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**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

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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:

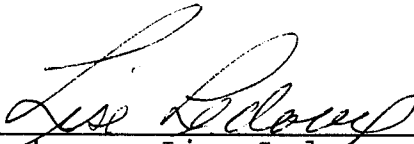
Executing and Consenting the amendments - 118

Not Voting - 58

Pursuant to Article VI Section 5 of the ByLaws, the amendment was approved.

I, 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


Secretary Lise Ledoux

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

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Exhibit B

BYLAWS
AS AMENDED and APPROVED February, 2004

**THE BIRCHES, A CONDOMINIUM
UNIT OWNERS' ASSOCIATION**

ARTICLE I

Purpose and Definitions

SECTION 1.

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 2.

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 3.

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 4.

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 Plasic Road, Merrimack, New Hampshire.

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ARTICLE II

Board of Directors

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;

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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.

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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.

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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. This section is not subject to amendment.

SECTION 6.

Limitations. So long as Declarant has an interest in the Conda8iniua, 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.

SECTION 8.

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 9.

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 10.

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.

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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.

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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 person 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.

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ARTICLE IV.

OFFICERS OF THE ASSOCIATION

SECTION 1.

General. The officers of the association shall be a President, Vice President and Secretary/Treasurer, all of whom shall be elected annually by, and may be removed and replaced by, the Board. The officers shall hold office at the pleasure of the Board and until their successors are elected. During the period that the Declarant holds all of the positions of members of the Board, Declarant, in its discretion, may hold any of the offices of the association. The Board may appoint an assistant secretary and an assistant treasurer and such other officers as, in its discretion, may be necessary. The President must be a member of the Board, but the other officers need not be members of the Board or Owners.

SECTION 2.

President. The President shall preside at meetings of the Association and meetings of the Board and the President shall have such other powers and duties as are provided in the Declaration, these Bylaws or by law and as are ordinarily exercised by the presiding officer of an Association, including the appointment of committees from among the Owners, and as may be delegated to him by the Board or the Association from time to time.

SECTION 3.

Vice President. The Vice President shall, in the absence or disability of the President, perform the duties and exercise the powers of the president, and shall perform such other duties as the Board shall prescribe.

SECTION 4.

Secretary/Treasurer. The Secretary/Treasurer shall record the proceeding. of meetings of the Board and of meetings of the Association, shall keep such records and all other records, documents and other papers of the Board and of the Association, shall give notice of the annual and special meetings of the Owners, and shall have such other powers and duties as may be delegated to him by the Board or the Association from time to time. He shall be responsible for the funds of the Association and shall be responsible for keeping or having kept full and accurate financial records and books of account showing all receipts and disbursements of the Association and any other financial data required by the Board or by the Association. He shall be responsible for the deposit of all funds in the name of the Board or the Association in such depositories as may be designated by the Board from time to time and shall have such other powers and duties as may be delegated to him by the Board or the Association from time to time. The Board may delegate such of the

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Secretary/Treasurer's powers and duties to the manager or managing agent as it deems to be advisable.

ARTICLE V

Common Expenses

SECTION 1.

Fiscal Year. The fiscal year of the Association shall be a twelve (12) month period beginning January 1st and terminating December 31st of each year, provided that the Board may change the fiscal year.

SECTION 2.

Assessment. The common expenses shall include any amounts necessary to pay for the items obtained pursuant to Article II, Section 1, any amounts necessary to make up any deficit for the fiscal year, reserves for operations and replacements of the Common Area and for working capital and any amounts required for the purchase of a unit by the Association pursuant to Section 4 of this Article. The Board of Directors shall adopt a budget showing estimated common expenses and owner assessments and make a reasonable effort to submit it to Owners 15 days before the start of the fiscal year. Common expenses shall be assessed to the owners pursuant to the percentages set forth in Appendix D of the Declaration. Declarant is excused from the payment of any assessment during the time it pays any expenses of the Association incurred during that time and not funded by assessments receivable from the other members; otherwise, Declarant shall pay for each completed but unoccupied Unit a full monthly assessment. If the sum estimated proves inadequate for any reason, including nonpayment of any owner assessment, the Board may at any time levy a further assessment, which shall be assessed to the Owners according to Exhibit C percentages, unless otherwise provided herein. Each owner shall be obligated to pay the assessments made against him to the Board, and such payments shall be due in equal installments on or before the first day of each installment term. If a unit is rendered uninhabitable by fire or other casualty, the Board, in its discretion may abate all or a portion of the common expenses assessed against the owner of the unit while it remains uninhabitable.

The Board of Directors shall build up and maintain an operating reserve and reserve for replacement of the common area which shall be funded by monthly payment. The funds collected for the reserve for replacement of common area shall be placed in a separate account, apart from general operating funds and used only for such purpose. If the reserve is inadequate a further assessment, lump sum or by installments may be levied.

The Board of Directors shall establish a working capital fund reserve equal to two months common area charge exclusive of other reserves which shall be collected at the initial conveyance of a unit.

The failure of the Board to fix the assessments for such a twelve (12) month period prior to the commencement of such a period

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shall not be deemed a waiver or modification in any respect of the provisions hereof, or a release of the Owners from the obligation to pay the assessments, or any installment thereof for such period, but the assessment fixed for the preceding twelve (12) month period shall continue until a new assessment is fixed. Amendments to this Section shall be effective only upon unanimous written consent of the Owners. No owner may exempt himself from liability for his assessment of the common expenses by waiver of the use or enjoyment of any of the common area or by abandonment his unit.

The Board shall submit an audited financial statement within 120 days of the end of a fiscal year.

SECTION 3.

Records. The Treasurer shall keep detailed, accurate records in chronological order of the receipts and expenditures by the Association specifying and itemizing the maintenance and repair expenses and any other expenses incurred. The records shall be available for examination by the Owners, or their agents, at convenient times.

SECTION 4.

Default in Payment of Assessments. Each assessment of common expenses, and each special expense and assessment shall be separate, distinct and personal debts and obligations of the owner against whom they are assessed and shall be collectible as such. Suit for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing it. The amount of any assessment which is not paid on its due date, plus a Ten and 00/100 Dollar (\$10.00) late fee per month and costs, including reasonable attorneys' fees, shall be a lien upon the unit as provided in Section 46 of the Act. The lien may be enforced by a sale by the Board conducted with the law applicable to the exercise of a power of sale or other foreclosure of mortgages. In any foreclosure, the owner shall be required to pay the costs and expenses of such proceedings and reasonable attorneys' fees. Upon foreclosure, the owner shall immediately vacate the unit and if he fails to do so he shall be liable for a reasonable rental while he remains in possession. The Board, in behalf of the Association, shall have the power to purchase the unit at foreclosure or other sale and to hold, lease, mortgage and convey the unit thereafter.

SECTION 5.

Initial Assessment. Upon the transfer or sale of any unit, the buyer of said unit will be assessed a sum equal to two(2) months condominium fees as a contribution to the working capital fund of the Association, This assessment is to be collected at closing by the selling or conveying party or his agent and is to be delivered to the Association or its agent within five (5) days of the recording of the Unit deed.

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ARTICLE VI

MISCELLANEOUS

SECTION 1.

Surplus. Any surplus of common expense payments by Owners over the actual expenses during a fiscal year shall be paid into the operating reserve for the following fiscal year.

SECTION 2.

Severability. The invalidity of any part of these Bylaws Shall not impair or affect in any manner the validity, enforceability or effect of the balance hereof or of the Declaration.

SECTION 3.

Gender. The use of the masculine gender 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.

SECTION 4.

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

SECTION 5.

Amendment. The Bylaws may be amended in the same manner as set forth in Paragraph 21 of the Declaration; provided, however, that while Declarant holds all of the positions of directors pursuant to Section 2 of Article II of these Bylaws, these Bylaws cannot be amended without the written assent of Declarant.

Dated at

Oakshire Development L.L.C.
BY: Russell Wilkinson, Manager

As of December 1, 2002

This document incorporates the following amendments:

1. Original Declaration and Bylaws - Book 3988, Page 0081.
2. Amended Declaration and Bylaws - Book 5534, Page 1939.
3. Amendment to Declaration & Bylaws - Book 5535 Page 1712.
4. Amended Pages 1 & 17 of the Declaration - Book 5535 Page 1715.
5. Affidavit of George Dickson, Attorney - Book 5539, Page 1824.
6. Affidavit Re The Birches, A Condominium - Book 5697, Page 0042.

