEREAS, Grantor is the owner of a fee simple title to those lands and premises described in Exhibit "A" attached hereto and made a part hereof, which lands and premises are hereafter referred to as the "Property"; and

WHEREAS, Grantor intends to construct one hundred sixteen (116) condominium units, hereinafter referred to as "units", together with interior private roadways, parking areas, walkways, open spaces and other improvements as more particularly shown on that certain property plan (The Declaration Plan) and made a part hereof as Exhibit "B", all such property together with such units, interior roadways, parking areas, walkways, open space, residential facilities, and other improvements, hereinafter collectively sometimes referred to as the "condominium"; and

WHEREAS, it is the intention of the Grantor to establish the form of ownership of the Property as a condo-

minium pursuant to the provisions of 25 Del.C. Chapter 22 (the Delaware Unit Properties Act, hereinafter, "The Act"); and

WHEREAS, the Grantor has established the BurnBrae Condominium Association, Inc., hereinafter referred to as the "Association", a Delaware non-profit corporation, for the administration, operation and management of BurnBrae Condominiums at Wilton and other improvements intended for the common use and enjoyment of the residents of the property.

THEREFORE, WITNESSETH:

ESTABLISHMENT OF CONDOMINIUM. The Grantor does hereby submit, declare and establish "Burnbrae Condominiums at Wilton" in accordance with the Act, hereby formally submitting the property to the provisions of the Act.

CONDOMINIUM NAME. The condominium shall be known as BurnBrae Condominiums. The condominium consists of the lands and premises described in Exhibit "A" hereto, and the buildings, units and common elements shown on The Declaration Plan attached hereto as Exhibit "B".

GENERAL DESCRIPTION OF CONDOMINIUM. The condominium will contain 9 buildings, 2 of which will comprise a total of 36 three-story flat units and 7 of which will comprise a total of 80 townhouse units, with parking areas, interior roads, walkways, open spaces, common facilities and other improvements as shown on The Declaration Plan attached hereto as Exhibit "B".

### DESCRIPTION OF UNITS

(a) The horizontal and vertical dimensions, area and location of the buildings containing all of the aforesaid units comprising the first phase within the condominium are shown graphically on Exhibits "B" and "C". Each Unit is intended to contain all space within the area bounded by the exterior surface of the interior perimeter or party walls of each unit and the floor and ceiling of each unit.

(b) Each unit, regardless of type, also includes all appliances, fixtures, doors, windows, interior walls and partitions, gypsum board and/or other facing material on the walls and ceilings thereof, the inner decorated and/or finish surface of the floors (including all flooring tile, ceramic tile, finished flooring, if any), and all other improvements located within such unit which are exclusively appurtenant to such units, although all or part thereof may be limited to the following individual appurtenances:

(1) So much of the plumbing system as extends from the walls and floors into the interior air space;

(2) All electrical wires which extend from the ceilings, walls or floors into the interior air space and all fixtures, switches, outlets and circuit breakers;

(3) All utility meters now owned by the public agency supplying service;

(4) All cable television wiring;

(5) All heating and air conditioning apparatus;

DESCRIPTION OF COMMON ELEMENTS.

(a) All appurtenances and facilities and other items which are not part of the units hereinbefore described shall comprise the common elements as graphically shown on Exhibits "B" and "C" aforesaid. The common elements shall include by way of description but not by way of limitation:

(1) All lands shown on Exhibit "B" aforesaid whether improved or unimproved; and including the Dedicated Open Space.

(2) All curbs, walkways, interior roadways and parking areas; and

(3) Shrubbery, conduits, utility lines; and

(4) Public connections and meters for gas, electricity, telephone and water not owned by the public utility or other agencies providing such services; and

(5) The foundations, columns, girders, beams, exterior or interior bearing or main walls between units; and

(6) Exteriors, exterior lighting and other facilities necessary to the upkeep and safety of the buildings and grounds; and

(7) The recreational facilities, as shown in Exhibit "B"; and

(8) Any easement or other right which may now or hereafter be granted for the benefit of the unit owners or others for access to or use of the common elements not included within the condominium or for any other purpose; and

(9) All tangible personal property required for the operation, maintenance and administration of the condominium which may be owned by the Association.

