

**HILLTOP PLACE**  
**CLUSTER FIVE CONDOMINIUM DECLARATION**

by Hilltop Place Trust

(Compilation incorporating changes  
effected by amendments as annotated)

THIS DECLARATION is made this 3<sup>rd</sup> day of June, 1977, by John R. Hardie, Kenneth P. Wilson and Richard J. Weed, all of Concord, County of Merrimack and The State of New Hampshire, trustees of the Hilltop Place Trust, having a mailing address of 27 North State Street, Concord, New Hampshire, 03301, (sometime hereinafter called the "Declarant"), for the purpose of submitting certain property to condominium use and ownership in accordance with the provisions of the New Hampshire Unit Ownership of Real Property Act.

WHEREAS, the said Trust owns a certain tract of land generally located northwesterly of County Road in New London, New Hampshire, on which it has constructed, or hereafter will construct, a condominium project known as "Hilltop Place, Cluster Five", together with certain other improvements, and whereas the said Trust intends to sell and convey condominiums in said Cluster Five subject to certain mutually beneficial restrictions, covenants, conditions, equitable servitudes and charges which it desires to impose thereon under a general plan of improvement of said Cluster Five for the benefit of all of said condominiums and the future owners thereof:

NOW, THEREFORE, the Declarant hereby declares that all of the premises described in Appendix A hereto including all of the condominiums and other improvements located and to be located thereon are held and shall be held, conveyed, encumbered, leased, used, occupied and improved subject to the following restrictions, covenants, conditions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a general plan for Cluster Five and for the improvement of the aforesaid premises and the division of said premises into condominiums; and said restrictions, covenants, conditions, uses, limitations and obligations are intended to enhance and protect the value and desirability of Cluster Five as a whole and to mutually benefit each of the condominiums located therein, and to create mutual equitable servitudes upon each of said condominiums in favor of each and all other condominiums therein, to create reciprocal rights and privity of contract and estate between all persons acquiring or owning an interest in any of said condominiums, including the Declarant, and their grantees, heirs devisees, successors and assigns, and shall be deemed to run with the land and be a burden and benefit to all such persons, including Declarant, their grantees, heirs, devisees, successors and assigns.

1. Definitions.

Certain of the terms as used in this Declaration and in the Bylaws, which are annexed hereto as Appendix C and are made a part hereof, are defined and shall have meaning as follows, unless the context clearly indicates a different meaning therefor:

(a) “Declaration” means this instrument.

(b) “Declarant” means John R. Hardie, Kenneth P. Wilson and Richard J. Weed, all of Concord, County of Merrimack, and the State of New Hampshire, together with their successors in office, trustees of the Hilltop Place Trust, having a mailing address of 27 North State Street, Concord, New Hampshire 03301.

(c) “Act” means the New Hampshire Unit Ownership of Real Property Act (Chapter 479-A of the New Hampshire Revised Statutes Annotated, 1955, as amended).

(d) “Hilltop Place Cluster Five” or “Cluster Five” means the premises described in Appendix A hereto including land, all buildings and other improvements and structures now or hereafter constructed thereon, all easements, rights and appurtenances belonging thereto, and all personal property now or hereafter used in connection therewith, which have been or are intended to be submitted to the provisions of the Act.

(e) “Unit” means a part of Cluster Five intended for independent ownership, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in any residential building in Cluster Five, and with a direct exit to Common Area leading to a public street or highway, all as more particularly described in Paragraph 2(c) hereof.

(f) “Common Area” means all that portion of Cluster Five other than the Units, and is more particularly described in Paragraph 2(d) hereof. Common Area includes Limited Common Area.

(g) “Limited Common Area” means that portion of the Common Area which is designated herein as reserved for the use of the Owner or Owners of a certain Unit or Units to the exclusion of the Owners or other Units and which is more particularly described in Paragraph 2(e) hereof.

(h) “Condominium” means a Unit together with an undivided interest in the Common Area, and all easements, rights and appurtenances belonging thereto.

(i) “Owner” means any person or persons or other entity owning a completed Unit in fee simple absolute together with an undivided interest in fee simple in the Common Area, in the percentage specified in Appendix B hereto.

(j) “Cluster Five Association” or “Cluster Five Association of Owners” means the owners acting as a group in accordance with the Act, the Declaration and the Bylaws. (As Amended 27 May 1980 Book 1406 Page 0478)

(k) “Bylaws” means the instrument annexed hereto as Appendix C and hereby made a part hereof.