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AFFIDAVIT
RE
THE BIRCHES, A CONDOMINIUM

I, Gerard J. Sevigny, of Merrimack, in the County of Hillsborough and State of New Hampshire, being the President of the Board of Directors of the Unit Owners' Association of The Birches, A Condominium, on oath depose and say as follows:

- 1) That the Declaration of Condominium of The Birches, A Condominium is recorded in the Hillsborough County Registry of Deeds at Book 5534, Page 1938.
- 2) That Section 3, F. 4 of said Declaration recites that ninety-six (96) of the Condominium Units shall be occupied only by a family unit in which the head of the household or spouse is 55 years old. The location of said 96 Units is further identified in said Section 3, F. 4.
- 3) That prior to March 29, 1994, the Unit Owners' Association voted on a proposed Amendment to the Declaration whereby Section 3, F. 4 of the Declaration would be deleted in its entirety; said vote was passed pursuant to NH RSA 356-B:34.
- 4) That a document entitled "Amendment to the Declaration of The Birches Condominium" dated March 29, 1994 was recorded in the Hillsborough County Registry of Deeds on March 31, 1994 at Book 5535, Page 1712.
- 5) That although Oakshire Development, L.L.C., an owner of some of the said 96 Units, sought a variance from the Town of Merrimack in June of 1994 to permit the removal of the age-restricted designation for its units, said variance was denied by the Town of Merrimack Zoning Board of Adjustment (Case 94-28).
- 6) That said denial was appealed by Oakshire Development, L.L.C. to the Hillsborough County Superior Court, Southern District - Oakshire Development, L.L.C. v. Town of Merrimack, Case No. 94-E-243.
- 7) That by Order of the Court dated March 24, 1995, the Zoning Board of Adjustment's denial of the variance to Oakshire Development, L.L.C. was affirmed.
- 8) That although the Unit Owners' Association of The Birches, A Condominium, has voted to amend the Declaration by deleting the age-restriction which applies to 96 Units, the denial of the variance to permit the removal of the age-restricted designation for

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the Units owned by Oakshire Development, L.L.C., requires disclosure by the Board of Directors in the records of the Registry of Deeds in order to prevent any confusion or misunderstanding of the legal status of all of said 96 Units.

9) That it is the current understanding of the Board of Directors that the Town of Merrimack considers said 96 Units to be age-restricted.

10) That the Board of Directors has authorized me to execute the within Affidavit on behalf of the Unit Owners' Association of The Birches, A Condominium, and to record this Affidavit in the Hillsborough County Registry of Deeds.

Gerard J. Seigny
~~Witness~~
President, BOARD OF DIRECTORS.

GERARD J SEIGNY
Print Name:

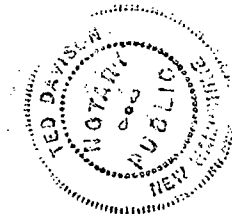
The State of New Hampshire
Hillsborough, ss.

Personally appeared the above-named Gerard Seigny and made oath that the statements herein made by him/her are true to the best of his/her knowledge and belief this 24th day of February, 1996.

Before me,

Ted Davison
Justice of the Peace/Notary Public

TED DAVISON, Notary Public
My Commission Expires
December 6, 2000



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AMENDMENT TO THE DECLARATION OF
THE BIRCHES CONDOMINIUM ASSOCIATION

Amendment _____

94 MAR 31 PM 3:14

The following paragraphs of the Declaration of the Birches Condominium Association as recorded in the Hillsborough County Registry of Deeds at Book 5534 Page 1938 are hereby amended as follows. All provisions of the Declaration not specifically mentioned below remain in full force and effect:

AMENDMENT to SECTION 3, F. 4

Paragraph 4 is deleted in its entirety.

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AMENDMENT to SECTION 9

The last sentence of Section 9 is amended by deleting the words, "Strafford County Registry of Deeds" and substituting in its place the words "Hillsborough County Registry of Deeds".

AMENDMENT TO EXHIBIT B, THE BYLAWS, ARTICLE III, 2

The single sentence is amended by deleting the words, "... mailed by certified mail, return receipt requested..."

AMENDMENT TO EXHIBIT B, THE BYLAWS, ARTICLE III, 4

The last sentence of this paragraph is amended by deleting the words, "...by certified mail, return receipt requested..."

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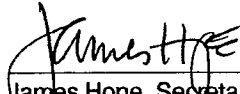
AMENDMENT TO EXHIBIT B, THE BYLAWS, ARTICLE V,

The Section is amended to add the following:

5. Initial Assessment. Upon transfer or sale of any unit, the buyer of said unit will be assessed a sum equal to two (2) months condominium fees as a contribution to the working capital fund of the Association. This assessment is to be collected at closing by the selling or conveying party or his agent and is to be delivered to the Association or its agent within five (5) days of recording of the Unit Deed.

CERTIFICATE OF THE SECRETARY, BIRCHES CONDOMINIUM ASSOCIATION

The undersigned Secretary of the Birches Condominium Association hereby certifies that the foregoing Amendments to the Declaration of the Birches Condominium Association is a true and correct copy of the Amendment voted on and passed pursuant 356-B:34 of the Condominium Act. Pursuant to said Declaration the foregoing Amendments are effective as of the date said Amendments are recorded in the Hillsborough County Registry of Deeds.



James Hope, Secretary
Birches Condominium Association

3/29/94

Date

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VOTE COUNT AS OF MARCH 30, 1994

Per RSA 356-B:34:

II. If there is any unit other than the declarant, then the condominium instruments shall be amended only by agreement of the unit owners of units to which 2/3 of the votes in the unit owners' association appertain or such larger majority as the condominium instruments may specify, except in cases for which this chapter provides different methods of amendment.

Current ownership is 149 units. 2/3 of this voting power (149) is 100.

For the record, five elements were presented to the membership for votes:

- Element #1 - In favor: 107 - Section 3.F.4
- Element #2 - In favor: 117 - Section 9
- Element #3 - In favor: 117 - Exhibit B, Bylaws, Article III, 2
- Element #4 - In favor: 116 - Exhibit B, Bylaws, Article III, 4
- Element #5 - In favor: 101 - Exhibit B, Bylaws, Article IV, Add Section 5

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AMENDED Pages 1 and 17 as of March 31, 1994
Exhibit 1

DECLARATION OF CONDOMINIUM

THE BIRCHES, A CONDOMINIUM

Oakshire Development, L.L.C., a New Hampshire limited liability corporation of Milford, New Hampshire (Declarant), declares:

1. SUBMISSION AND DECLARATION:

Declarant, owner in a fee of the land described in Exhibit A, submits the land and all buildings and improvements now existing or hereafter constructed and all easements, rights and appurtenances to the provisions of RSA 356-B and creates with respect to the land a condominium with the condominium form of ownership.

2. DEFINITIONS:

Terms shall have the meanings specified in RSA 356-B:3 except as defined in this Declaration, the Bylaws (Exhibit B) and the Plans unless the context otherwise requires:

- A. "Act": The New Hampshire Condominium Act (RSA 356-B).
- B. "Association" or "Association of Owners": The owners acting as a group in accordance with the Act, the Declaration and the Bylaws. Each Unit Owner shall be a member of the Association.
- C. "Board" or "Board of Directors": The governing body of the Condominium elected pursuant to the Bylaws.
- D. "Bylaws": Exhibit B.
- E. "Common Area": All that portion of the Condominium other than the units, and as more particularly described in Paragraph 3 (D). Common Area included Limited Common Area although Limited Common Areas are reserved for the exclusive use of the Owners of the Units to which the Limited Common Areas are assigned.
- F. "Common expenses": All expenses incurred by the Association for the purposes of administration, maintenance, repair and replacement of the common area and for any other lawful purposes.
- G. "Condominium": The premises described in Exhibit A including land, all buildings and other improvements and structures now or hereafter 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

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Any first mortgage holder which does not deliver or mail to the Board a negative response within thirty (30) days of a written request by the Board for approval of any addition or amendment pursuant to this paragraph shall be deemed to have consented to the addition or change set forth in such request. An affidavit by the Board making reference to this section, when recorded at the Hillsborough County Registry of Deeds shall be conclusive as to the facts therein set forth as to all parties.

Dated at: York, Maine

OAKSHIRE DEVELOPMENT, L.L.C.

Dated: May 30, 1994

By: [Signature]
MANAGER FOR OAKSHIRE DEVELOPMENT

STATE OF Washington
COUNTY OF York

The Declaration was acknowledged before me on 3/30, 1994 by Russell Wilkinson, Manager of Oakshire Development, L.L.C., a New Hampshire limited liability corporation, on behalf of the corporation.



Kevin E. Oakley
Justice of the Peace/Notary Public

Commission Expires:

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08/01/00 13:29

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ATTORNEY DICKSON

003

AMENDED Page 12 of "BYLAWS
THE BIRCHES, A CONDOMINIUM
UNIT OWNERS' ASSOCIATION" as of March 31, 1994

SECTION 5.

Amendment. The Bylaws may be amended in the same manner as set forth in Paragraph 21 of the Declaration; provided, however, that while Declarant holds all of the positions of directors pursuant to Section 2 of Article II of these Bylaws, these Bylaws cannot be amended without the written assent of Declarant.

Dated at *York, ME*

Oakshire Development, L.L.C.

By: 

Russell Wilkinson, Manager

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AFFIDAVIT

**Re: The Birches, A Condominium and
Oakshire Development, L.L.C.**

I, **George Dickson**, Attorney with a business address of
394 Elm Street, Box 1, Milford, New Hampshire 03055,
being duly sworn, and under penalties of perjury, to the best of my
knowledge and belief, depose and say:

1. That I am an attorney licensed to practice in the State
of New Hampshire;

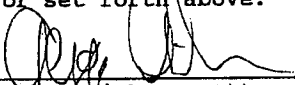
2. That I represent Oakshire Development, L.L.C. and R. L.
Wilkinson Development, L.L.C.;

3. That Oakshire Development, L.L.C. received approval of
the Attorney General's office as Declarant of The Birches, A
Condominium. See Hillsborough County Registry of Deeds Book 5534,
Page 1938;

4. That due to a scrivener's error the Declaration of
Covenants recorded in said Registry of Deeds in Book 5534 Page 1939
recited the Declarant as Wilkinson Development, L.L.C.;

5. That Wilkinson Development, L.L.C. does not exist and
that the Declarant should have been recited as Oakshire
Development, L.L.C.;

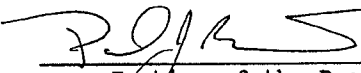
6. That by document recorded in said Registry in Book 5535
Page 1715, the Declarant Oakshire Development, L.L.C. recorded
"Amended Page 1 and 17 as of March 31, 1994, Exhibit 1, Declaration
of Condominium The Birches, A Condominium" and "Amended Page 12 of
'Bylaws The Birches, A Condominium, Unit Owners' Association'" in
order to correct the scrivener's error set forth above.



