

069  
Connelly  
14-  
2-  
16-

**AMENDMENT TO DECLARATION  
THE BIRCHES, A CONDOMINIUM**  
February 2004

WHEREAS The Birches, A Condominium was established by the recording of a Declaration of Condominium in March 1987 with the original Declaration and Bylaws recorded at Book 3988, page 0081 of the Hillsborough County Registry of Deeds, and



WHEREAS there have been subsequent recordings of documents that have purported to change, amend and modify the original condominium instruments,

IT IS THEREFORE AGREED by the unit owners that the following prior amendments and affidavits are hereby acknowledged, ratified and adopted by vote of the Association.

1. Exhibit 1 Declaration and Bylaws recorded - Book 5534, Page 1939.
2. Amendment to Declaration of The Birches Condominium Association recorded - Book 5535 Page 1712.
3. Amended Pages 1 & 17 as of March 31, 1994 Exhibit 1 Declaration of Condominium The Birches, A Condominium recorded - Book 5535 Page 1715.
4. Affidavit Re: The Birches, A Condominium and Oakshire Development, L.L.C. recorded - Book 5539, Page 1824.
5. Affidavit Re The Birches, A Condominium recorded - Book 5697, Page 0042.

END OF AMENDMENT

Executed this 23 Day of FEBRUARY 2004.

  
 President Stephen Olynyk  
  
 Treasurer  
 NICK DIAMOND

BK 7176 PG 1785

**CERTIFICATION OF VOTE**

On February 13, 2004, pursuant to the Bylaws of the Association and with notice to all unit owners as prescribed by Law, a vote to amend the condominium documents pursuant to Article VI Section 5 of the Bylaws and Article 21 of the Declaration was held. As of February 13, 2004, the total number of units is 176. The total number of unit owners consenting and executing the proposed Amendment was 118. Said number constituting a quorum for amending the Declaration and Bylaws of the association the following votes were taken and recorded.

- 1. To adopt and re-affirm the Amendment to the Declaration and Bylaws as stated in the preceding amendment:

Executing and Consenting the amendments - 118  
 Not Voting - 58

Pursuant to Article VI Section 5 of the Bylaws, the amendment

*LISE LEDOUX*, the Secretary of the Association hereby certify that as of February 13, 2004 all unit owners were notified of the proposed amendment and in accordance with the Declaration and Bylaws of the Association and in compliance with the applicable New Hampshire Statutes, the proposed amendment was consent to by sufficient unit owners and the amendment does not affect the rights of any first mortgage holders and the above vote was taken and available for inspection upon request.

Dated: 2/24/04

*Lise Ledoux*  
 Secretary  
 Lise Ledoux

The Birches Condominium Association  
 c/o Harvard Management Solutions, Inc.  
 P.O. Box 2019  
 Merrimack, NH 03054  
 Tel. (603) 429-2019

BK 7176PG1787

Office. The office of the Condominium and of the Board of Directors shall be at the Condominium or at such other place as may be designated by the Board of Directors. The address of the Condominium is 2 Plastic Road, Merrimack, New Hampshire.

SECTION 4.

Applicability of Bylaws. The Bylaws apply to all of the property which constitutes the condominium and to its use and occupancy. All present and future owners, visitors, tenants and occupants of units and any other persons who may use the facilities of the condominium in any manner are subject to these Bylaws, the Declaration and the Condominium Rules. The acceptance of a deed or the making of a lease or an act of occupancy of a Unit shall constitute an agreement that these Bylaws, the Condominium Rules and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

SECTION 3.

Definitions. The terms used in the Bylaws and in the Declaration shall have the same meaning as in the Declaration unless the context clearly indicates a different meaning therefor.

SECTION 2.

Purpose. The administration of the Condominium shall be governed by these Bylaws and all present and future holders of any interest in any Unit in the Condominium shall hold it subject to these Bylaws, the Declaration and the Condominium Rules.

SECTION 1.

Purpose and Definitions

ARTICLE I

THE BIRCHES, A CONDOMINIUM  
UNIT OWNERS' ASSOCIATION

BYLAWS  
AS AMENDED and APPROVED February, 2004

Exhibit B

069  
Commonly  
50  
2-  
52 83

Board of Directors

ARTICLE II

SECTION 1.

Powers and Duties. The affairs of the Owners' Association shall be administered by the Board of Directors except as to those matters the Act requires be performed by the Owners. The Board shall have the powers and duties specifically conferred upon it by the Act, the Declaration and these Bylaws, and all other powers and duties necessary for the administration of the affairs of the condominium (except as otherwise provided by law, the Declaration or these Bylaws), including, without limiting the generality of the foregoing:

A. Preparation of the annual budget and the establishment of the assessment of each owner for the common expenses;

B. Making the annual assessment against the owners;

C. The power and duty to obtain the following items for the benefit of the condominium, the cost of all of which items shall be common expenses:

1. Trash collection, snow removal from the common area, water, electrical, telephone and any other necessary utility service for the common area;

