

***Beacon Hill Townhome  
Condominium  
Declaration***

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## **BEACON HILL TOWNHOMES CONDOMINIUM**

### **DECLARATION**

THIS DECLARATION, made and entered into this 10<sup>th</sup> day of August 1979, by BHN, INC. , a corporation organized and existing under the laws of the State of Delaware, hereinafter and in the Exhibits hereto, sometimes called the "Declarant":

WHEREAS, the Declarant is the owner in fee simple of certain land and premises located in the County of New Castle, State of Delaware and more particularly described on "EXHIBIT A" attached hereto and by reference made a part hereof; and

WHEREAS, the Declarant is the owner of certain buildings and other improvements constructed upon the aforesaid premises, which property constitutes a "condominium" pursuant to the "Unit Property Act", 25 Del. C., Section 2201, et seq.-, (hereinafter called the "Unit Property Act" or "the Act"), and it is the desire and intention of the Declarant to divide said property and the improvements thereon into condominium units and to sell and convey the same subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens, hereinafter set forth, each of which is for the benefit of said property and the subsequent owners thereof; and

WHEREAS, prior to the recordation hereof, the Declarant has filed for record in the Office of the Recorder of Deeds for New Castle County, Delaware, a certain Plan hereinafter referred to as the "Declaration Plan" which Declaration Plan, consisting of Two (2) sheets is recorded in Microfilm No. 5258.

WHEREAS, the Declarant desires and intends by the recordation of the Declaration Plan and this Declaration, to submit the property described on "EXHIBIT A", attached hereto, together with the improvements heretofore or hereafter constructed thereon, and all appurtenances thereto, to the provisions of the Unit Property Act.

NOW, THEREFORE, the Declarant hereby declares that all of the property described on "EXHIBIT A" attached hereto, together with all improvements heretofore or hereafter constructed thereon, and all appurtenances thereto, shall be held, conveyed, divided or subdivided, leased, rented and occupies, improved, hypothecated and/or encumbered subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens hereinafter set forth, including the provisions of the Code of Regulations of the Unit Owners of the condominium, attached hereto as "EXHIBIT B" and by this reference incorporated herein, all of which are declared and agreed to be in aid of a plan for improvement of said property, and the division thereof into condominium units and common elements, and shall be deemed to run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, its successors and assigns, and any person acquiring or owning an

interest in said property and improvements, including, without limitation, any person, group of persons, corporation, partnership, trust or other legal entity or any combination thereof, who holds such interest solely as security for the performance of an obligation.

## ARTICLE I

Section 1 Definitions. Unless the context shall plainly require otherwise, the following words, when used in this Declaration and any and all exhibits hereto, shall have the following meanings:

(a) "The Act" or "the Unit Property Act" means the "Unit-Property Act," 25 Del.C. Section 2201, et seq., and shall include any revisions thereof and amendments and supplements thereto which are enacted subsequent to the date of this Declaration and not inconsistent with the provisions hereof.

(b) "Condominium" or "the condominium project" means the property subject to this Declaration.

(c) "Unit" or "condominium unit" means a three dimensional area, as hereinafter and on the Declaration Plan described and identified, and shall include all improvements contained within that area except those excluded in this Declaration, as described in Section 2202 (14) of the Act.

(d) "Common elements" means both general common elements and limited common elements, as hereinafter and on the Declaration Plan described and identified, and shall include all of the condominium except the condominium units, as described in Section 2202(3) of the Act.

(e) "Unit owner" or "owner" means any person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who holds legal title to a unit within the condominium, provided, however, that any person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who holds such interest solely as security for the performance of an obligation shall not be a unit owner by reason only of such interest.

(f) "Association of Unit owners" or "Unit Owners" means all unit owners.

(g) "Council" means a board of natural individuals charged with the responsibility of managing the offices of the condominium, as described in Section 2202(5) of this Act.

(h) "Common expenses and common profits" means the expenses and profits of the unit owners, as described in Section 2202(4) of the Act.

(i) "Mortgagee" means the holder of any recorded mortgage, to include the wholly owned subsidiary or subsidiaries thereof, all as more fully defined in Article II, Section

2 of the Code of Regulations.

Section 2      Other Definitions.      Unless it is plainly evident from the context that a different meaning is intended, all other terms used herein shall have the same meaning as they are defined to have in the Code of Regulations of the Unit Owners or the Unit Property Act.