George Dickson, Attorney

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

Subscribed and sworn to by **George Dickson, Attorney** this
14th day of April, 1994 before me,



Justice of the Peace

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Appendix D(1)

Exhibit 1

DECLARATION OF CONDOMINIUM

Oakshire

THE BIRCHES, A CONDOMINIUM

Wilkinson Development, L.L.C., a New Hampshire limited liability corporation of Milford, New Hampshire (Declarant), declares:

1. SUBMISSION AND DECLARATION:

Declarant, owner in a fee of the land described in Exhibit A, submits the land and all buildings and improvements now existing or hereafter constructed and all easements, rights and appurtenances to the provisions of RSA 356-B and creates with respect to the land a condominium with the condominium form of ownership.

2. DEFINITIONS:

Terms shall have the meanings specified in RSA 356-B:3 except as defined in this Declaration, the Bylaws (Exhibit B) and the Plans unless the context otherwise requires:

- A. "Act": The New Hampshire Condominium Act (RSA 356-B).
- B. "Association" or "Association of Owners": The owners acting as a group in accordance with the Act, the Declaration and the Bylaws. Each Unit Owner shall be a member of the Association.
- C. "Board" or "Board of Directors": The governing body of the Condominium elected pursuant to the Bylaws.
- D. "Bylaws": Exhibit B.
- E. "Common Area": All that portion of the Condominium other than the units, and as more particularly described in Paragraph 3 (D). Common Area included Limited Common Area although Limited Common Areas are reserved for the exclusive use of the Owners of the Units to which the Limited Common Areas are assigned.
- F. "Common expenses": All expenses incurred by the Association for the purposes of administration, maintenance, repair and replacement of the common area and for any other lawful purposes.
- G. "Condominium": The premises described in Exhibit A including land, all buildings and other improvements and structures now or hereafter 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

BK 5534 PG 1939

submitted to the provisions of the Act.

- H. "Condominium rules": Such rules and regulations as the Board from time to time may adopt relative to the use of the Condominium or of any part thereof.
- I. "Declarant": Wilkinson Development, L.L.C., a New Hampshire limited liability corporation; provided, however, that no successor or assignee of Declarant shall have any rights or obligations of Declarant unless they are specifically set forth in the instrument of succession or assignment or unless such rights or obligations pass by operation of law. If another (Second Declarant) stands in the same relation to the Condominium as the first Declarant, the Second Declarant shall hold the same rights and obligations as the first Declarant would have held.
- J. "Declaration": This instrument.
- K. "Land": The real property described in Exhibit A.
- L. "Property": The land and all improvements.
- M. "Owner": Any person owning a Unit together with an undivided fee simple interest in the common area. No mortgagee shall be deemed an owner merely because of rights acquired under a mortgage.
- N. "Unit": A part of the Condominium and the appurtenant percentage of the common area designed and intended for independent ownership of fee or leasehold, all as more particularly described in Paragraph 3(C).

3. INFORMATION REQUIRED BY 356-B:16 OF THE ACT.

- A. Name and Location. This Condominium is The Birches, A Condominium, which is located in Merrimack, Hillsborough County, New Hampshire.
- B. Description of Land. Exhibit A contains a metes and bounds description of the land submitted to the Condominium Act.
- C. Description of Units.
 - 1. Buildings. The Condominium includes residential buildings containing 176 units in the townhouse style.
 - 2. Units. Each Unit may be transferred in the same manner as any other parcel of real property. Exhibit C lists all Unit designations, limited common area and appurtenant percentage of the common area.
 - 3. Unit Boundaries. Each Unit consists of the space within the following boundaries:

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Horizontal Boundaries: The upper and lower (horizontal) boundaries of each Unit shall be the following boundaries extended to an intersection with the vertical boundaries:

Upper Boundary: The unfinished interior surface of the uppermost ceiling.

Lower Boundary: The unfinished interior surface of the lowest floor.

Vertical Boundaries: The perimeter (vertical) boundaries of each Unit shall be the vertical plane of the interior surface of all walls bounding the Unit extended to intersections with each other and with the upper and lower boundaries; but the Unit extends to the exterior unfinished surfaces of the window frames and doors.

Each Unit includes the portion of the building within the above boundaries and the space enclosed by the boundaries, except any common area described in Paragraph 3 (D) below which may be located therein. The finished interior of the lowest floors, perimeter walls and uppermost ceiling of a Unit consisting of, without limitation, paint, paneling, wallpaper, flooring, carpeting, tiles, and any other materials constituting any part of the finishing materials and finished surfaces thereof are a part of each Unit. The owner of a Unit owns the interior walls and partitions which are contained in his Unit, and the window and door glass, and the entrance doors and window frames (to the unfinished exterior surfaces thereof). A Unit does not own any pipes, wires, cables, chutes, flues, conduits, utility lines, ventilation or other ducts, bearing walls, bearing columns, roof supports or stringers or structural portions of the building running through that Unit which are utilized for or serve more than one Unit or serve any portion of the Common Area, or Limited Common Area and such items are a part of the Common Area.

D. Description of Common Area. The common area includes, but not by way of limitation:

1. The land described in Exhibit A;
2. The water supply, sewage disposal, electrical and telephone and other utility systems serving the Condominium to the extent the systems are located within the property and are not owned by the supplier of the utility service, but not including any portions within and serving a single Unit.
3. The roofs, roof supports or stringers, foundations (other than the finished interior surfaces), columns and supports of the buildings, the perimeter walls, and floors of each Unit to the interior surfaces thereof; and the pipes, ducts, flues, chutes, conduits, plumbing, wires, meters, meter housings and other

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facilities for the furnishing of utility services or waste removal not located within a Unit and such facilities located within a Unit, which serve parts of the Condominium other than the Unit within which they are located.

4. The Limited Common Area assigned to each Unit is designated upon plan entitled "The Birches, a Condominium - Floor Plans", Stephen D. Wojcik, Registered Architect indicated in Exhibit C and is exclusively and permanently assigned. The Limited Common Area includes a deck.
- E. Percentage of Interest and Voting. Each Unit has an equal percentage of undivided interest in the common area and one vote. If a Unit has more than one Owner, the vote must be cast as a whole. Each deed of a Unit shall convey the undivided interest appurtenant to the Unit.
- F. Statement of Purposes and Restrictions of Condominium Use. The Condominium is intended for residential use and the following provisions, together with the provisions of the Condominium Bylaws and rules, are in furtherance of this purpose:
 1. Each unit shall be occupied and used only for private residential purposes by the Owner and his family, or by tenants or guests of the Owner, except for such limited professional use as the Board, upon application of an Owner, from time to time may authorize as not being incompatible with the residential character of the Condominium. The occupancy and use of the Unit shall be in accordance with the Merrimack Zoning Ordinance and other applicable municipal ordinances. This restriction shall not be construed to prohibit owners from leasing their units so long as the tenants occupy and use the units in accordance with these provisions and any restrictions imposed by the Board.
 2. The common area shall not be used in a manner which is inconsistent with the residential character of the Condominium. 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 expense incurred by the Board in repairing it; and nothing shall be stored in the common area without the prior written consent of the Board. Nothing shall be altered, constructed in or removed from the common area without the prior written consent of the Board.
 3. No noxious or offensive use shall be made of any part of the Condominium and nothing shall be done therein which is or will become an annoyance or nuisance to other owners. No use shall be made of any part of the Condominium which will constitute a fire hazard or which will result in the cancellation of insurance on any part of the Condominium or which is in violation of any law, ordinance or governmental regulation applicable thereon. No use shall be made of any part of the Condominium which will increase the rate of insurance on the

common area without prior written consent of the Board. No Owner shall place or operate mobile homes, manufactured housing, unregistered motor vehicles or snowmobiles upon the common area.

- 4. Ninety-six (96) of the Condominium Units shall be occupied only by a family unit in which the head of the household or spouse is 55 years old. Those units and the buildings in which they are located are as follows:

Plasic Road -----Units 1-2-3-4-5-6-7 & 8 (2 bldgs.)
Winrow Drive -----Units 34-36-38-40-42-44-46 & 48 (2 bldgs.)
Joston Drive -----Units 10-12-14-16-18-20-22 & 24 (2 bldgs.)
Vanden Road -----Units 1-3-5-7-10-12-14 & 16 (2 bldgs.)
Wellington Circle ---- Units 1-2-3-4-5-6-7 & 8 (2 bldgs.)
Lynn Drive ----- Units 1-2-3-4-5-6-7-8-9-10-11-12-13-14-15-16 & 17 (4 bldgs.)
Rollins Court -----Units 1-2-3-4-5-6-7-8-10-12-14 & 16 (3 bldgs.)
Adams Avenue -----Units 1-2-3-4-5-6-7-8-9-10-11-12-14-15-16 & 17 (4 bldgs.)
Burberry Court ----- Units 1-2-3-4-5-6-7-8-10-12 & 14 (3 bldgs.)