2. A public liability insurance policy fire, extended coverage policy and other policies as required by Paragraph 3(g) of the Declaration;

3. Such other insurance, including workmen's compensation insurance, and directors' and officers' liability insurance, as required by law or as the Board may determine;

4. The services of a manager or managing agent, to the extent deemed advisable by the Board, to whom the Board, in its discretion, may delegate certain of its powers and duties, as well as the services of any other personnel as the Board may determine to be necessary or proper for the operation of the condominium, whether such personnel are employed directly by the Board or are furnished by the manager or managing agent;

5. Any legal and accounting services necessary or proper for the operation of the condominium or the enforcement of the provisions of the Act, the Declaration, these Bylaws and the condominium rules;

BK 7176PG 1788

6. Such painting, maintenance, repair and landscaping of, and such furnishings, tools, equipment, appliances, and other personal property for, the common area as the Board shall determine are necessary or proper!

7. Maintenance and repair of any unit, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the common area or preserve the appearance and value of the condominium, and the owner of the unit has failed or refused to maintain or repair it within a reasonable time after written notice is delivered by the Board, provided that the Board shall levy an individual assessment against the owner for the costs of said maintenance or repair!

8. Any emergency repairs to any unit necessary to prevent damage to other parts of the condominium!

9. Any other materials, supplies, labor, services, structural alterations, insurance, taxes or assessments which the Board is required to secure or pay for pursuant to the terms of the Declaration, these Bylaws or by law or which in its opinion shall be necessary or proper for the operation, maintenance and repair of the common area or for the enforcement of the Declaration or of these Bylaws, provided that if any such materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for particular units, the cost thereof shall be specially assessed to the owners of such units.

The Board's power shall be limited in that it shall have no authority to acquire and pay for out of common expenses any capital additions and improvements or structural alterations (other than for purposes of replacing portions of the common area subject to the provisions of the Declaration and these Bylaws) having a cost in excess of five thousand and 00/100 dollars (\$5,000.00) unless such additions, improvements or alterations have been approved by a majority of the owners' total voting power.

The Board shall have the exclusive right to contract for all such goods, services and insurance referred to in this Section 1, which right may be delegated by it. Any agreement for professional management of the condominium may be terminated on ninety (90) days written notice and no such contract shall be for a period of more than three (3) years.

SECTION 2.

Number. The Board shall consist of five (5) directors.

BK 7176PG 1790

SECTION 3.

Turnover. Until Declarant has conveyed units as to which 3/4 of the undivided interests in the common area appertain, has relinquished the positions or until two (2) years after the date of recording the Declaration, whichever shall first occur (turnover), Declarant or its representatives shall hold all of the positions of directors.

SECTION 4.

Qualification. Subject to the provisions of Section 3, the Board shall be elected by the owners and shall consist only of owners or spouses of owners, except that where a corporation or partnership is an owner, the directors and officers of the corporation or the partners shall be eligible to be members of the Board.

SECTION 5.

Declarant's Veto. From turnover, Declarant shall have a veto power until 100% of the Units have been conveyed by Declarant to Unit Owners as follows:

- A. Declarant shall be given written notice complying with the Bylaws of all regular and special meetings and stating the agenda;
- B. Declarant, or its representatives may join in the discussion;
- C. Declarant shall have the power to veto any action, policy or program which shall infringe upon its rights as Owner, change any definition which alters its rights or status, affect its rights of conversion, alter the character or rights of membership of Declarant or alter the basis for assessment.

SECTION 6.

Limitations. So long as Declarant has an interest in the Condominium, the Association may not use its financial resources to pay, guaranty or otherwise defray or subsidize any costs of opposing its activities so long as they remain consistent with the plan for the Condominium regime.

SECTION 7.

Election and Term. At the first meeting of the Association after turnover, the owners shall elect five (5) members of the Board, three (3) for a term of two (2) years, and two for a term of one (1) year. If the election occurs at a special meeting rather than at an annual meeting of the association, then each of the terms shall also include the period between the date of the special meeting and the date of the next annual meeting of the association. At the expiration of each of the initial terms of office, a successor shall be elected for a term of two (2) years.

Quorum. A majority of the Board shall constitute a quorum for the transaction of business, but less than a quorum may transact business if the remaining member of the Board subsequently assent in writing to the decisions of the Board by signing a copy of the minutes of the meeting, to be filed with the records of the Board. When a quorum is present at any meeting, the votes of a majority of the members in attendance shall decide any business brought before the meeting. The Board may also transact without a meeting any business which it is authorized to transact at a meeting, provided that the members of the Board unanimously assent in writing to the decisions of the Board concerning such business by signing the official record of said decisions to be filed with the records of the Board.

SECTION 10.

Meetings. Regular meetings of the Board may be held at such times and places as the Board determines. Special meetings of the Board may be called by the president or by any two (2) members of the Board. Seven (7) days' notice of regular and special meetings shall be given to each Director which shall state the time and place of the meeting and, in the case of a special meeting, the purpose for which it is being called. Any Director may expressly waive notice in writing or by attending the meeting. No notice is necessary of a meeting of the Board held immediately after and at the same place as the annual meeting of the owners.