(b) LIMITED COMMON ELEMENTS. Certain parts of the common elements herein called and designated as "limited common elements" are hereby set aside and reserved for the exclusive use of certain units, and such units shall have appurtenant thereto an exclusive easement for the use of such limited common elements. The limited common elements are as follows:

(1) Balconies. Each second and third floor unit will have a balcony as shown on Exhibit "C". Each balcony is hereby set aside and reserved for the exclusive use of the unit owner(s) whose unit has said balcony appurtenant thereto.

(2) Patios. Each first floor unit will have a patio as shown on Exhibit "C". Each patio is hereby set aside and reserved for the exclusive use of the unit owner(s) whose unit has said patio or deck appurtenant thereto.

ESTATE ACQUIRED: INTEREST IN COMMON ELEMENTS.

(a) The owner of each unit shall have an estate therein as may be acquired by grant, by purchase or by operation of law, including an estate in fee simple, and shall acquire as an appurtenance thereto an undivided percentage interest in the common elements of the condominium, which shall not be divisible from the unit to which it appertains.

(b) The Association shall, if any question arises, determine the purpose for which a common element is intended to be used. It shall have the right to promulgate rules and regulations controlling the use of the common elements and limited common elements.

(c) The unit's proportionate share of common expenses and any common surplus of the Association shall be calculated by dividing the number of each unit (1) by the total number of all the units in the condominium (116). (See Exhibits "D" and "E".) This ratio shall be used to allocate the assessments for common expenses, and any common surplus of the Association.

USE OF COMMON ELEMENTS. Each unit owner, tenant and occupant of a unit, and the invitee, agents and employees of such unit owner, may use the common elements in common with other unit owners, their tenants, occupants and invitee in accordance with the reasonable purposes for which they are intended without hindering or encroaching upon the lawful rights of other unit owners, but nothing contained in this paragraph shall be deemed to prevent a unit owner from enjoying substantially exclusive rights or advantages in a part or parts of the limited common elements by reason of his ownership of a particular unit or units.

VOTING: Each unit will be entitled to one (1) vote, in accordance with its percentage interest of ownership in the common elements, as a member of the Condominium Association.

#### COMMON EXPENSE ASSESSMENTS.

(a) It shall be an affirmative and perpetual obligation of the Association to fix annual common expense assessments in an amount at least sufficient to maintain and operate the common elements and to maintain the Dedicated Open Space. No vote of the unit owners as members of the Association shall be required for normal common expense assessments, which shall be fixed by the Council of Unit Owners (the Board of Directors) of the Association.

(b) The Association may levy, in any assessment year, an added or special assessment, for the purpose of



defraying, in whole or in part, the cost of any operating expenses, or unexpected repair or replacement upon or to the common elements including the upkeep of the Dedicated Open Space. No vote of the unit owner members is required for an added or special assessment, which may be levied by the Council of Unit Owners of the Association.

(c) The Association may levy a special assessment for capital improvements only upon the assent of seventy-five percent (75%) of all the votes eligible to be cast. Any votes held by Grantor are ineligible to be cast for or against a levy of a special assessment for capital improvements. The Grantor is expressly excluded from liability, payment or obligation for any special assessment levied pursuant to this subsection unless such assessment results from an emergency condition, in which case Grantor shall be liable to the extent of its interest except as to any unit or units the Grantor owns or retains for investment or personal use.

(d) Every unit owner, by acceptance of a deed or other conveyance for a unit, whether or not it is or should be so expressed in any such deed or other such conveyance, shall be deemed to covenant and agree to pay to the Association such sums, by way of annual, added or special common expense assessments as are herein or in the Code of Regulations of the Association more particularly described.

(e) No unit owner may waive or otherwise avoid liability for common expenses by non-use of the common elements, open space or Dedicated Open Space, or any of them. Each such assessment shall be a continuing lien upon the unit against which it was made and shall also be the personal obligation of the owner of such unit at the time when the common expense assessment fell due. Such lien shall be effective from and after the time of recording in the public records of New Castle County of the claim of lien stating the description of the unit, the name of the unit owner, the amount due and the date when due. All such liens shall be subordinate to any lien for past due and unpaid taxes, the lien of a first mortgage recorded prior to the date of the delinquent assessment, and to any other lien recorded prior to the time of recording of the claim to lien.