G. Insurance and Voting in the Event of Damage.

- 1. Insurance to be Obtained. The Board of Directors shall obtain and maintain to the extent obtainable, the following insurance:

- (a) Fire insurance with extended coverage, vandalism and malicious mischief endorsements insuring the building comprising the Condominium including without limitation all such portions of the interior of the building as are for insurance purposes normally deemed to constitute part of the building and customarily covered by such insurance, such as heating and other service machinery, interior walls, all finished wall surfaces, and bathroom, heating and lighting fixtures, except for improvements made by individual owners which exceed a total value of One Thousand and 00/100 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 building and to be payable to the Board as trustees for the owners and their mortgagees as their respective interests may appear.
- (b) Public liability insurance in such amounts as the Board may from time to time determine, but in no event shall the limits of liability be less than One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury and property damage per occurrence, insuring each member of the 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.

BOOK 5534 PG 1943

- (c) Workmen's compensation insurance as required by law.
- (d) Blanket fidelity bond coverage for any person, partnership or corporation, or any other entity which either handles or is responsible for funds held or administered by the Unit Owners' Association, whether or not they receive compensation for their services. Any management agent that handles funds for the Owners' Association must be named as obligee and any premiums must be included as a common expense by the Unit Owners' Association. The fidelity bond must cover the maximum funds that will be in the custody of the Unit Owners' Association or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least equal the sum of three (3) month's assessments on all units in the project plus all of the Unit Owners' Association's reserve funds. The fidelity bond must include a provision that calls for ten (10) days written notice to the Unit Owners' Association or insurance trustee, before the bond can be cancelled or substantially modified for any reason. The same notice must be given to any servicer that services a FNMA owned mortgage in the project.
- (e) Such other insurance as the Board may determine.

2. General Insurance Provisions.

- (a) The 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(G)(1) and shall review with the insurer or insurance agent, at least annually, the coverage under the policies, such review to include an appraisal of improvements within the Condominium, and shall make any necessary changes in the policy provided for under Paragraph 3(G)(1)(a) (prior to the expiration date set forth in any agreed amount endorsement contained in the policy) in order to meet its coverage requirements.
- (b) The Board shall be required to make every effort to see that all policies of physical damage insurance provided for under Paragraph 3(G)(1): (i) shall contain waivers of subrogation by the insurer as to claims against the association, its employees, members of the Board, owners and members of the family of any Owner who reside with said Owner, except in cases of arson and fraud; (ii) shall contain a waiver of defense of invalidity on account of the conduct of any of the owners over which the association has "no control"; (iii) 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 and all mortgagees of units in the Condominium; (iv) shall provide that in no event shall the insurance under the policies be brought into contribution with insurance purchased individually by owners or their mortgagees; and (v) shall exclude policies obtained by individual owners from consideration under any "no other insurance" clause.

- (c) 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 Board pursuant to Paragraph 3(G)(1), and each Owner assigns to the Board the proceeds of any such policy to the extent that any such policy does in fact result in a decrease in such coverage, the proceeds to be applied pursuant to these terms 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 Association.
- (d) Each Owner should obtain insurance for his own benefit and at his own expense insuring all personal property presently or hereafter located in his Unit and all improvements to his Unit which exceed a total value of One Thousand and 00/100 Dollars (\$1,000.00) and which are not reported in writing to the Board.

3. Procedure in the Event of Damage.

If the Condominium is damaged, all or part, by fire or other casualty:

- (a) The Board shall arrange for the prompt repair and restoration of the damage and shall disburse the insurance proceeds to the contractors in appropriate progress payments unless the damage is eighty percent (80%) or more of the replacement value of all of the buildings of the Condominium, and the Association, by a vote of eighty percent (80%) of the owners' total voting power made within ten (10) days of the damage, elects not to repair and reconstruct but to terminate the Condominium. The cost of repair and restoration exceeding the insurance proceeds shall constitute a common expense. If the cost of such repair and restoration is less than the amount of the insurance proceeds, then the excess of the insurance proceeds over the cost shall be added to the Condominium reserves or, in the discretion of the Board, distributed by the Board to the owners and their mortgagees, as their interests may appear, in accordance with the percentages set forth in Paragraph 3(E). If the harm to the Condominium is less than eighty percent (80%) of such value, the arrangement by the Board for the repair and reconstruction of the property shall be deemed a determination by the Association to repair and reconstruct.
- (b) If the owners elect to terminate the Condominium, the Board shall record at the Hillsborough County Registry of Deeds a notice to that effect and upon the filing of the notice the Condominium in its damaged condition shall be deemed to be removed from the provisions of the Act and to be owned in common by the individual owners, each owning an undivided interest equal to the percentage set forth in Paragraph 3 (E), any liens on any

Condominium being deemed to be transferred to the undivided interest of the Owner of the encumbered Condominium in accordance with the then-existing priorities; and upon the recording of the notice, the property shall be subject to a petition by any Owner to the Board for its sale and for distribution of the net proceeds of such sale. In the event of such a petition, the property shall be sold as a whole or in parts and at one or more sales, upon such terms and conditions as the 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 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.

4. OTHER APPROPRIATE MATTERS:

- A. Changes in Price. Declarant reserves the right, so long as it or its assignee is the Owner of any unsold Unit, to change its price. No change in price of a Unit, however, will vary the percentage of interest of any Unit in the common area nor the annual common charge.
- B. Easements for Structural Encroachments. None of the rights and obligations of the owners shall be altered in any way by encroachments 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 if the encroachment occurred due to the willful conduct of the Owner.
- C. Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines and Other Common Area Located Inside of Units; Support. Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common area serving such other Units or the Common Area and located in such Unit. The Board of Directors shall have a right of access to each Unit to inspect it, to correct violations of the Rules or Bylaws and to maintain, repair or replace the Common Area contained therein or elsewhere in the buildings. Every portion of a Unit which contributes to the structural support of a building shall be burdened with an easement of structural support for the benefit of all other Units and the Common Area.
- D. Units Subject to Declaration, Bylaws and Rules and Regulations. This Declaration, the Bylaws, and rules and regulations adopted by the Board of Directors, and decisions and resolutions of the Board of Directors or its representatives, as amended from time to time, all contain, or will contain restrictions as to use of the units and other parts of the Condominium. Each Owner shall comply therewith and

failure to comply with any such provision, decision or resolution shall be grounds for an action to recover sums due, for damages or for injunctive relief. All such actions in law or at equity shall be authorized by resolution of the Board of Directors and the Condominium Unit Owners' Association shall be entitled to recover all reasonable costs and expenses of such actions including attorneys' fees. All present or future owners, tenants and occupants of units, or any other person who might use the facilities of the Property in any manner are subject to the provisions of this Declaration, the Bylaws and the rules. The acceptance or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws and the rules, as they may be lawfully amended from time to time, are accepted and ratified by such Owner, tenant or occupant and all of such provisions shall be deemed and taken to be enforceable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were recited and stipulated at length in each and every deed of conveyance or lease thereof.

- E. Easement to Complete Construction. Declarant and its assignee as the Owner of any units which have been constructed may make such use of the Condominium as may facilitate the completion of construction and sales, including without limiting the generality of the foregoing, the right to enter the common area and Limited Common Area for construction purposes, to store materials, to maintain a sales/rental office, to show property and to display signs.
- F. Sales Office. The Declarant may use such Units within the Condominium as a sales office which it selects in its discretion.
- G. Rules. The Board of Directors is empowered to adopt and amend, from time to time, rules concerning use of the Condominium and its various parts. Such rules shall be furnished in writing to all owners and shall not be violated.
- H. Easement for Ingress and Egress. Each Unit Owner shall have and each Unit shall be subject to an easement in common with the other owners for ingress and egress through, and use and enjoyment of all common area.
- I. Subdivision. No Unit may be divided or subdivided into a smaller Unit. The common area shall remain undivided and no Unit Owner or other person shall bring any actions for partition or subdivision, nor shall the common area be abandoned by any act or omission unless the Condominium shall be terminated pursuant to this Declaration or the Condominium Act.
- J. Real Estate Tax. Each Unit Owner shall be responsible for payment of his real estate taxes to the Town of Merrimack for the fee simple ownership of his Unit together with a proportionate share of the real estate taxes for the Common Area.
- K. Town of Merrimack Planning Board Approval of Amendments. No amendment to

the Declaration or Bylaws which changes the use of the Condominium or which changes the obligations of any Unit Owner, or which affects the Town of Merrimack shall be effective unless approved by the Town of Merrimack Planning Board, or its successor, or unless a waiver of approval is obtained from the Board.

- L. Occupancy Permit Required. No individual Unit may be sold or rented by the Declarant until a Certificate of Occupancy has been issued by the Town of Merrimack. No individual Unit shall receive an Occupancy Permit until all Units within the same building are complete.