SECTION 9.

Resignation and Removal; Vacancies. Any member of the Board may resign at any time by written notice to the President, and, subject to the provisions of Section 1 of this Article, any member may be removed for cause from such position by two-thirds vote of the Owners' total voting power at any annual or special meeting, provided that notice of the removal vote shall have been mailed to all Owners at least twenty (20) days prior to the meeting. Members of the Board shall serve until their respective successors have been elected, or until death, resignation or removal; provided that if any member (or any member's corporation, partnership or spouse) ceases to be an owner, his membership on the Board shall terminate. Whenever a vacancy on the Board occurs the Board shall fill the vacancy until the next annual meeting of the association at which time any remaining unexpired term shall be filled by the Owners.

SECTION 8.

ARTICLE III

Owners' Association and Meetings

SECTION 1.

Association. All of the unit owners shall constitute an unincorporated association which shall administer the condominium in accordance with the Act, Declaration and Bylaws.

SECTION 2.

Annual Meeting. The annual meeting of the association of owners following the turnover meeting shall take place on the first Monday in February of each year at 7:00 p.m. in the common area or at such other reasonable place or time (Not more than thirty (30) days before or after such date) as may be designated by written notice of the Board, to the owners of record not less than twenty-one (21) days prior to the date fixed for said meeting. At the meeting, the members shall elect a member or members of the Board of Directors and conduct any other business to be transacted at the annual meeting. The Board shall present a statement of common expenses and assessments for the preceding fiscal year and a budget of the estimated common expenses and assessments for the then current fiscal year. Within thirty (30) days after the annual meeting, a copy of the minutes of the meeting, including a copy of the statement and budget, shall be mailed or delivered to the owners not present at the meeting. This notice may be omitted if the meeting is actually held on the first Monday in February commencing at or shortly after 7:00 p.m. Any such notice shall be deemed waived by any owner who expressly waives same in writing or who is present in person or by proxy at any such meeting.

SECTION 3.

Special Meetings.

- A. Promptly after turnover Declarant shall notify the Owners and call a special meeting.
- B. Special meetings of the owners may be called at any time for the purpose of considering matters which, by the terms of the Declaration, these Bylaws or the Act require the approval of the owners, or for any other reasonable purpose.
- C. The meetings shall be called by seven (7) days' written notice, signed by the president or secretary, a majority of the Directors, or by the Owners having one-third (1/3) of the Owners' total voting power and mailed by certified mail, return receipt requested, to all owners of record not less than seven (7) days prior to the date fixed for said meeting.

BK 7176PG 1792

D. The notice shall specify the date, time and place of the meeting, and the purpose for which it is being called. Any Owner may waive the notice in writing or by presence in person or by proxy at any such meeting.

SECTION 4.

Quorum. At any meeting of the association, the presence in person or by proxy of owners holding at least thirty-three and one-third percent (33 1/3) of the owners' total voting power shall constitute a quorum, but less than a quorum may transact business if owners holding fifty percent (50%) of the voting power not present subsequently assent to the decisions made at said meeting by signing a copy of the minutes thereof to be filed with the records of the Association. When a quorum is present, unless otherwise provided in the Declaration, these Bylaws or the Act, a majority of the Owners' total voting power present in person or by proxy shall decide any business brought before the meeting. If any meeting of the association cannot be held because a quorum has not attended, a majority of the voting power of the Owners who are present at such meeting either in person or by proxy, shall adjourn the meeting to a time not less than fourteen (14), nor more than sixty (60) days from the date of the original meeting, in which case any proxies of those not attending such adjourned meeting, in which case any proxies shall be honored notwithstanding their specific reference to such original meeting rather than to such adjourned meeting, and in which case the required quorum shall be reduced to fifteen percent (15%) of the owners' total voting power. Written notice of such adjourned meeting shall be mailed to all owners of record not less than seven (7) days prior to the date fixed for the meeting.

SECTION 5.

Voting. At any meeting of the association, the owners of each unit, including Declarant, shall be entitled to cast one (1) vote per unit. Any owner may attend and vote at such meeting in person, or by proxy (an instrument in writing signed by the owner and filed with the Board). Where there is more than one record owner of the same unit, any or all of such persons may attend any such meeting, but it shall be necessary for them to act unanimously in order to cast the vote to which they are entitled. Where only one of such person attends any such meeting, he may vote for himself and as agent for any absent owner of his unit without proxy designation. Where none of such persons attends such meeting, any designation of proxy must be signed by all such persons. In addition to granting a proxy, an Owner may assign his right to vote to any first mortgagee of record. Any Unit or Units owned by the Board of Directors on behalf of the Condominium shall not be entitled to a vote and shall be excluded from the total of ownership percentages when computing the interests of all other owners for voting purposes. An owner shall be entitled to vote only if he has paid in full all charges and assessments more than three (3) days before a meeting. There shall be no cumulative voting.

BK 7176PG 1793