(f) Each unit owner shall promptly furnish, perform and be responsible for, at his own expense, all of the maintenance, repairs and replacements for his own unit, and all appurtenant window glass, provided, however:

(1) Such maintenance, repairs and replacements as may be required for the functioning of the common elements, including limited common elements, shall be furnished by the Association through itself, a manager or agent or through other persons, firms or corporations to whom such duties may be delegated by the Association; and

(2). The Association, its agents and employees may effect emergency or other necessary repairs which the unit owner has failed to perform at such unit owner's expense. The Association shall first make a reasonable attempt to notify the unit owner before effecting emergency or other necessary repairs. In the case of necessary repairs other than emergency repairs, the Association shall specify a reasonable period of time in such notice for the completion of such repairs.

(g) If due to the negligent act or omission of or misuse by a unit owner, or a member of his family, or a guest, occupant or visitor of a unit owner (whether authorized or unauthorized by the unit owner), damage shall be caused to the common elements, or to a unit owned by others, such unit owner shall pay for such damage and be liable for any damages, liability cost and expense, including attorney's fees, caused by or arising out of such circumstances.

(h) (1) The Association shall have the right to make or cause to be made such repairs, alterations and improvements to the common elements and limited common elements as in its opinion may be beneficial and necessary or which is requested in writing by a unit owner(s) and the holders of first mortgages thereon. The Association may require the consent in writing before undertaking such work of such unit owners and the holders of first mortgages

thereon, whose rights, in the sole opinion of the Association, may be prejudiced by such alteration or improvement. The Grantor reserves the right to change the buildings, units or common elements, provided that the construction of same shall be substantially in accordance with the condominium documents. The Grantor shall not be permitted to cast any votes held by him for unsold lots, parcels, units or interests for the purpose of amending the Declaration, Code of Regulations or any other document for the purpose of changing the permitted use of a lot, parcel, unit or interest or for the purpose of reducing the common elements or facilities.

(2) When, in the sole opinion of the Association, the alteration or improvement is general in character, the cost therefor shall be assessed as a common expense.

(3) When, in the sole opinion of the Association, the alteration or improvement is exclusively or substantially exclusively for the benefit of one or more unit owners that requested it, the cost shall be assessed against such unit owner(s) in such proportion as the Association shall determine is fair and equitable. Nothing herein contained shall prevent the unit owners affected by such alteration or improvement from agreeing in writing, either before or after the assessment is made, to be assessed in different proportions.

(4) While the Grantor maintains a majority of the Council of Unit Owners, he agrees to have an annual audit of Association funds prepared by an independent accountant, as set forth in the estimated first year operating budget, a copy of which shall be delivered to each unit owner within 90 days of the expiration of the fiscal year of the Association. The audit shall cover the operating budget and reserve account.

(5) While the Grantor maintains a majority of the Council of Unit Owners, he shall make no addition, alterations, improvements or purchases which would necessitate a special assessment or a substantial increase in the monthly assessment unless required by a government agency, title insurance company, mortgage lender, or in the event of an emergency, or unless as a part of amending this Declaration to subject any additional Stages to the terms hereof as hereinafter set forth.

#### EASEMENTS.

EASEMENTS NECESSARY FOR THE GOOD OF THE COMMUNITY ARE AS FOLLOWS:

(a) Ingress and egress easements through the common elements for ingress and egress for all persons rightfully making use of the common elements in accordance with the terms of the condominium documents.

(b) Easements through the units and common elements for maintenance, repair and replacement of the units

and common elements. Use of these easements, however, for access to the units shall be limited to reasonable hours, upon prior reasonable notice to an individual unit owner or owners, except that access may be had at any time in case of emergency.

(c) Easements through every portion of the unit which contributes to the structural support for the benefit of the entire structure.

(d) Perpetual easements to each unit owner providing unrestricted ingress and egress to his or her unit. This easement shall pass with the unit owner's estate upon any transfer of ownership to a unit.