5. PERSON TO RECEIVE SERVICE OF PROCESS:

Gary Gladstone at 15 Congress Street, Nashua, New Hampshire, shall be a person to receive service of process in accordance with the Act until turnover. Thereafter such person shall be the President of the Unit Owners' Association.

6. DECLARANT'S OBLIGATION TO COMPLETE:

Declarant has no obligation to complete improvements labeled NOT YET COMPLETED OR NOT YET BEGUN on the site plans.

7. WARRANTY:

Declarant warrants the units and all of the common area against structural defects for one (1) year pursuant to RSA 356-B:40II.

8. ENTRY FOR REPAIRS:

The Association shall have the irrevocable right, to be reasonably exercised by the Board or its agents, to enter any Limited Common Area to inspect it, to remove violations therefrom and to perform any repair, maintenance or construction for which the Board is responsible, and shall have the irrevocable right, to be reasonably exercised by the Board for its agents, or by any two or more owners acting as a group, and in an emergency only, to enter any Limited Common Area for the purpose of making emergency repairs necessary to prevent damage to other parts of the Condominium. 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 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.

9. BYLAWS:

The Bylaws are set forth in Exhibit B. The Bylaws may be amended as set forth in RSA 356-B:38 at any meeting of the association provided a copy of the proposed amendment has been included in the written notice of the meeting as provided for in RSA 356-B:37. Any amendment

shall be effective on recording in the Strafford County Registry of Deeds.

10. ASSESSMENTS:

Each Owner shall pay all common expenses assessed against him and all other assessments made against him by the Board in accordance with the terms of the Declaration and Bylaws, and unpaid assessments shall be secured by a lien (RSA 356-B:46). No Owner shall convey, mortgage, sell or lease his Unit until he shall have paid all assessments due. Within ten (10) days after receiving a request and payment of Ten and 00/100 Dollars (\$10.00), the Board shall apply a certificate executed by a Director stating the amount of any unpaid assessment secured by a lien against a Unit in accordance with the Act, the Declaration and the Bylaws, and the amount 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 Association. A purchaser of a Unit shall be liable for the payment of any such expenses or assessments against the Unit prior to its acquisition by him which are unpaid as of the time of 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 mortgagee who purchases at such foreclosure sale or 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.

12. RESALE:

A prospective buyer shall have the right to request and to receive within ten (10) days of the receipt of such request (and before the closing of the sale of a Unit if requested ten (10) days prior thereto) from the president or treasurer of the Association the following:

- A. The amount of any unpaid assessment under RSA 356-B:46 VIII;
- B. A statement of any capital expenditures and major maintenance expenditures anticipated by the Association within the current or succeeding two (2) fiscal years;
- C. A statement of the status and amount of any reserve for the major maintenance or replacement fund and any portion of such fund earmarked for any specified project by the Board of Directors;
- D. A copy of the income statement and balance sheet of the Association for the last fiscal year for which such statement is available;
- E. A statement of the status of any pending suits or judgments in which the Association is a party defendant;
- F. A statement setting forth what insurance coverage is provided for all Unit owners by the Association and what additional insurance coverage would normally be secured by each individual Unit Owner; and

- G. A statement that any improvements or alterations made to the Unit, or the limited common areas assigned thereto, by the prior Unit Owner are not known to be in violation of the Condominium instruments.

12. CONDEMNATION:

If any part of the common area is taken by eminent domain the award shall be allocated to the Unit Owners in respect to their undivided interests; provided that the portion of the award attributable to the taking of any permanently assigned Limited Common Area shall be allocated to the Unit Owner of the Unit to which such area was so assigned at the time of the taking.

13. WAIVER:

The failure of the Board 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 which shall remain in full force and effect. The receipt by the 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 Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

14. LIABILITY OF THE BOARD:

The members of the 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 below. The owners shall indemnify and hold harmless each of the members of the Board against all contractual liability to others arising out of contracts made by the Board in behalf of the Condominium 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 Board who are directors or officers of the Declarant to contract with the Declarant and affiliated corporations without fear of being charged with self-dealing. It is intended that the members of the Board shall have no personal liability, other than as owners, with respect to any contract made by them in behalf of the Condominium 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 Board or out of the indemnity in favor of the members of the Board shall be limited to such proportion of the total liability thereunder as his interest in the common area bears to it (except that the personal liability of owners who are members of the 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 14 do not apply to and shall not preclude claims for property damage and personal injury by owners against the Board or any other insured under the liability insurance required by Paragraph 3 (G)(1)(b).

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15. ENFORCEMENT:

Each Owner, tenant or occupant shall comply with this Declaration, the Bylaws, the Condominium rules and with decisions adopted pursuant to the Declaration, Bylaws and Condominium rules. Failure to comply shall be grounds for relief under RSA 356-B:15.

16. PERSONAL PROPERTY:

The Board may acquire and hold, for the benefit of the owners, tangible and intangible personal property and may dispose of it by sale or otherwise; and the beneficial interest in such property shall be owned by the owners in the same proportion as their respective interests in other common area. A transfer of a Unit shall transfer the beneficial interest in such personal property, whether or not it is specifically mentioned therein.

17. NOTICES:

All notices hereunder and under the Bylaws to the Association or the Board shall be sent by registered or certified mail to the Board at the Condominium, or to such other address as the Board may designate from time to time by notice in writing to all owners. All notices of change of address shall be deemed have been given when received.

18. SEVERABILITY:

The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity of any part of this Declaration shall not affect in any manner the validity, enforceability or effect of the balance of the Declaration.

19. GENDER:

The use of the masculine gender is deemed to include the feminine gender and the use of the singular is deemed to include the plural whenever the context so requires.

20. 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.

21. AMENDMENT:

Except as otherwise provided herein and in the Act, this Declaration may be amended by the vote of sixty-seven percent (67%) or more of the total voting power of all owners case in accordance with these provisions and the Bylaws; provided, however, that,

- A. No amendment to the Declaration shall be effective until recorded at the Hillsborough County Registry of Deeds.

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- B. So long as Declarant owns a Unit, no amendment shall be adopted that could interfere with the construction, sale, lease or other disposition of a Unit.

22. **FHLMC-FNMA PROVISIONS:**

Notwithstanding anything to the contrary herein contained, the following provisions shall govern and be applicable insofar and for so long as they are required in order to qualify mortgages of units in the Condominium for sale to the Federal Home Loan Mortgage Corporation (FHLMC) or Federal National Mortgage Association (FNMA), as applicable, under laws and regulations applicable thereto:

- A. Any first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage or by foreclosure of the mortgage will not be liable for such unit's unpaid common expenses, charges, or dues which accrue prior to the acquisition of title to such Unit by the mortgagee.
- B. Except as provided by statute in case of condemnation or substantial loss to the units and common areas and facilities of the Condominium project, unless at least sixty-seven percent (67%) of the first mortgagees (based upon one vote for each first mortgage owned), and owners (other than the sponsor, developer, or builder) of the individual units have given their prior written approval, neither the Unit owners, nor the Board, nor the Association shall take any of the following actions (by amendment to this Declaration or otherwise):
 1. By act or omission, seek to abandon or terminate the Condominium;
 2. Change the pro rata interest or obligations of any individual Unit for the purpose of: (a) levying assessments or changes or allocating distributions of hazard insurance proceeds or condemnation awards, or (b) determining the pro rata share of ownership of each Unit in the common areas and facilities;
 3. Partition or subdivide any Unit;
 4. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common areas and facilities (the granting of easements for public utilities or for other public purposes consistent with the intended use of the common areas and facilities in the condominium 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 the common areas and facilities) for other than the repair, replacement or reconstruction of such Condominium property;
 6. Perform any restoration or repair of the Condominium after partial

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condemnation or damage due to an insurable hazard unless the same be done substantially in accordance with the terms of the Declaration and the plans recorded therewith;

7. Establish self management by the Board where professional management had been previously required by any first mortgage holder;
- C. No provision of the Declaration shall give a Unit Owner or any other party priority over any rights of the first mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of units and/or common areas and facilities.
 - D. Condominium dues or charges shall include an adequate reserve fund for maintenance, repair and replacement of those portions of the common areas and facilities that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments. In addition, a working capital fund shall be established equal to at least a two (2) months' estimated common area charge for each Unit and shall be maintained in a segregated account. The purpose of the working capital fund is to insure that there will be cash available to meet unforeseen expenditures, or to acquire additional equipment or services necessary or desirable by the Board. Amounts paid into the fund are not to be considered as advance payment of regular assessments.
 - E. Upon written request to the Board, identifying the name and address of the holder and the Unit number or address, any first mortgagee will be entitled to timely notice of:
 - (1) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which said mortgagee holds the first mortgage;
 - (2) Any default in the performance by the individual Unit Owner of any obligation under the Declaration or Bylaws which is not cured within sixty (60) days;
 - (3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
 - (4) Any proposed action which would require the consent of a specified percentage of first mortgagees as specified in sub-paragraphs (b) and (f) of this section.
 - F. Any agreement for professional management of the Condominium, or any other contract providing for services of the developer, sponsor, or builder or any lease may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

- G. Any holder of a first mortgage of a Unit shall be entitled upon written request to an audited financial statement for the immediately preceding fiscal year free of charge. Any financial statement so requested shall be furnished within a reasonable time following such request.
- H. Any holder of a first mortgage of a Unit shall also be entitled to current copies of the Declaration, Bylaws, or the rules concerning the project and the books, records and financial statements of the Association.
- I. Without the consent of the holders of the first mortgages on units which have at least fifty-one percent (51%) of the beneficial interest hereunder, no material provision of the Declaration or Bylaws shall be added or amended which establishes, provides, governs, or regulates any of the following:
 - (1) Voting;
 - (2) Assessments, assessment liens or subordination of such liens;
 - (3) Reserves for maintenance, repair and replacement of the common areas and facilities;
 - (4) Insurance or fidelity bonds;
 - (5) Rights to use of the common areas and facilities;
 - (6) Responsibility for maintenance and repair of the several portions of the Condominium;
 - (7) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
 - (8) Boundaries of any Unit;
 - (9) The interests in the common areas or limited common areas and facilities;
 - (10) Convertibility of units into common areas and facilities or of common areas and facilities into units;
 - (11) Leasing of units;
 - (12) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his Unit;
 - (13) Any provisions of any right of first refusal which are for the express benefit of first mortgage holders on units.