Section 3      Name.      The name by which the condominium is as follows:

**BEACON HILL TOWNHOMES CONDOMINIUM**

**ARTICLE II**

Section 1      Property Subject to Declaration.      The property which is, and shall be held, conveyed, divided or subdivided, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration and the provisions of the Unit Property Act is located in the County of New Castle, State of Delaware, and is more particularly described on "EXHIBIT A" attached hereto and by this reference made a part hereof.

Section 2      Declaration Plan.      The Declaration Plan is incorporated herein and by this reference made a part of this Declaration.

**ARTICLE III**

Section 1.      The Condominium Units.      The general description and number of each condominium unit in the condominium, including its perimeters, approximate dimensions, floor area, identifying number or letter, location and such other data as may be-sufficient to identify it with reasonable certainty, is set forth on the Declaration Plan.

The lower boundary of any condominium unit in the project is a horizontal plane (or planes), the elevation of which coincides with the elevation of the underside of the structural subfloor thereof, extended to intersect the lateral or perimetrical boundaries of such condominium unit.

The upper boundary of any such condominium unit in the project is a horizontal plane (or planes), the elevation of which coincides with the elevation of the interior roof surface thereof (to exclude the roof and roofing material upon such condominium unit, but to include the attic area), extended to intersect the lateral or perimetrical boundaries of such condominium unit.

The lateral or perimetrical boundaries of any such condominium unit in the project are vertical planes which coincide with the interior surfaces of the exterior perimeter walls.(to include the drywall and plaster surfaces thereof, and windows and doors), extended to intersect the upper and lower boundaries of such condominium unit and to intersect the other lateral or

perimetrical boundaries thereof.

Equipment and appurtenances located within any unit and designed to serve only that unit, such as furnaces, air-conditioning equipment, mechanical equipment, appliances, range hoods, non-bearing partition walls, flooring material, outlets, electrical receptacles and outlets, fixtures, cabinets and the like, shall be considered a part of the condominium unit and not a part of the common elements.

Section 2      Easements.      Each condominium unit shall be subject to an easement to the owners of all of the other condominium units to and for the unobstructed and uninterrupted use of any and all pipes, ducts, flues, chutes, conduits, cables, wires and wire outlets, utility lines and the like, and any other common elements located within or accessible only from any particular condominium unit and for support.

#### **ARTICLE IV**

Section 1      Common Elements.      The common elements are the real property described on "EXHIBIT A" and all of the condominium except the condominium units, to include:

- (i) entrance ways and exits of the buildings;
- (ii) the yards, parking areas, driveways and recreational facilities;
- (iii) portions of the land and buildings used exclusively for the management, operation and maintenance of the common elements; installations of all central services and utilities;
- (v) all apparatus and installations existing for common use;
- (vi) all other elements of the building necessary or convenient to its existence, management, operation, maintenance and safety or normally in common use.

Section 2      Covenant Against Partition.      The common elements shall remain undivided. No owner of any condominium unit or other person shall bring any action for partition or division thereof except as may be provided for in the Unit Property Act.

Section 3      Easements.      The common elements of the condominium shall be subject to mutual rights of support, access use and enjoyment by all of the unit owners, except where designated as "Limited Common Elements" on the Declaration Plan whereby exclusive rights and advantages exist as to use by a specific unit Owner to the exclusion of others.

## ARTICLE V

Section 1            The Condominium Units.            Each condominium unit in the condominium shall have all the incidents of real property.

Section 2            Undivided Percentage Interests in Common Elements.    Each unit owner shall own an undivided percentage interest in the common elements of the condominium equal to that set forth on "EXHIBIT C" attached hereto and by this and other reference made a part hereof. The undivided percentage interests in the common elements set forth on "EXHIBIT C" shall have a permanent character and, except as specifically provided in the Unit Property Act, may not be changed without the written consent of all of the unit owners and the holders of all mortgages on the condominium units. The undivided percentage interests in the common elements set forth on "EXHIBIT C" may not be separated from the condominium unit to which they appertain. Any instrument, matter, circumstance, action, occurrence or proceeding in any manner affecting a condominium unit also shall affect, in like manner, the individual percentage interest in the common elements appertaining to such unit, whether or not such percentage interest is expressly described or mentioned.

Section 3            Percentage Interests in Common Expenses and Common Profits.    Each unit owner shall have a percentage interest in the common expenses and common profits of the condominium equal to that set forth on "EXHIBIT C" attached hereto and by this and other reference made a part hereof. The percentage interests in the common expenses and common profits set forth on "EXHIBIT C" shall have a permanent character and, except as specifically provided in the Unit Property Act, may not be changed without the written consent of all of the unit owners and the holders of all mortgages on the condominium units. The percentage interests in the common expenses and common profits set forth on "EXHIBIT C" may not be separated from the condominium unit to which they appertain. Any instrument, matter, circumstance, action, occurrence or proceeding in any manner affecting a condominium unit also shall affect, in like manner, the percentage interests in the common expenses and common profits appertaining to such unit, whether or not such percentage interest is expressly described or mentioned.