(e) A perpetual easement does and shall continue to exist throughout the common elements for the purpose of installation, maintenance, repair and replacement of all gas, television cable, sanitary sewer, storm sewer, water, electric and telephone lines, pipes, mains, conduits, wires, poles, transformers and any and all other equipment or machinery necessary or incidental to the proper functioning of any utility system. By virtue of this easement it shall be expressly permissible for the Grantor or the providing utility or service company to install and maintain facilities and equipment on the premises, to excavate for such purposes and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of the units, provid-

ing such company restores disturbed areas to the condition in which they were found.

Notwithstanding anything to the contrary contained in this paragraph: (1) no sewers, electrical lines, water lines or other utility service lines or facilities for such utilities may be installed or relocated on the premises except as approved by the Council of Unit Owners, and (2) it shall not be construed to apply to the relocation, installation or removal of utility lines within a unit which serves only that unit. This shall in no way affect any other recorded easements on the premises.

(f) An easement for the existence and continuance of any encroachment by a unit upon any adjoining unit or units or upon any common elements, now existing or which may come into existence hereafter as a result of construction, repair, shifting, settlement, movement of any portion of the building or a unit, or as a result of condemnation or eminent domain proceedings, which encroachment will remain undisturbed so long as the building stands.

(g) An easement for the existence and continuance and maintenance of: (i) any encroachment by a unit upon any adjoining unit or units or upon any common elements; or (ii) any encroachment of the common areas to any unit or units, now existing or which may come into existence hereafter as a result of construction, reconstruction, repair, shifting, settlement, movement of any portion of the

improvements, or as a result of condemnation or eminent domain proceedings, which such encroachment will remain undisturbed so long as the improvements exist.

(h) The Grantor reserves an easement and right on, over and under the ground within each unit to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Grantor shall restore the affected property to its original condition as near as practicable. The Grantor shall give reasonable notice of its intent to take such action to all affected unit owners, unless in the opinion of the Grantor an emergency exists which precludes such notice.

(i) Notwithstanding any other provision hereof to the contrary, so long as the Grantor is engaged in developing or improving any portion of the premise, the Grantor shall have an easement of ingress, egress and use over any lands not conveyed to an owner for occupancy for (1) movement and storage of building materials and equipment, (2) erection and maintenance of directional and promotional signs, and (3) conduct of sales activities, including maintenance of a model or models.



ADMINISTRATION: THE ASSOCIATION.

(a) The administration of the common elements of the condominium and other common facilities and private and public spaces shall be by the Association and its Board of Directors (the Council of Unit Owners, as referred to in the Act) in accordance with the provisions of the Act, this Declaration, the Certificate of Incorporation, the Code of Regulations, as referred to in the Act, and any other documents, amendments or supplements to the foregoing which may subsequently be required by a bank, mortgage broker, the Veterans Administration, Department of Housing and Urban Development, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association or other institution making mortgage loans on the subject premises.

(b) Upon acceptance of the deed to a unit, each unit owner shall automatically become a member of the Association and shall be a member so long as he shall hold legal title to his unit subject to all the provisions to this Declaration, the Act, the Certificate of Incorporation of the Association, and the Code of Regulations and rules and regulations which may now or hereafter be established for or by the Association.

(c) By acceptance of a deed to a unit or by acceptance of any other legal or equitable interest in the condominium, each and every contract purchaser, unit owner or occupant or holder of any mortgage of lien does automatically

and irrevocably name, constitute, appoint and confirm Grantor, its successors and assigns, as attorney-in-fact for the purpose of executing such amended Declaration or other instruments necessary to effect the foregoing amendments and supplements as set forth in subparagraph (a) above.

RIGHT OF ACCESS. Each unit owner by acceptance of a deed or other conveyance of a unit shall be deemed to have granted a right of access to his unit or units to the Association, its manager and/or managing agent and its Council of Unit Owners for the purpose of making necessary inspections and repairs to any conditions originating in his unit and affecting another unit or common element, or for the purpose of performing necessary installation, alterations or repairs to the units, common elements or limited common elements. Any such access and a entry shall be done by request at reasonable times, except in the case of an emergency. In the case of an emergency, as determined by the Association, such right of entry shall be immediate and in order to permit the aforementioned emergency entry and access, each unit owner shall leave a key to his unit with the Association or its designees.