Any first mortgage holder which does not deliver or mail to the Board a negative response within thirty (30) days of a written request by the Board for approval of any addition or amendment pursuant to this paragraph shall be deemed to have consented to the addition or change set forth in such request. An affidavit by the Board making reference to this section, when recorded at the Hillsborough County Registry of Deeds shall be conclusive as to the facts therein set forth as to all parties.

Dated at: 3/28/94

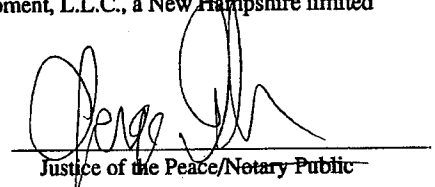
WILKINSON DEVELOPMENT, L.L.C.

Dated: 3/28/94

By: 

STATE OF Hillsborough
COUNTY OF New Hampshire

The Declaration was acknowledged before me on MARCH 28, 1994 by Russell Wilkinson, President of Wilkinson Development, L.L.C., a New Hampshire limited liability corporation, on behalf of the corporation.


Justice of the Peace/Notary Public

Commission Expires:

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Exhibit A

The tract of land in Merrimack, Hillsborough County, New Hampshire shown as New Lot 286, Map 4C on a consolidation plan entitled "The Birches" owned by Realtek Corporation dated December 19, 1983 by Hamilton Engineering Associates, Inc. recorded in the Hillsborough County Registry of Deeds as Plan No. 17988 bounded as follows:

Beginning at the most northerly corner of the premises at the intersection of the south line of West Chamberlain Road with the west line of the F. E. Everett Turnpike; thence

1. South 15° 55' 24" East 165.68 feet by the Turnpike to a New Hampshire Highway Department bound found; thence
2. Continuing southeasterly by the Turnpike and by a curve to the right having a radius of 5580 feet, 500.64 feet to a point; thence
3. South 17° 23' 27" West by land believed to be the State of New Hampshire 941.78 feet to a bound found; thence
4. South 16° 24' 32" West 1385.10 feet by land believed to be the State of New Hampshire to an iron pipe found; thence
5. South 16° 24' 32" West by land believed to be the State of New Hampshire 196.30 feet to a point; thence
6. North 1° 19' 55" West 478.50 feet to a point; thence
7. North 28° 32' 58" West 772.66 feet to a point; thence
8. North 15° 18' 46" West 264.00 feet to an iron pipe found; thence
9. South 58° 48' 53" West 1579.06 feet to a point in the east line of Turkey Hill Road; thence
10. North 46° 29' 3" West 325.74 feet by the east line of Turkey Hill Road to an iron pipe found; thence
11. North 61° 16' 44" East 1060.00 feet through an iron pipe found to a point; thence
12. North 9° 50' 16" West 206.00 feet through an iron pipe found to a point; thence
13. North 89° 41' 46" West 153.60 feet to a point; thence
14. North 89° 44' 46" West 174.00 feet to a point; thence

15. North $3^{\circ} 54' 7''$ West 214.44 feet to a point in the south line of Oxford Street; thence
16. Easterly, northerly and westerly by the curve of a cul-de-sac having a radius of 50 feet, 261.65 feet to a point at an iron pipe found in the north line of Oxford Street; thence
17. North $12^{\circ} 16' 26''$ West 788.73 feet to an iron pipe found; thence
18. North $77^{\circ} 43' 34''$ East 200.01 feet to a point in the west line of Burlington Street; thence
19. South $12^{\circ} 16' 26''$ East 115.00 feet to a point; thence
20. North $77^{\circ} 43' 34''$ East 500.02 feet to a stone bound to be set; thence
21. North $12^{\circ} 16' 26''$ West 271.40 feet to a stone bound to be set in the south line of West Chamberlain Road; thence ;by the south line of West Chamberlain Road in courses 22 - 30;
22. Easterly by a curve having a radius of 725.00 feet, 197.89 feet to a stone bound tyo be set; thence
23. Easterly by a curve having a radius of 1275.00 feet, 113.47 feet to a stone bound to be set; thence
24. North $63^{\circ} 7' 17''$ East 69.84 feet to a stone bound to be set; thence
25. Easterly by the curve having a radius of 350.00 feet, 175.72 feet to a stone bound to be set; thence
26. South $88^{\circ} 6' 43''$ East 194.66 feet to a stone bound to be set; thence
27. Easterly by a curve having a radius of 325.00 feet, 114.36 feet to a stone bound to be set; thence
28. North $66^{\circ} 26' 16''$ East 165.21 feet to a stone bound to be set; thence
29. Easterly by a ;curve having a radius of 1475.00 feet, 97.50 feet to a stone bound to be set; thence
30. North $70^{\circ} 13' 30''$ East 431.48 feet to the point of beginning.

Exhibit B

For purposes of this registration application only, see Appendix D(2) for a copy of the bylaws. The bylaws will appear as Exhibit B of the Declaration in all other instances.

BK5534PG1958

EXHIBIT C

BUILDING NO.	UNIT NO.	COMMON INTEREST	VOTE	LIMITED COMMON AREA DECK	
<u>PHASE I</u>					
1	1	1/176	1	X	
	3	1/176	1	X	
	5	1/176	1	X	
	7	1/176	1	X	
	2	2	1/176	1	X
		4	1/176	1	X
		6	1/176	1	X
3	8	1/176	1	X	
	9	1/176	1	X	
	11	1/176	1	X	
	15	1/176	1	X	
	17	1/176	1	X	
4	10	1/176	1	X	
	12	1/176	1	X	
	14	1/176	1	X	
	16	1/176	1	X	
5	19	1/176	1	X	
	21	1/176	1	X	
	23	1/176	1	X	
	25	1/176	1	X	
<u>PHASE II</u>					
6	1	1/176	1	X	
	3	1/176	1	X	
	5	1/176	1	X	
	7	1/176	1	X	
	7	2	1/176	1	X
4		1/176	1	X	
6		1/176	1	X	
8		1/176	1	X	
8	9	1/176	1	X	
	11	1/176	1	X	
	15	1/176	1	X	
	17	1/176	1	X	
	9	10	1/176	1	X
12		1/176	1	X	
14		1/176	1	X	
16		1/176	1	X	
10	18	1/176	1	X	
	20	1/176	1	X	
	22	1/176	1	X	
	24	1/176	1	X	
11	26	1/176	1	X	
	28	1/176	1	X	
	30	1/176	1	X	
	32	1/176	1	X	

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BUILDING NO.	UNIT NO.	COMMON INTEREST	VOTE	LIMITED COMMON AREA DECK
12	19	1/176	1	X
	21	1/176	1	X
	23	1/176	-1	X
	25	1/176	1	X
	34	1/176	1	X
13	36	1/176	1	X
	38	1/176	1	X
	40	1/176	1	X
	27	1/176	1	X
14	29	1/176	1	X
	31	1/176	1	X
	33	1/176	1	X
	42	1/176	1	X
15	44	1/176	1	X
	46	1/176	1	X
	48	1/176	1	X
<u>PHASE III</u>				
16	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
17	7	1/176	1	X
	2	1/176	1	X
	4	1/176	1	X
	6	1/176	1	X
	8	1/176	1	X
18	9	1/176	1	X
	11	1/176	1	X
	15	1/176	1	X
	17	1/176	1	X
19	10	1/176	1	X
	12	1/176	1	X
	14	1/176	1	X
	16	1/176	1	X
20	19	1/176	1	X
	21	1/176	1	X
	23	1/176	1	X
	25	1/176	1	X
21	18	1/176	1	X
	20	1/176	1	X
	22	1/176	1	X
	24	1/176	1	X
<u>PHASE IV</u>				
22	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
	7	1/176	1	X
23	2	1/176	1	X
	4	1/176	1	X