(l) “Cluster Five Board” or “Cluster Five Board of Directors” means the governing body of Cluster Five elected pursuant to the Bylaws. (As Amended 27 May 1980 Book 1406 Page 0478)

(m) “Condominium Rules” means such rules and regulations as the Cluster Five Board from time to time may adopt relative to the use of Cluster Five or of any part hereof.

(n) “Common Expenses” means expenses incurred by the Cluster Five Association for the purposes of administration, maintenance, repair and replacement of Common Area or any other expenses agreed upon by the Cluster Five Association or authorized by this Declaration, the Bylaws or the Act.

## 2. Information required by Section 10 of the Act.

(a) Description of Land. A description of the land on which the buildings and other improvements in Cluster Five are or are to be located is contained in Appendix A to this Declaration, which is hereby made a part thereof.

(b) Description of Buildings. There are nine (9) residential buildings in Cluster Five, containing a total of twenty-three (23) units. All buildings are of wood frame construction set upon concrete foundations. They are one, one and a half, and two stories high, with no basements. The roofs are covered with asphalt shingles, and the exterior walls with vertically marked plywood siding. The interior walls are of plasterboard, and the floors are largely carpeted. Additional detail concerning the buildings is set forth in Appendix B to this Declaration, which is hereby made a part hereof.

(c) Description of Units. The unit number of each Unit, and a statement of its location, approximate area, number of rooms and value is contained in Appendix B hereto, which is hereby made a part hereof. Each Unit has access to a patio or balcony and each unit has access to a covered front entry and the majority of units have access to storage area for trash and wood, all of which are Limited Common Area. The boundaries of each Unit with respect to floors, ceilings, and the walls, doors and windows thereof are as follows: (As Amended 27 May 1980 Book 1406 Page 0478)

(i) Floors: The unfinished interior surface of the lowermost floor.

- (ii) Ceilings: The unfinished interior surface of the uppermost ceiling.
- (iii) Perimeter walls and door frames: The unfinished interior surface thereof.
- (iv) Windows and doors: As to doors, the unfinished exterior surface thereof; and as to windows and window frames, the exterior surface of the glass and the unfinished exterior surface of the window frames.

Each Unit shall include the portions of the building within said boundaries and the space enclosed by said boundaries, except any Common Area described in Paragraph 2(d) here-in below which may be located therein.

(d) Description of Common Area. The common Area includes, but not by way of limitation: (i) the land on which the buildings containing the Units is located, the walks, shrubbery, plantings and other landscaping and exterior decoration, parking areas and other land and interests in land included in the description of Cluster Five in Appendix A hereto; (ii) the water supply, sewage disposal, electrical and telephone systems serving Cluster Five to the extent said systems are located within Cluster Five (but not including any portions thereof contained within the servicing of a single Unit); (iii) the roofs, foundations, slabs, columns and supports of said buildings; the perimeter walls around each Unit to the unfinished interior surfaces thereof and other walls which are not within a Unit; (iv) the exterior stairs, walkways, stairway landings, corridors, lobbies and halls which are not within a Unit; (v) the pipes, ducts, fireplace flues, chutes, conduits, plumbing, wires, meters, meter housings and other facilities for the furnishing of utility services or waste removal, which are not located within a Unit and any such pipes, ducts, fireplace flues, chutes, conduits, plumbing, wires, meters, meter housings and other facilities, which are located within a Unit but serve parts of Cluster Five other than the Unit in which they are located; (vi) all other parts of Cluster Five including personal property, if any, necessary or convenient to its existence, maintenance and safety, or normally in common use, and including any other easements set forth in Appendix A hereto. (As Amended 27 May 1980 Book 1406 Page 0479)

(e) Description of Limited Common Area. The Limited Common Area includes that portion of the Common Area consisting of separate garage areas, covered front entries and (except for Units 102 and 103) separate storage areas for wood and (except for Unit 102) , for trash, all of which are in each case designated as appurtenant to a particular Unit and so identified on the Hilltop Place Cluster Five floor plan which are recorded in Merrimack County Records pursuant to RSA 479-A:12, and also includes certain patios, balconies and attic storage space, all of which are identified and designated as appurtenant to specific numbered Units in Cluster Five as set forth in Appendix B. All such Limited Common Area is limited to the exclusive use of the Owner or Owners of the Unit or Units to which it is appurtenant.