LEASING OF UNIT. No unit shall be rented by the owner(s) thereof for transient or hotel purposes. Any lease will be subject to the covenants, restrictions and rules and regulations contained in the Declaration, the Code of Regulations and other condominium documents. No unit may be

leased or rented for less than thirty (30) days. The Association shall be notified in writing at least thirty (30) days prior to such lease, stating the name, address and telephone number of the person(s) involved in the leasing of the unit.

MORTGAGE HOLDER'S RIGHTS. Any mortgage holder on a unit or any insurer or guarantor of a mortgage on a unit shall be entitled, upon written request to the Association, to timely written notice of:

(a) Any condemnation or casualty loss that affects either a material portion of the development or the unit securing its mortgage;

(b) Any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage;

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

(d) Any proposed action that requires the consent of a specified percentage of eligible mortgage holders in accordance with the condominium documents.

To obtain this information, the mortgage holder, insurer or guarantor must send a written request to the Association, stating both its name and address and the unit number or address of the unit subject to its mortgage.

PROVISIONS APPLICABLE TO AND RIGHTS RESERVED BY  
GRANTOR.

(a) Until the conveyance of title to the first unit, Grantor shall be solely responsible for all common expenses. Following that conveyance, owners of the units to whom title shall have been conveyed shall be responsible for their proportionate share of the common expenses as set forth in Exhibit "D".

(1) The Grantor reserves the unrestricted right to sell or lease any units which it continues to own after recording or filing of these condominium documents.

(2) Grantor reserves the right to change the buildings, or units which it continues to own after recording or filing of these condominium documents, except as specifically set forth herein or in any agreement of sale for a unit, and no person shall rely upon any warranty or representation not specifically made therein.

(3) The Grantor reserves the right to change the interior or exterior design and arrangements of all units and to alter boundaries between units so long as the Grantor owns the units so changed or altered. No such change shall increase the number of units or alter the boundaries of the common elements without amendment of the condominium documents as herein provided. If Grantor shall

make any changes to the units, such changes shall be reflected by an amendment of the condominium documents.

(b) When a member of the Council of Unit Owners who has been elected by unit owners other than Grantor is removed or resigns, that vacancy shall be filled by vote of the unit owners other than Grantor.

(c) Grantor hereby reserves unto itself, its successors and assigns, an easement upon, through and over the common elements so long as the Grantor, its successors and assigns shall be engaged in the development and sale of the units, which easement shall be for the purpose of construction, installation, maintenance and repair of the building(s), units, and appurtenances thereto and common elements, and for ingress and egress to future model units for sale, promotion and exhibition.

(d) Grantor, for itself, its successors and assigns, hereby declares that the Government of New Castle County, Delaware (but not the public in general) shall have a perpetual non-exclusive easement to enter upon all roadways, parking areas, driveways, walkways and sidewalks for the purpose of maintaining the safety, health, welfare, police and fire protection of the citizens of New Castle County, including the residents of the condominium.

(e) Notwithstanding anything to the contrary, Grantor hereby reserves for itself, its successors and assigns, for a period of five (5) years from the date the

first unit is conveyed to an individual purchaser, the right and power to execute on behalf of all contract purchasers, unit owners, mortgagees, other lienholders or parties claiming a legal or equitable interest in the condominium, any such agreements, documents, amendments or supplements to the Declaration and the Certificate of Incorporation and Code of Regulations which may be required under this Section.

By acceptance of a deed to any unit or by the acceptance of any other legal or equitable interest in the condominium, each and every contract purchaser, unit owner or occupant, holder of any mortgage or other liens, does automatically and irrevocably name, constitute, appoint and confirm Grantor, its successors and assigns, as attorney-in-fact for the purpose of executing such amended Declaration(s) and other instrument(s) necessary to effect the foregoing, including necessary and appropriate adjustments to unit owners' proportionate interests in the common elements of the condominium (provided that such power of attorney may not be used to adversely affect the priority or validity of any lien on or the value of any unit).

The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to any and all units and be binding upon the heirs, personal representatives, successors and assigns of any of the foregoing parties. Further, said power of attorney shall

not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said power.