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BUILDING NO.	UNIT NO.	COMMON INTEREST	VOTE	LIMITED COMMON AREA DECK
	6	1/176	1	X
	8	1/176	1	X
24	9	1/176	1	X
	11	1/176	1	X
	15	1/176	1	X
	17	1/176	1	X
25	10	1/176	1	X
	12	1/176	1	X
	14	1/176	1	X
	16	1/176	1	X
26	19	1/176	1	X
	21	1/176	1	X
	23	1/176	1	X
	25	1/176	1	X
27	18	1/176	1	X
	20	1/176	1	X
	22	1/176	1	X
	24	1/176	1	X
28	27	1/176	1	X
	29	1/176	1	X
	31	1/176	1	X
	33	1/176	1	X
<u>PHASE V</u>				
29	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
	7	1/176	1	X
30	2	1/176	1	X
	4	1/176	1	X
	6	1/176	1	X
	8	1/176	1	X
31	9	1/176	1	X
	11	1/176	1	X
	15	1/176	1	X
	17	1/176	1	X
32	10	1/176	1	X
	12	1/176	1	X
	14	1/176	1	X
	16	1/176	1	X
<u>PHASE VI</u>				
33	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
	7	1/176	1	X
34	2	1/176	1	X
	4	1/176	1	X
	6	1/176	1	X
	8	1/176	1	X

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BUILDING NO.	UNIT NO.	COMMON INTEREST	VOTE	LIMITED COMMON AREA DECK
<u>PHASE VII</u>				
35	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
	7	1/176	1	X
36	2	1/176	1	X
	4	1/176	1	X
	6	1/176	1	X
37	8	1/176	1	X
	10	1/176	1	X
	12	1/176	1	X
	14	1/176	1	X
	16	1/176	1	X
<u>PHASE VIII</u>				
38	2	1/176	1	X
	4	1/176	1	X
	6	1/176	1	X
	8	1/176	1	X
39	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
40	7	1/176	1	X
	10	1/176	1	X
	12	1/176	1	X
	14	1/176	1	X
41	16	1/176	1	X
	9	1/176	1	X
	11	1/176	1	X
	15	1/176	1	X
	17	1/176	1	X
<u>PHASE IX</u>				
42	2	1/176	1	X
	4	1/176	1	X
	6	1/176	1	X
	8	1/176	1	X
43	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
44	7	1/176	1	X
	10	1/176	1	X
	12	1/176	1	X
45	14	1/176	1	X
		1/176	1	N/A

BK 5534 PG 1962

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PUBLIC OFFERING STATEMENT

INTRODUCTION

Oakshire Development, L.L.C. (Declarant), having a principal place of business at 394 Elm Street, Milford, Hillsborough County, New Hampshire, offers condominium ownership of real estate located at West Chamberlain Street, Merrimack, Hillsborough County, New Hampshire. Declarant will sell sixty-seven (67) condominiums, 40 of which currently exist and 27 of which are under partially constructed. The land and the structures constitute a portion of a condominium known as The Birches, A Condominium, which consists of 176 units.

This Public Offering Statement consists of two parts, a Narrative portion and an Exhibit portion. The Exhibits are the principal legal documents for the operation of the condominium. The documents include a Declaration of Condominium, By-Laws, a Public Offering Statement Receipt, a sample Purchase and Sale Agreement and a sample deed. The Narrative portion of the Public Offering Statement is intended to summarize the significant features of the Exhibits and provide information required by the prospective purchaser. In the event of any inconsistency between the Exhibits and the Narrative, the provisions of the Exhibits will govern.

A. THE CONDOMINIUM CONCEPT:

The term "Condominium" refers to a form of property ownership. Property which is owned as a Condominium contains two distinct types of property -- Units and Common Area. Units are portions of a Condominium which are set aside for individual ownership. In the case of a residential condominium, the Units are the separate living quarters which may be used only by the Unit Owner. Common Area, on the other hand, is all portions of the Condominium which are not included within the Units. The Common Area constitutes the land and utility apparatus which services the Units to the extent it is not owned by the utility. Each Unit Owner owns an "undivided interest" in the Common Area. An undivided interest is a fractional percentage share of ownership of all the Common Area. In this Condominium, the undivided interest is 1/176th. The ownership of an undivided interest gives the Unit Owner the right to participate in the control and management of all the Common Area but such ownership carries with it the obligation of each Unit Owner to pay his share of the normal expenses of operating and maintaining all of the Common Area. It is the ownership of an undivided interest in the Common Area together with the ownership of air space which sets Condominium Ownership apart from other forms of property ownership.

Part of the Common Area is designated Limited Common Area which is a portion of the Common Area assigned to a particular Unit. The Unit Owner has the exclusive right to use the Limited Common Area assigned to the Unit.

B. DESCRIPTION OF THE CONDOMINIUM:

The Condominium is located on land in Merrimack, Hillsborough County, New Hampshire.

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The Condominium consists of a maximum of one hundred seventy six (176) residential units. Declarant will perform necessary site work such as roads and utilities and construct buildings.

The land constituting the Condominium is described in Exhibit A to the Declaration.

The Declaration established the boundaries of the Condominium as a whole, the Common Area, limited common area and the undivided interest in the Common Area appertaining to each Unit.

C. EASEMENTS AND RESTRICTIONS:

The Condominium is subject to easements and restrictions normally associated and necessary with Condominiums. The easements and restrictions are of three types: (1) utility easements; (2) governmental requirements; and (3) Condominium easements and restrictions.

(1) Utility Easements. The Condominium is and will be subject to normal utility easements for water, sewer, electric and telephone.

(2) Governmental Requirements. The Condominium is located in a cluster zone in the Town of Merrimack. The Merrimack Planning Board has approved the site plan for the Condominium development. Merrimack has also approved the tie-in of the Condominium development. Copies of these approvals from Merrimack are available for inspection and/or copying from the Declarant upon request.

(3) Condominium Easements and Restrictions. The Condominium is subject to and has the benefit of easements created by the Declaration and by the Condominium Act, R.S.A. 356-B. These are:

(a) Easement to facilitate completion. To facilitate completion the Declarant reserves an easement across the Condominium to the extent necessary to construct the improvements on the Condominium.

(b) Easement to facilitate sales. The Declarant may use Units in the Condominium as models or as sales offices and may place advertising signs anywhere within the Condominium.

(c) Easement for ingress and egress. Each Unit Owner has a right of access to the Common Area, subject to rules, regulations and restrictions established by the Unit Owners Association.

(d) Easement for access to Units. Authorized representatives of the Unit Owners Association, including the Declarant, may enter any Unit to the extent necessary to correct the conditions threatening other Units or the Common Area, to make repairs to Common

Area which are accessible only from the Unit, or to correct conditions which constitute violations of the Declaration, By-Laws or Regulations. The violation may be corrected without the consent of the Unit Owner and the Unit Owner may be charged with the resulting expense.

(e) Restrictions for Residential Use. Each Unit is restricted for residential use. The uses of a Unit are also restricted by Paragraph 3-f of the Declaration and Article I, Section 3 of the By-Laws.

A copy of the legal documents pertaining to any easement of restriction is available on request from the Declarant.

D. MATTERS OF TITLE AFFECTING THE CONDOMINIUM:

(1) The Condominium is subject to the lien of one (1) mortgage given to R.L. Wilkinson Development, L.L.C. upon the property which will be released as to the Unit conveyed. R.L. Wilkinson Development, L.L.C. shall give a partial release of the lien of this mortgage upon receipt of \$40,000 for each unit sold. A copy of this mortgage is available upon request.

(2) Under New Hampshire law, any supplier of materials or a contractor involved in construction of the Condominium acquires a mechanics' lien for its labor and/or materials. Under R.S.A. 356-B, the Declarant is required to obtain a release of all such liens on a Unit prior to conveyance of the Unit. Failure to obtain such releases would result in the Unit being conveyed subject to these liens. The Declarant will provide each Unit Owner at the time of transfer of title with an Affidavit stating that all services and materials provided in connection with the construction of the Unit have been paid. A purchaser at the closing should require the delivery of partial releases from the mortgages for his Unit and the Affidavit with respect to mechanics' liens.

(3) The Merrimack Planning Board by decision dated August 8, 1983 granted to Realtex Corporation, a predecessor of Declarant, the right to remove 300,000 cubic yards of gravel from the condominium premises.

(4) The Town of Merrimack claims a change of use tax lien upon the condominium premises. In the opinion of Declarant's counsel the claim is without legal validity. In any event, title insurance written by a title insurance company authorized to do business in New Hampshire is available without exception for the Merrimack claim and without charge for additional premium.

A copy of the legal documents pertaining to Matters of Title is available upon request from the Declarant.

E. IMPROVEMENTS AND AMENITIES:

At this time, the Condominium site is under development. The Declarant's plan for the construction of the Condominium is as follows:

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(1) Individual Units. One hundred seventy-five (175) units will be single family residential units within townhouse buildings. There will be forty-four (44) buildings. One unit will be detached.

(2) Common Area. The Common Area constitutes all of the Condominium other than the Units. The major component of the Common Area of the Condominium is all of the land.

(3) Improvements and Amenities. Declarant may, but is not obligated, to complete the improvements or to install a swimming pool and tennis courts, including 176 units.

F. IMPROVEMENTS NECESSARY BY PURCHASER:

A purchaser does not need to make any improvements to the Unit.

G. WARRANTIES:

Each Unit together with its appurtenant undivided interest in the Common Area will be conveyed by warranty deed (Exhibit 5). Declarant will grant a one (1) year warranty against structural defects (Exhibit 6).

H. UNIT OWNERS ASSOCIATION:

The Unit Owners' Association is an unincorporated association to which each Unit Owner must belong by virtue of the Declaration.