(f) Unit Values and Relative Percentages. The value of each Condominium and of Cluster Five and the percentage of undivided interest in Common Area appertaining to each Unit are set forth in Appendix B hereto. There shall appertain to each Condominium in Cluster Five for voting purposes in connection with meetings of the Cluster Five Association, a number of votes which is equal to the aforementioned percentage.

Where a particular Condominium is owned by more than one person, said Owners may not divide the number of votes appertaining to their Condominium, but must cast said number of votes as a whole. Assessments of Common Expenses by the Cluster Five Association against the Owners, pursuant to the Declaration and Bylaws, shall be allocated to the Owners according to the aforementioned percentages.

(g) Statement of Purposes of Condominium Use. Hilltop Place Cluster Five is primarily intended for use as a residential community and the following provisions, together with the provisions of the Condominium Rules, are in furtherance of this purpose: (As Amended 24 October 1991 Book 1869 Page 1835)

(1) Each Unit shall be occupied and used only for the private residential purposes by the Owner and his family, or by Lessees or guests of the Owner, except for such limited professional use as the Cluster Five Board, upon application of the Owner, from time to time may authorize as not being incompatible with the residential character of Cluster Five. This restriction shall not be construed to prohibit Owners from leasing their condominiums so long as the lessees thereof occupy and use the leased premises in accordance with the provisions hereof. No Owner or Owners of any Condominiums shall permit the use of the Condominium for transient, hotel or commercial purposes.

(2) The Common Area shall not be used in a manner which is inconsistent with the residential character of Cluster Five. No one shall obstruct, commit any waste in, or otherwise cause any damage beyond reasonable wear and tear to, the Common Area and anyone causing such damage shall pay the expenses incurred by the Cluster Five Board in repairing same; and nothing shall be stored in the Common Area without the prior written consent of the Cluster Five Board, except in storage areas appurtenant to the particular Units, as provided in Paragraph 2(e) hereinabove. Nothing shall be altered, constructed in or removed from the Common Area without the prior written consent of the Cluster Five Board.

(3) No noxious or offensive use shall be made of any part of Cluster Five and nothing shall be done therein which is or will become an annoyance or nuisance to the other Owners. No use shall be made of any part of Cluster Five which will constitute a fire hazard or which will result in the cancellation of insurance on any part of Cluster Five or which is in violation of any law, ordinance or governmental regulation applicable thereto. No use shall be made of any part of Cluster Five which will increase the rate of insurance

on the Common Area without prior written consent of the Cluster Five Board.

(4) No signs, clotheslines, television antennas, refuse, air conditioning equipment, loose clothing or similar material or equipment shall be hung, posted or otherwise placed so as to be within the public view or within the view of other Owners, without the prior written consent of the Cluster Five Board. (As Amended 27 May 1980 Book 1406 Page 0479)

(5) No animals, livestock or poultry shall be kept anywhere within Cluster Five except that dogs, cats or other household pets may be kept in Units, with the prior written consent of the Cluster Five Board, which consent may be withdrawn whenever any such household pet becomes a nuisance to the other Owners, and which consent shall be subject to the Condominium Rules.

(6) The Cluster Five Board of Directors is empowered to adopt and amend, from time to time, Condominium Rules concerning use of Cluster Five and various parts thereof, which Rules shall be furnished in writing to all Owners and shall not be violated.

(7) The consents of the Cluster Five Board referred to in this Paragraph (g), except as specified in subparagraph (5), may be withdrawn by the Cluster Five Board whenever it deems such withdrawal to be in the best interest of Cluster Five.

(8) None of the rights and obligations of the Owners created herein, or in any deed conveying a Condominium from the Declarant to a purchaser thereof, shall be altered in any way by encroachments as a result of construction of any structures or due to settling or shifting of structures. There shall be valid easements for the maintenance of such encroachments so long as they shall exist; provided however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners.