NO PARTITION. Subject to the provisions of the Declaration, the Certificate of Incorporation and Code of Regulations of the Association, and the Act, the common elements shall remain undivided and no unit owner shall bring any action for partition or division thereof. In addition, the undivided percentage interest in the common elements and any and all limited common elements shall not be separate from any unit to which they appertain and shall be deemed conveyed or encumbered with the unit even though such interest or limited common elements are not expressly mentioned or described in the unit deed effecting the conveyance or other instrument.

RIGHTS OF ACTION. The Association and any aggrieved unit owner shall have a right of action against any unit owner(s) or lessee(s) who fail to comply with this Declaration, the Certificate of Incorporation or the Code of Regulations of the Association, or any rules and regulations adopted by the Association.

DAMAGE, DESTRUCTION OR CONDEMNATION.

(a) If any building, improvement or common element or part thereof is damaged or destroyed by fire, casualty or eminent domain, the repair, restoration or ultimate disposition shall be as provided in the Act.

(b) If the proceeds of such insurance shall be inadequate by a substantial amount to cover the estimated cost of restoration of an essential improvement or common element or if such damage shall constitute substantial total destruction of the condominium property or of one or more of the buildings comprising the condominium property, then seventy-five percent (75%) of the unit owners directly affected by such damage or destruction voting in accordance with the procedures established by the Code of Regulations shall determine whether to repair or restore the affected buildings or common elements. Should the unit owners directly affected by such damage decide not to restore or rebuild, then the Association shall proceed to realize upon the salvage value of that portion of the condominium property so damaged or destroyed either by sale of such other means as the Association may deem advisable and shall collect the proceeds of any insurance. Thereupon the net proceeds of such sale, together with the net proceeds of such insurance shall be considered as one fund to be divided among the unit owners directly affected by such damage or destruction in proportion to their divided ownership of the common elements. Any liens or encumbrances on any affected unit shall be relegated to the interest in the fund of the unit owners. Notwithstanding the aforementioned provisions, if the unit owners and/or mortgagees affected decide not to rebuild after fire, they must restore the property to its natural state



# INSURANCE.

(a) The Association shall obtain master policies of insurance which shall provide that any payment for loss thereunder shall be paid to the Association as insurance trustee under this Declaration. The Association will maintain full replacement value insurance on the units and common elements, adjusted annually to accurately reflect full replacement value. Under the said master policies, certificates of insurance shall be issued which indicate on their face that they are part of such master policies of insurance covering each and every unit of the condominium and its common elements. A certificate of insurance with the proper mortgagee endorsements shall be issued to the unit owner and original thereof shall be delivered to the mortgagee, if there be one, or retained by the unit owner if there is no mortgagee. The certificate of insurance shall show the relative amount of insurance covering the unit and the interest in the common elements of the condominium property and shall provide that improvements to a unit or units which may be made by the unit owner or owners shall not affect the valuation for the purposes of this insurance of the buildings and other improvements upon the property.

All common facilities shall be insured for the full replacement cost of those items for the perils of fire, extended coverage, vandalism and malicious mischief.

The original master policy of insurance shall be deposited with the Association as insurance trustee and a memorandum thereof shall be deposited with any first mortgagee who may require same, and the Association shall upon receipt acknowledge that the insurance policies and any proceeds thereof will be held in accordance with the terms hereof.

(b) The condominium property, including fencing, entrance sign, light standards, residential facilities, and the like, shall be covered by:

(1) PHYSICAL DAMAGE AND ADDITIONAL PERIL INSURANCE in an amount equal to the full replacement value of the individual buildings as determined annually by the Association with an independent appraisal to be obtained every three (3) years. Such coverage shall afford protection against loss or damage by fire, lightning, extended coverage and other perils, also with coverage for the payment of common expenses with respect to damaged units during the period of reconstruction. This is an all-risk form of policy, covering vandalism, malicious mischief, windstorm, etc.

All policies of casualty or physical damage insurance shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to all insured, including all

mortgagees of the units, and certificates of such insurance and all renewals thereof.

(2) PUBLIC LIABILITY INSURANCE against claims for bodily injury, death or property damage, such insurance to afford minimum protection in respect of bodily injury or death of not less than \$1,000,000.00 for any one person, and not less than \$1,000,000.00 for any one occurrence, and in respect of property damage, not less than \$100,000.00.

(c) The Association shall further obtain:

(1) WORKERS COMPENSATION INSURANCE to meet the requirements of law.