Section 4            Value.            The "value" herein established for any condominium unit shall not fix the market value of the condominium unit and shall not prevent the owner of any condominium unit, including the Declarant, from establishing a different circumstantial value for such condominium unit.

Section 5            Voting Rights.            At any meeting of the Unit Owners each unit owner shall be entitled to cast, on each question, one vote for each unit owned, which vote shall have



the value described in "EXHIBIT C".

## ARTICLE VI

Section 1.            Uses and Restrictions.            Each unit in the condominium is intended for residential use. Restrictions upon the use of the units are set forth in the Code of Regulations which is attached hereto, marked as "EXHIBIT B" and by this reference made a part hereof.

## ARTICLE VII

Section 1.            Encroachments.            In the event any portion of the common elements encroaches upon any condominium unit, or in the event any condominium unit encroaches upon any other condominium unit or any common element, as a result of settlement, shifting, or the duly authorized construction or repair of any building a valid easement for the encroachment and for the maintenance of the same shall exist so long as the building stands.

In the event any portion of the condominium is partially or totally damaged or destroyed by fire or other casualty, or as a result of condemnation or eminent domain proceedings, and then repaired or reconstructed as authorized in the Code of Regulations of the Unit owners and the Unit Property Act, encroachments of any portion of the common elements upon any condominium unit or of any condominium unit upon any other condominium unit or any portion of the common elements due to such repair or reconstruction shall be permitted, and valid easements for such encroachments and the maintenance of the same shall exist so long as the building stands.

For all purposes incident to the interpretation of deeds, the Declaration Plan and all other instruments of title relating to any condominium unit in the condominium project, the existing physical boundaries of any condominium unit constructed or reconstructed in substantial conformity with the Declaration Plan shall be conclusively presumed to be its boundaries, regardless of the shifting, settling or lateral movement of any building and regardless of minor variations between the physical boundaries shown on the Declaration Plan and those of any condominium unit.

Section 2.            Easement to Declarant.            There is hereby reserved to the Declarant and its agents a non-exclusive easement over all of the common elements of the condominium for purposes of access, the storage of building supplies and materials and equipment and, without limitation for any and all purposes reasonably related to the completion of the rehabilitation and repair of the condominium and the sale of units therein, for a period of twelve (12) months.

## ARTICLE VIII

Section 1.            Amendment.            Except as otherwise provided in the Unit Property Act, this Declaration may be amended only with the written consent of all of the unit owners and the holders of all mortgages on the condominium units in the condominium. Any such amendment shall be effective only upon the recordation of a Declaration of Amendment filed with the Recorder of Deeds for New Castle County, Delaware.

Section 2.            Termination and Waiver.            The condominium regime established by the recordation of this Declaration and the Declaration Plan may be terminated by Deed of Revocation executed by all of the unit owners and, in a manner to indicate their consent to such revocation, by the holders of all mortgages on the condominium units in the condominium, all in the manner provided in Section 2229 of the Unit Property Act. Any such revocation shall be effective only upon the recordation of a Deed of Revocation filed with the Recorder of Deeds for New Castle County, Delaware.

## ARTICLE IX

Section 1.            Special Declarations.            Any term, covenant, condition, restriction, or requirement of this Declaration or of the Code of Regulations of the Council of Unit Owners to the contrary notwithstanding, it is hereby expressly declared as follows:

(a) A first mortgagee of a unit in the condominium at his request is entitled to written notification from the Council of any default by the mortgagor of such unit in the performance of such mortgagor's obligations under the condominium documents which is not cured within thirty (30) days.

(b) Any first mortgagee who comes into possession of a unit, pursuant to the remedies provided in the mortgage, or foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal", at any time adopted by the Council.

(c) Any first mortgagee who comes into possession of a unit pursuant, to tho remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged unit which accrue prior to the time such holder comes into possession of the unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all units including the mortgaged unit).