(h) Delegation of Powers, Duties and Administrative and Managerial Functions. All of the powers, duties, and administrative and managerial functions of the Board of Directors and the Treasurer as set forth in Article II Section 7, Article IV Section 4 and Article V Section 3 of these Bylaws and in paragraph 2(g) and 7 of the Declaration are hereby delegated to the Hilltop Place Community Association. All of the functions, powers, rights and prerogatives of the Board of Directors and of the Owners not specifically set forth in the sections listed in the preceding sentence shall continue to be exercised by the Board of Directors and the Owners as provided in the Declaration and these By-Laws. (As Amended 17 July 2007 Book 3004 Page 1135)

(i) Person to Receive Service of Process. Any member of the Cluster Five Board of Directors whose residence is at Cluster Five shall be an agent to receive service of process in

accordance with the Act. (As Amended 27 May 1980 Book 1406 Page 0480)

(j) Vote to Rebuild. In the event of damage or destruction of all or part of Cluster Five, the provisions as to the percentage of votes by the Owners which shall be determinative of whether to rebuild, repair, restore or sell Cluster Five are set forth in Paragraph 3 hereinbelow.

3. Insurance and Voting in the Event of Damage or Destruction.

(a) Insurance to be Obtained. The Cluster Five Board of Directors shall obtain and maintain, to the extent obtainable, the following insurance:

(i) Fire insurance with extended coverage, vandalism and malicious mischief endorsements insuring all the buildings in Cluster Five including without limitations all such portions of the interior of such buildings as are for insurance purposes normally deemed to constitute part of the building and customarily covered by such insurance, such as heating and air conditioning and other service machinery, interior walls, all finished wall surfaces, bathroom and kitchen cabinets and fixtures, and heating and lighting fixtures, except for improvements made by individual Owners which exceed a total value of One Thousand Dollars (\$1,000.00) and are not reported to the insurer, such insurance to be in an amount at least equal to the replacement value of the buildings and to be payable to the Cluster Five Board as trustee for the Owners and their mortgagees as their respective interests may appear.

For the purposes of this Declaration the term “replacement value” shall mean \$1,546,225; provided, however, that said amount shall be adjusted annually starting in fiscal year 1984 by the percentage increase or decrease in local building costs determined by reference to the Marshall Swift Company-National Appraisal Service Factor, or if said Marshall Swift Company-National appraisal Service factor is no longer published, as determined by reference to a similar index of local building costs which is generally accepted by the property insurance industry; and provided that the figure yielded by the above-mentioned Appraisal Service factor may be revised from time to time in the sole discretion of the Board of Directors on the basis of an appraisal of the cost of replacement of the buildings obtained from a builder or other person or agency in the construction industry qualified to appraise building construction costs; and provided further that the insurance company providing the amount of property coverage required hereunder shall execute an “Agreed Amount” endorsement to the Cluster’s insurance policy which requires said company to pay One Hundred (100) percent of the actual replacement cost for any loss with respect to one or more of the Cluster’s buildings up to at least the full replacement value as defined hereinabove. (Amended 3 August 1987 Filed 8/18/1987 Book 1669 Page 0593)

(ii) Public liability insurance in such amounts as the Cluster Five Board may

from time to time determine, but in no event shall the limits of liability be less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) for bodily injury and property damage per occurrence, insuring each member of the Cluster Five Board and the Owners, and with cross liability coverage with respect to liability claims of any one insured thereunder against any other insured thereunder. This insurance, however, shall not insure against the individual liability of an Owner for negligence occurring within his own Unit or within the Limited Common Area of which he has exclusive use. (As Amended 27 May 1980 Book 1406 Page 0480)

(iii) Workmen's compensation as required by law.

(iv) Such other insurances as the Cluster Five Board may determine.

(b) General Insurance Provisions.

(i) The Cluster Five Board shall deal with the insurer or insurance agent in connection with the adjusting of all claims covered by insurance policies provided for under Paragraph 3(a)(i) above and shall review with the insurer or insurance agent, at least annually, the coverage under said policies, said review to include an appraisal of improvements within Cluster Five and shall make any necessary changes in the policy provided for under paragraph 3(a)(i) above (prior to the expiration date set forth in any agreed amount endorsement contained in said policy) in order to meet the coverage requirements of such Paragraph.