(2) FIDELITY INSURANCE covering those officers and employees of the Association and the Council of Unit Owners and those agents and employees hired by the Association who handle condominium funds, in such amounts as may be determined by the Association.

(3) ERRORS AND OMISSION INSURANCE at the option of the Council of Unit Owners.

(d) Each unit owner may obtain physical damage insurance at his own expense upon his unit, but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association or shall be written by the same carrier. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the

insurance purchased by the owner under this paragraph (d), the unit owner agrees to assign the proceeds of this latter insurance to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

(e) Premiums upon insurance policies purchased by the Association shall be paid by it and charged as common expenses.

(f) All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be received and held in trust by the Association for the purposes elsewhere stated herein and for the benefit of the unit owners and their respective mortgagees.

(g) Each unit owner shall be deemed to have delegated to the Association his right to adjust with the insurance company all losses under policies purchased by the Association.

(h) In no event shall any distribution of proceeds be made by the Association directly to a unit owner where there is a mortgagee endorsement on the Certificate of Insurance. In such event, any remittances shall be to the unit owner and his mortgagee jointly. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by him.

(i) NOTWITHSTANDING ANY PROVISIONS IN THIS INSURANCE SECTION, ANY UNIT OWNER MAY OBTAIN ADDITIONAL INDIVIDUAL UNIT INSURANCE AT HIS OWN COST.

AMENDMENT OF DECLARATION. This Declaration may be amended only as follows, either:

(a) If an amendment of a material nature, by a vote of at least seventy-five percent (75%) of all unit owners and sixty-seven percent (67%) of the eligible mortgage holders for units owned by unit owners other than the Grantor. A change to any of the following could be considered material:

- (1) voting rights;
- (2) assessments, assessment liens or subordination of assessment liens;
- (3) reserves for maintenance repair and replacement of common areas;
- (4) responsibility for maintenance and repairs;
- (5) reallocation of interests in the general or limited common areas or rights to their use;
- (6) boundaries of any unit;
- (7) convertibility of units into common area or vice versa;
- (8) contraction of the condominium or the withdrawal of property from the condominium;
- (9) insurance or fidelity bonds;

(10) leasing of units;

(11) imposition of any restrictions on a unit owner's right to sell or transfer his or her unit;

(12) a decision by the owners' association to establish self-management when professional management had been required previously by an eligible mortgage holder;

(13) restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;

(14) any action to terminate the legal status of the project after substantial destruction or condemnation occurs;

(15) any action or omission seeking to terminate or abandon the condominium;

(16) partition or subdivision of any condominium unit; or

(17) any provisions that expressly benefit mortgage holders, insurers or guarantors.

(b) An amendment not of a material nature may be made by a vote of at least fifty percent (50%) of all unit owners if no objection is raised by an eligible mortgage holder after thirty (30) days from the submission of a proposed change. Such an amendment can take place at any meeting of the Association duly held in accordance with the provisions of the Code of Regulations of the Association.

In no case shall an amendment of this Declaration be effective unless it is placed of record in the office of the Recorder of Deeds for New Castle County.

POWER OF ATTORNEY. Each unit owner will be provided with a Power of Attorney Document to be signed in conjunction with the Agreement of Sale. This document will facilitate the amendment process for the Declaration of Condominium as provided herein.

COUNCIL OF UNIT OWNERS. The Grantor has appointed the initial Board of Directors (the Council of Unit Owners) to manage and represent the Condominium Association, pursuant to 2219(8) of the Unit Property Act. The listing of initial members of the Board (Council) can be found in the Certificate of Incorporation attached as Exhibit "E".

CAPTIONS. Captions used in the Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of the condominium documents.

COVENANTS RUNNING WITH LAND. All provisions of this Declaration of Condominium, and the Certificate of Incorporation of the Association, 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 appurtenances and common elements thereof. Every unit owner and claimant of property or any part thereof or interest therein and his heirs, executors, administrators,

successors and assignees shall be bound by all the provisions of this Declaration and the Certificate of Incorporation of the Association.

UNIT DEEDS. Any transfer of a unit shall include all appurtenances thereto and its proportionate undivided interest in the common elements whether or not specifically described.