(d) Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage owned) of condominium units have given their prior written approval, the Council shall not be entitled to:

- (1) by act or omission seek to abandon or terminate the condominium regime;
- (2) change the pro rata interest or obligations of any condominium unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance

proceeds or condemnation awards and for (ii) determining the pro rata share of ownership of each unit in appurtenant real estate and any improvements thereon which are owned by the unit owners in the condominium project in undivided pro rata interest ("common elements"), except as such charges are required or permitted in order to accomplish the expansion of the condominium regime;

(3) partition or subdivide any condominium unit, except as such subdivision is permitted by the condominium act;

(4) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause;

(5) use hazard insurance proceeds for losses to any condominium property (whether to units or to common elements) or other than the repair, replacement or reconstruction of such improvements, except as provided by the condominium act in case of substantial loss to the units and/or common elements of the condominium project.

(e) First mortgagees shall have the right to examine the books and records of the Council upon reasonable notice during normal business hours.

(f) All taxes, assessments and charges which may be, come liens prior to the first mortgage under the laws of the State of Delaware shall relate only to the individual condominium units and not to the condominium project as a whole.

(g) No unit owner or any other party shall have priority over any rights of first mortgagees of condominium units pursuant to their mortgages in the event of a distribution to condominium unit owners of insurance proceeds or condemnation awards for losses to or taking of condominium units and/or common elements.

(h) The Council shall give notice in writing to all mortgagees of condominium units, or their agents, of any loss to, or taking of, the common elements of the condominium if such loss or taking exceeds Ten Thousand (\$10,000.00) Dollars.

## **ARTICLE X**

Section 1.            Construction and Enforcement.            The provisions hereof shall be liberally construed to facilitate the purpose of creating a uniform plan for the creation and operation of a condominium. Enforcement of these covenants and restrictions and of the Code of Regulations attached hereto shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain or enjoin violation or to recover damages, or both, and against any condominium unit to enforce any lien; and the failure or forbearance by the Unit Owners or the owner of any condominium unit to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter; and all provisions of section 2210 of the Act shall apply.

There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages.

Section 2                      Severability.                      Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

Section 3                      Captions.                      The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration.

IN WITNESS WHEREOF, the said BHN, INC. has caused these presents to be executed by Gerald Katzoff, its President, attested by Joseph W. Hopkins, its Secretary, and its corporate seal to be affixed hereunto; and does hereby appoint Gerald Katzoff as its true and lawful attorney-in-fact to acknowledge and deliver these presents as the act and deed of the said BHN, INC., all as of the day and year first above written.

I HEREBY CERTIFY that on the Tenth day of August 1979, before me, the subscriber, a Notary Public in and for the jurisdiction aforesaid, personally appeared GERALD KATZOFF, personally well known to me to be the person named as attorney in fact in the foregoing Declaration and by virtue of the authority vested in him by said instrument, acknowledged the same to be the act and deed of BHN, INC., and that the same was executed for the purposes therein contained.

WITNESS my hand and Notarial Seal the day and year first above written.

Notary Public

My Commission Expires: October 11, 1979

**“EXHIBIT A”**

ALL THAT CERTAIN lot, piece or parcel of land with the buildings thereon erected, Situate in Brandywine Hundred, New Castle County and State of Delaware, being more particularly bounded and described as shown on survey of Pennoni Associates, Inc., Consulting Engineers of Wilmington, Delaware, dated July 17, 1979, as follows, to wit:

BEGINNING at a point on the Northeasterly side of MOUSLEY PLACE (Fifty feet wide) said point being the Northerly corner of Lot 15, BEACON HILL SECTION ONE BLOCK C; THENCE from the point of beginning continuing along the aforesaid side of MOUSLEY PLACE, by an arc of a circle curving to the left 17.17 feet (R=150') to a point; THENCE by an arc of a circle, curving to the left, 62.73 feet (R=150') to a point; THENCE by the same, N. 14° 25' 56" E, 153.94 feet to a point; THENCE by an arc of a circle, curving to the right, 29.09 feet (R=71.75') to a point, a corner for LANDS NOW OR LATE OF THE STATE OF DELAWARE; THENCE by the same the following two (2) courses and distances; 1.-S 22° 20' 11" E, 16.611' to a point; 2. - S 75° 34' 04" E, 799.66 feet to a point on the Northerly side of OVERLOOK DRIVE (25 feet wide); THENCE by the same, S. 37° 28' 02" W. 500.00 feet to a point, a corner for NAAMANS MANOR BLOCK A, BRANDYWOOD DEDICATED PUBLIC OPEN SPACE AND DEDICATED PUBLIC OPEN SPACE; THENCE by DEDICATED PUBLIC OPEN SPACE and Lots 15 thru 20 inclusive, BEACON HILL SECTION ONE BLOCK C, N. 55° 34' 06" W, 673.30 feet to the first mentioned point or place of beginning; CONTENTS thereof be what they may.