(ii) The Cluster Five Board shall be required to make every effort to see that all policies of physical damage insurance provided for under Paragraph 3(a) above: (1) shall contain waivers of subrogation by the insurer as to claims against the Cluster Five Association, its employees, members of the Cluster Five Board, Owners and members of the family of any Owner who reside with said Owner, except in cases of arson and fraud; (2) shall contain a waiver of defense of invalidity on account of the conduct of any of the Owners over which the Cluster Five Association has "no control"; (3) shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days written notice to all of the insureds thereunder and all mortgagees of Condominiums in Cluster Five; (4) shall provide that in no event shall the insurance under said policies be brought into contribution with insurance purchased individually by Owners or their mortgagees; and (5) shall exclude policies obtained by individual Owners from consideration under any "no other insurance" clause.

(iii) Each Owner may obtain additional insurance for his own benefit and at his own expense. No such policy shall be written so as to decrease the coverage under any of the policies obtained by the Cluster Five Board pursuant to Paragraph 3(a) above, and each Owner hereby assigns to the Cluster Five Board the proceeds of any such policy to the extent that any such policy does in fact result in a decrease in such coverage, said

proceeds to be applied pursuant to the terms hereof as if produced by such coverage. Copies of all such policies (except policies covering only personal property, owned or supplied by individual Owners) shall be filed with the Cluster Five Association.

(iv) Each Owner should obtain insurance for his own benefit and at this own expense insuring all personal property presently or hereafter located in his Unit or Limited Common Area, all floor coverings whether or not fixtures, and all improvements to his Unit which exceed a total value of One Thousand Dollars (\$1,000.00) and which are not reported to the Cluster Five Board.

(v) Each Owner, within twenty (20) days after the commencement of construction of such improvements, shall notify the Cluster Five Board of all improvements to his Unit (except personal property other than fixtures) which exceed a total value of One Thousand Dollard (\$1,000.00) and upon receipt of such notice, the Cluster Five Board shall notify the insurer under any policy obtained pursuant to Paragraph 3(a)(i) hereof, of any such improvements.

(c) Procedure in the Event of Damage or Destruction. In the event of damage to or destruction of all or part of Cluster Five as a result of fire or other casualty:

(i) The Board shall arrange for the prompt repair and restoration of the damaged or destroyed portion of Cluster Five and the Board shall disburse any insurance proceeds to the contractors engaged in such repair and restoration in appropriate progress payments, unless Cluster Five is damaged or destroyed to the extent of 75% or more of the total replacement value of the buildings of Cluster Five and the Cluster Five Association by a vote of 75% of the Owners' total voting power does not, within sixty (60) days of the date of such damage or destruction, determine to repair, reconstruct or rebuild the damaged or destroyed property. Any cost of such repair and restoration in excess of the said insurance proceeds shall constitute a Common Expense and the Cluster Five Board may assess all the Owners for such excess in the same manner as Common Expenses are assessed. If the cost of such repair and restoration is less than the amount of said insurance proceeds, then the excess of said insurance proceeds over said cost shall be added to Cluster Five's reserve for contingencies and replacements or, in the discretion of the Cluster Five Board, be distributed by the Cluster Five Board to the Owners and their mortgagees, as their interests may appear, in accordance with the percentages set forth in Appendix B hereto. (In the event that Cluster Five is damaged or destroyed to the extent of less than 75% of said value, unless the Owners by a vote of 75% of their total voting power determine otherwise in accordance with Paragraph 3(c)(iii) hereof, the mere arrangement by the Cluster Five Board for the repair and restoration of the damaged or destroyed property shall be deemed a determination by the Cluster Five Association to repair, reconstruct and rebuild.)

(ii) If Cluster Five is damaged or destroyed to the extent of 75% or more of the total replacement value of all the buildings in Cluster Five, and the Cluster Five Association by a vote of 75% of Owners' total voting power does not, within sixty (60) days of the date of such damage or destruction, determine to repair, reconstruct or rebuild, or, if Cluster Five is damaged or destroyed to the extent of less than 75% of said value and the Owners by a vote of 75% of their total voting power elect to sell Cluster Five then the Board shall record at the Merrimack County Registry of Deeds a notice to that effect and upon the filing of said notice Cluster Five shall be deemed to be owned in common by the individual Owners, each owning an undivided interest equal to the percentage set forth in Appendix B hereto, and any liens on any Condominium being deemed to be transferred to the undivided interest of the Owner of said encumbered Condominium in accordance with the then-existing priorities; and upon the recording of said notice the said property shall be subject to a petition by any Owner to the Cluster Five Board for its sale and for partition of the net proceeds of such sale. In the event of such a petition, Cluster Five shall be sold, as a whole or in parts and at one or more sales, upon such terms and conditions as the Cluster Five Board in its sole discretion deems in the best interest of the Owners and the net proceeds of such sale or sales together with the net proceeds of insurance on said property, if any, shall be considered as one fund and shall be divided by the Cluster Five Board among all the Owners in proportion to their respective undivided interests in said property, after first paying out of the share of each Owner, to the extent sufficient for that purpose, the amount of any unpaid liens on his undivided interest in the order of the priority of such liens.