WORKING CAPITAL ACCOUNT. In addition to any and all payments required by the provisions of the Declaration, the Code of Regulations and Certificate of Incorporation, or other condominium documents, a \$200.00 non-refundable Capital Contribution to the Association is required at the time of conveyance of any unit in the condominium. This \$200.00 non-refundable Capital Contribution is to be used for the working capital of the Association. Because each unit owner will be required to pay such \$200.00 Capital Contribution upon conveyance of title, it is not expected that this charge will be adjusted between Seller and Buyer at settlement.

INVALIDITY. The invalidity of any provisions of the Declaration or the Certificate of Incorporation or Code of Regulations of the Association, shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration or said Certificate or Code of Regulations, which shall continue in full force and as if such invalid provision had never been included therein.



WAIVER. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

GENDER: The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural and vice versa whenever the context so requires.

RULE AGAINST PERPETUITIES. If any provision of this Declaration or the Certificate of Incorporation (Exhibit E) or Code of Regulations (Exhibit F) attached hereto as shall be interpreted to constitute a violation of the rule against perpetuities, then such provision shall be deemed to remain in effect until the death of the last survivor of the now living descendants of Robert F. Kennedy, deceased, former Senator of the State of New York, plus twenty-one (21) years thereafter.

SAFETY OF UNIT OWNERS. No unit owner shall do any work which would jeopardize the soundness or safety of the property or impair any easement or hereditament without the unanimous consent of the unit owners affected thereby. (25 Del.C. 2214; 54 Del. Laws, c. 282.)

RATIFICATION, CONFIRMATION AND APPROVAL OF AGREEMENTS. The fact that some or all of the officers, directors, members or employees of the Association or the Council and the Grantor may be identical and the fact that the Grantor or

its nominees have heretofore or may hereafter enter into agreements with the Association or with third parties, will not invalidate any such agreements and the Association and its members, from time to time, will be obligated to abide by and comply with the terms and conditions thereof. The purchase of a unit, and the acceptance of the deed therefor by any party, shall constitute the ratification, confirmation and approval by such purchaser, his heirs, legal representatives, successors and assigns, of the property and legality of any such agreement or agreements, or any other agreements authorized and permitted by the Act, this Declaration, the Certificate of Incorporation or the Code of Regulations of the Association. Nothing contained herein to the contrary shall serve to exculpate members of the Council of Unit Owners appointed by the Grantor from their fiduciary responsibilities.

PARLIAMENTARY RULES. Roberts Rules of Order shall govern the conduct of the proceedings of the Association and the Council of Unit Owners.

EXHIBITS. Attached hereto and made a part hereof are the following Exhibits:

Exhibit "A": Metes and bounds legal description of the property.

Exhibit "B": Site Plan of the property.

Exhibit "C": Unit layout plans and elevations.

Exhibit "D": Schedule of percentage of interest  
in the common elements.

Exhibit "E": Certificate of Incorporation of  
BurnBrae Condominium Association, Inc.

Exhibit "F": Code of Regulations of BurnBrae  
Condominiums at Wilton.

IN WITNESS WHEREOF, the Grantor has caused this  
instrument to be executed the date and year first above  
written, by its appropriate corporate officers and has caused  
its proper corporate seal to be affixed hereunto.

Attest:

BERMAN PROPERTIES, INC.

\_\_\_\_\_  
Secretary

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

Title: \_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA)  
 ) SS.  
 \_\_\_\_\_ COUNTY)

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 1988, personally came before me, the Subscriber, a Notary Public for the County and State aforesaid, \_\_\_\_\_, President of Berman Properties, Inc., and \_\_\_\_\_, Secretary of said corporation, personally known to me to be such, and acknowledged this Instrument, signed and attested by them pursuant to the authorization of said company.

GIVEN under my hand and seal of office the day and year aforesaid.

Notary Public

My Commission Expires: \_\_\_\_\_

Page

- EXHIBIT "C" - Declaration Plan - Unit Layouts and Elevations
- EXHIBIT "D" - Percentage Interest in Common Elements
- EXHIBIT "E" - Certificate of Incorporation of BurnBrae Condominium Association, Inc.
- EXHIBIT "F" - Code of Regulations and Bylaws of BurnBrae Condominium Association