(iii) Notwithstanding the provisions of subparagraphs (i) and (ii) hereinabove, the Owners by a vote of 75% of their total voting power may elect to sell Cluster Five in its damaged condition, in which event a notice shall be filed in accordance with the provisions of subparagraph (ii), said notice to have the same legal effect as set forth in subparagraph (ii). In the event of any sale or sales, either under said subparagraph (ii) or this subparagraph, the members of the Cluster Five board are hereby authorized to execute and deliver such instruments and to perform such acts as may be necessary or required to effect such sale or sales.

4. Extent of Ownership and Possession by Owner. Subject to the provisions of this Declaration each Owner shall be entitled to exclusive ownership and possession of his Unit. No Owner shall be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floor, door frames and ceiling, bounding his Unit, nor any Common Area located within his Unit, except as a tenant in common with the other Owners. An Owner, however, shall be deemed to own and shall have the exclusive right, at his own expense, to paint, repaint, tile, wax, paper or otherwise refinish and decorate the finished surfaces of the perimeter walls, floors, ceilings, door frames and window frames bounding his Unit, and of any walls, floors and ceilings inside his unit. No Owner shall be deemed to own the utilities running through his Unit which are utilized for, or service, more than one Unit, except as a tenant in common with the other Owners.

Each Owner shall own an undivided interest in the Common area in the percentage expressed in Appendix B hereto. No such percentage shall be altered without the consent of all Owners in accordance with the Act, as amended from time to time, and no such interest shall be separated from the Unit to which it appertains, it being deemed to be conveyed or encumbered with the Unit even though it is not expressly mentioned or described in the instrument of conveyance or encumbrance. Subject to the provisions of this Declaration, each Owner may use the Common Area, excepting Limited Common Area, in accordance with the purposes for which it is intended, so long as he does not hinder or encroach upon the lawful rights of the other Owners or otherwise violate the provisions hereof or of any Condominium Rules adopted pursuant to said provisions.

Subject to the provisions of this Declaration, each Owner shall be entitled to the exclusive use of the Limited Common Area appurtenant to his Unit. The exclusive use of the Limited Common Area shall not be altered without the consent of all Owners expressed in an amended Declaration duly recorded and, without such unanimous consent shall not be separated from the Unit to which it is appurtenant, it being deemed to be conveyed or encumbered with the Unit even though it is not expressly mentioned or described in the instrument of conveyance or encumbrance.

5. Owner's Obligation to Repair. Each Owner shall at his own expense keep his Unit and its equipment and appurtenances in good order, condition, and repair and in a clean and sanitary condition, and shall do all redecorating, painting, and refinishing which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition to redecorating and keeping the interior of the Unit in good repair, each Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heater, heating equipment or lighting fixtures and other property which are not Common Area, and which are located in his Unit. Each Owner shall immediately notify the Cluster Five Board or its agent of any damage to or malfunction of any facilities for the furnishing of utility services and waste removal which is Common Area within his Unit. Each Owner shall also, at his own expense, keep the Limited Common Area appurtenant to his Unit in a clean and sanitary condition, and shall make all repairs of damage thereto caused or permitted by him, reasonable wear and tear excepted. In the event an Owner fails to make such repairs after thirty (30) days written notice of the need for same is given to him by the Cluster Five Board, the Cluster Five Board may enter and make such repairs, the expense of which shall be borne by said owner. No Owner shall permit any repair or other work in his Unit, or the Limited Common Area appurtenant to his Unit, by anyone unless any such person or entity has furnished written evidence that it has obtained reasonably adequate public liability and workmen's compensation insurance in form and amount which are satisfactory to the Cluster Five Board, and unless such repair or other work is performed in compliance with all governmental laws, ordinances, rules and regulations.

6. Prohibition Against Structural Changes by Owner. No Owner shall, without first satisfying the requirements regarding repair or other work set forth in Paragraph 5 above and, in

addition, obtaining written consent of the Cluster Five Board:

- (i) make or permit to be made any structural alteration, structural improvement or structural addition in or to his Unit or in or to any other part of Cluster Five;
- (ii) tamper with any bearing wall or take any other action or permit any action to be taken that will impair the structural soundness or integrity or safety of any building or other structure in Cluster Five;
- (iii) impair any easement or right or personal property which is part of Cluster Five; or
- (iv) paint, decorate or adorn with decorative or functional objects any portion of the exterior of any building or other structure in Cluster Five or any Common Area therein.

7. Entry for Repairs. The Cluster Five Association shall have the irrevocable right, to be reasonably exercised by the Cluster Five Board or its agents, to enter any Unit to inspect the same, to remove therefrom violations of this Declaration, the Bylaws or the Condominium Rules adopted pursuant hereto, and in order to perform any repair, maintenance or construction for which the Cluster Five Board is responsible and shall have the irrevocable right, to be reasonably exercised by the Cluster Five Board or its agents, or by any two or more Owners acting as a group, to enter any Unit for the purpose of making emergency repairs necessary to prevent damage to other parts of Cluster Five. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby or expense in connection therewith shall be repaired or satisfied by the Cluster Five Board out of the Common Expense fund unless such emergency repairs are necessitated by the negligence of one or more Owners, in which case the negligent Owner or Owners shall bear the expense of such repairs.

8. Notice of Transfer. Immediately after any transfer of any Condominium, by sale, lease, gift, devise, intestate succession, death of a joint tenant, or otherwise, either the transferring Owner or the acquiring Owner shall give notice to the Cluster Five Board of such transfer, including the name and address of the acquiring Owner and the date of transfer.

9. Assessments. Each Owner shall pay all Common Expenses assessed against him, all expenses for which he is liable under Paragraphs 2(g)(2), 4, and 6 hereof, and all other assessments made against him by the Cluster Five Board in accordance with the terms of the Declaration and Bylaws and all expenses so incurred and sums so assessed but unpaid shall be secured by a lien as provided in Section 22 of the Act. (As Amended 24 October 1991 Book 1869 Page 1837) No Owner shall convey, mortgage, sell or lease his Condominium unless and until he shall have paid in full to the Cluster Five Board all such expenses theretofore incurred and sums theretofore assessed by the Cluster Five Board against his Condominium, which are due and unpaid. Within ten (10) days after receiving an appropriate request and payment of a reasonable fee, if required, not to exceed Ten Dollars (\$10.00), the Cluster Five Board shall

supply a certificate executed by any one of its members stating the amount of any unpaid Common Expense assessments or other expenses or assessments secured by a lien against any particular Condominium in accordance with the Act, the Declaration and Bylaws, and the amount thereof which is then due, and the amounts so stated shall be conclusively established as of such date, in favor of all persons who rely thereon in good faith, as against the Cluster Five Association. Any Owner of a Condominium shall be liable, jointly with the prior Owner, for the payment of any such expenses or assessments against said Condominium prior to its acquisition, by purchase or otherwise, by him which are unpaid as of the time of the said acquisition, whether or not such expenses or assessments are then due, except that a first mortgagee or other purchaser at the foreclosure sale of a first mortgage lien or at a sale in lieu of such foreclosure, and a purchaser from a first mortgagee who purchases at such a foreclosure sale or such a sale in lieu of foreclosure, shall not be liable for the payment of expenses or assessments unpaid and due as of the time of his acquisition but shall be liable for unpaid expenses and assessments becoming due thereafter.

The lien for unpaid Common Expenses or other expenses or assessments shall be subordinate to any first mortgage lien of record and to certain tax liens, as provided in Section 22 of the Act.

10. Condemnation. In the event of taking in condemnation or by eminent domain of part or all of the Common Area, the award made for such taking shall be payable to the Cluster Five Board. If the Cluster Five Association by vote of 75% or more of the Owners' total voting power, within sixty (60) days of such taking, approves the repair and restoration of such Common Area in whatever manner said Owners may determine, the Cluster Five Board shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that the Cluster Five Association does not so approve the repair and restoration of such Common Area, the Cluster Five Board shall disburse the net proceeds of such award in the same manner as they are required to distribute insurance proceeds where there is no repair or restoration of the damage, as provided in Paragraph 3(c)(ii) hereof; provided, however, that the portion of any award attributable to the taking of any Limited Common Area shall be allocated to the Owner of the Unit to which such Limited Common Area was appurtenant.

11. Waiver. The failure of the Cluster Five Board or its agents to insist, in any instance, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or of the Bylaws, or to exercise any right herein or therein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future, of such term, covenant, condition, restriction or right, but such term, covenant, condition, or restriction or right shall remain in full force and effect. The receipt by the Cluster Five Board of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Cluster Five Board or its agents of any

provision hereof shall be deemed to have been made unless expressed in writing and signed by the Cluster Five Board.

12. Liability of the Cluster Five Board. The members of the Cluster Five Board shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith and except as provided hereinbelow. The Owners shall indemnify and hold harmless each of the members of the Cluster Five Board against all contractual liabilities to others arising out of contracts made by the Cluster Five Board in behalf of Cluster Five unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of the Bylaws. It is permissible for the members of the Cluster Five Board to contract with the Declarant without fear of being charged with self-dealing. It is intended that the members of the Cluster Five Board shall have no personal liability, other than as Owners, with respect to any contract made by them in behalf of Cluster Five except with respect to any such contract made in bad faith or contrary to the provisions of the Declaration or of the Bylaws. It is also intended that the personal liability of each Owner arising out of any contract made by the Cluster Five Board or out of the aforesaid indemnity in favor of the members of the Cluster Five Board shall be limited to such proportion of the total liability thereunder as his interest in the Common Area bears to the interests of all the Owners in the Common Area (except that the personal liability of Owners who are members of the Cluster Five Board and who contract in bad faith or contrary to the provisions of the Declaration or of the Bylaws shall not be so limited). The provisions of this Paragraph 12 do not apply to and shall not preclude claims for property damage and personal injury by Owners against the Cluster Five Board or any other insured under the liability insurance required by Paragraph 3(a)(ii).

13. Enforcement. Each Owner shall comply strictly with the provisions of this Declaration, the Bylaws and the Condominium Rules as the same may be lawfully amended from time to time and with decisions adopted pursuant to said Declaration, Bylaws and Condominium Rules, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Cluster Five Board in behalf of the Owners, or in a proper case, by an aggrieved Owner.

14. Personal Property. The Cluster Five Board may acquire and hold, for the benefit of the Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such personal property shall be owned by the Owners in the same proportion as their respective interests in other Common Area. A transfer of a Condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property, whether or not such personal property is specifically mentioned therein.

15. Notices. All notices mailed hereunder, and under the Bylaws and the Act, to the Cluster Five Association and the Cluster Five Board shall be sent by registered or certified mail to the Cluster Five Board at Cluster Five, or to such other address as the Cluster Five Board may designate from time to time by notice in writing to all Owners. All notices shall be deemed to

have been given when mailed, except notices of change of address which shall be deemed to have been given when received, and except as otherwise provided herein. (As Amended 27 May 1980 Book 1406 Page 0480)

16. Invalidity. The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability or effect of the balance of the Declaration.

17. Gender. The use of the masculine gender herein shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

18. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project.

19. Amendment. Except as otherwise provided herein and in the Act, this Declaration may be amended from time to time by an instrument in writing signed by Owners representing seventy-five (75) percent or more of the total voting power of all Owners, which signatures shall be witnessed but need not be acknowledged. Any such amendment shall be effective upon recordation at the Merrimack County Registry of Deeds. (As Amended 27 May 1980 Book 1406 Page 0481)

IN WITNESS WHEREOF, the Trustees of the Hilltop Place Trust have hereunto set their hands and seals to this instrument this 3<sup>rd</sup> day of June, 1977.

HILLTOP PLACE TRUST

By /s/ Kenneth P. Wilson

By /s/ John R. Hardie, Trustee

WITNESS:

John R. Penothlon  
to all three

By /s/ Richard J. Weed, Trustee

STATE OF NEW HAMPSHIRE  
County of Merrimack

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of June, 1977 by John R. Hardie and Kenneth P Wilson and Richard J. Weed, Trustees

/s/ Nancy Knowlton  
Justice of the Peace/Notary Public