The Unit Owners' Association is the organization responsible for governing the Condominium. Each Unit Owner has an equal vote in the Association since all Unit Owners have an equal undivided interest in the Common Area.

All of the normal operations of the Unit Owners' Association are accomplished under the direction of a five (5) member Board of Directors. The Unit Owners participate directly in the election of the Board.

The Board of Directors may, and expects to, employ a Managing Agent to act in its behalf in the performance of its duties. Directors will be elected by the Unit Owners.

The Board of Directors elects the officers of the Unit Owners Association. The officers are President, Vice President, Secretary/Treasurer, and any other officers the Directors may deem necessary.

The operation of the Unit Owners Association is governed by the By-Laws. The By-Laws are recorded at Hillsborough County Registry of Deeds with the Declaration at the time the Condominium is created. In addition to provisions for a Board of Directors, Managing Agent and officers as discussed above, the By-Laws provided for annual and special meetings, common expense assessments, reserves, insurance, restrictions on the use of Units and Common Area, and

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numerous other matters affecting the occupancy and operation of the condominium. A copy of the By-Laws is attached as Exhibit B to the Declaration.

I. BUDGET:

The Budget (Exhibit 2) is the actual budget from the most recent year of operation.

Obviously, Units will be completed on different dates and expenses will commence at varying dates. The actual expenses may vary substantially from year to year. The amount of a Unit Owner's monthly assessment will be determined by dividing the annual budget by the number of Units in the Condominium. The annual budget is prepared and adopted by the Board of Directors. The Declarant cannot guaranty the amount of future budgets or monthly assessments.

A provision has been made in the budget for current maintenance and operations. In addition, each purchaser will be required to pay two (2) months' assessments at the time of the purchase of his Unit into a capital reserve fund and a working capital fund. The reserve funds will be held at a banking institution in New Hampshire and each purchaser's payments will be deposited at the time of closing. The accounts will be established under the name of the Unit Owners' Association of the Birches, A Condominium. In addition to the reserve and the sums in the initial budget, the Unit Owners' Association may desire to provide for additional payment into the reserve fund as part of future budgets.

J. FEES:

In addition to the purchase price, the initial fees or charges which the Buyer is required to pay at the closing are:

1. A prorated monthly assessment of the Unit Owners' Association.
2. Payment of two (2) months' assessment for a working capital fund and a capital reserve fund.
3. The Buyer's prorated share of current real estate taxes.
4. One-half (1/2) of the documentary stamps required to be affixed to the deed.
5. Recording fees for the deed.
6. Costs of charges by Buyer's mortgagee if Buyer's Unit is to be mortgaged.
7. Utility deposits apportioned to the Unit.
8. Buyer's own attorney's fees.

The Buyer, along with all other Unit Owners, is required to pay the recurring Unit Owner's

assessment. The Buyer is also responsible for his own utility charges, mortgage payments and taxes.

K. AVAILABLE FINANCING:

Declarant does not finance the sale of Units. The Declarant has not made any arrangements with banks or other lending institutions for the placement of permanent mortgage loans for the Condominium Units and Declarant assumes no responsibility for assisting the purchaser in acquiring financing or for procuring financing for the purchaser.

L. ESCROW OF DEPOSITS:

All deposits made pursuant to any purchase and sales agreement will be held in an escrow account until the transfer of title or default by Trow Realty, Inc..

M. ELDERLY USE RESTRICTION

Ninety-six (96) of the Condominium Units shall be occupied only by a family unit in which the head of the household or spouse is 55 years old. Those units and the buildings in which they are located are as follows:

- Plasic Road -----Units 1-2-3-4-5-6-7 & 8 (2 bldgs.)
- Winrow Drive -----Units 34-36-38-40-42-44-46 & 48 (2 bldgs.)
- Joston Drive -----Units 10-12-14-16-18-20-22 & 24 (2 bldgs.)
- Vanden Road -----Units 1-3-5-7-10-12-14 & 16 (2 bldgs.)
- Wellington Circle -----Units 1-2-3-4-5-6-7 & 8 (2 bldgs.)
- Lynn Drive -----Units 1-2-3-4-5-6-7-8-9-10-11-12-13-14-15-16 & 17 (4 bldgs.)
- Rollins Court -----Units 1-2-3-4-5-6-7-8-10-12-14 & 16 (3 bldgs.)
- Adams Avenue -----Units 1-2-3-4-5-6-7-8-9-10-11-12-14-15-16 & 17 (4 bldgs.)
- Burberry Court -----Units 1-2-3-4-5-6-7-8-10-12 & 14 (3 bldgs.)

Dated: 3/28/94

OAKSHIRE DEVELOPMENT, L.L.C.

By: Russell Wilkinson
Title: Manager

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Appendix D(2)

Exhibit B

BYLAWS

THE BIRCHES, A CONDOMINIUM
UNIT OWNERS' ASSOCIATION

ARTICLE I
Purpose and Definitions

SECTION 1.

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 s subject to these Bylaws, the Declaration and the Condominium Rules.

SECTION 2.

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 3.

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 4.

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 Plasic Road , Merrimack, New Hampshire.

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ARTICLE II

Board of Directors

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;

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- 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, insurances, 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 Three Thousand and 00/100 Dollars (\$3,000.00) 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.

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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. This section is not subject to amendment.

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

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(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 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.

SECTION 8.

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 9.

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 10.

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 members 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.

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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 mailed by certified mail, return receipt requested, 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

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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.

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 person 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 by certified mail, return receipt requested, to all owners of record not less than seven (7) days prior to the date fixed for the meeting.

SECTION 5.

oting. 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 persons 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

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the Association, shall give notice of the annual and special meetings of the Owners, and shall have such other powers and duties as may be delegated to him by the Board or the Association from time to time. He shall be responsible for the funds of the Association and shall be responsible for keeping or having kept full and accurate financial records and books of account showing all receipts and disbursements of the Association and any other financial data required by the Board or by the Association. He shall be responsible for the deposit of all funds in the name of the Board or the Association in such depositories as may be designated by the Board from time to time and shall have such other powers and duties as may be delegated to him by the Board or the Association from time to time. The Board may delegate such of the Secretary/Treasurer's powers and duties to the manager or managing agent as it deems to be advisable.

ARTICLE V

Common Expenses

SECTION 1.

Fiscal Year. The fiscal year of the Association shall be a twelve (12) month period beginning January 1st and terminating December 31st of each year, provided that the Board may change the fiscal year.

SECTION 2.

Assessment. The common expenses shall include any amounts necessary to pay for the items obtained pursuant to Article II, Section 1, any amounts necessary to make up any deficit for the fiscal year, reserves for operations and replacements of the Common Area and for working capital and any amounts required for the purchase of a unit by the Association pursuant to Section 4 of this Article. The Board of Directors shall adopt a budget showing estimated common expenses and owner assessments and make a reasonable effort to submit it to Owners 15 days before the start of the fiscal year. Common expenses shall be assessed to the Owners pursuant to the percentages set forth in Appendix D of the Declaration. Declarant is excused from the payment of any assessment during the time it pays any expenses of the Association incurred during that time and not funded by assessments receivable from the other members; otherwise, Declarant shall pay for each completed but unoccupied Unit a full monthly assessment. If the sum estimated proves inadequate for any reason, including nonpayment of any owner assessment, the Board may at any time levy a further assessment, which shall be assessed to the Owners according to Exhibit C percentages, unless otherwise provided herein. Each owner shall be obligated to pay the assessments made against him to the Board, and such payments shall be due in equal

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installments on or before the first day of each installment term. If a unit is rendered uninhabitable by fire or other casualty, the Board, in its discretion, may abate all or a portion of the common expenses assessed against the owner of the unit while it remains uninhabitable.

The Board of Directors shall build up and maintain an operating reserve and reserve for replacement of the common area which shall be funded by the monthly payment. The funds collected for the reserve for replacement of common area shall be placed in a separate account, apart from general operating funds and used only for such purpose. If the reserve is inadequate a further assessment, lump sum or by installments may be levied.

The Board of Directors shall establish a working capital fund reserve equal to two months common area charge exclusive of other reserves which shall be collected at the initial conveyance of a unit.

The failure of the Board to fix the assessments for such a twelve (12) month period prior to the commencement of such a period shall not be deemed a waiver or modification in any respect of the provisions hereof, or a release of the Owners from the obligation to pay the assessments, or any installment thereof for such period, but the assessment fixed for the preceding twelve (12) month period shall continue until a new assessment is fixed. Amendments to this Section shall be effective only upon unanimous written consent of the Owners. No owner may exempt himself from liability for his assessment of the common expenses by waiver of the use or enjoyment of any of the common area or by abandonment of his unit.

The Board shall submit an audited financial statement within 120 days of the end of a fiscal year.

SECTION 3.

Records. The Treasurer shall keep detailed, accurate records in chronological order of the receipts and expenditures by the Association specifying and itemizing the maintenance and repair expenses and any other expenses incurred. The records shall be available for examination by the Owners, or their agents, at convenient times.

SECTION 4.

Default in Payment of Assessments. Each assessment of common expenses, and each special expense and assessment shall be separate, distinct and personal debts and obligations of the owner against whom they are assessed and shall be collectible as such. Suit for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing it. The amount of any assessment which is not paid on its due date, plus a Ten and 00/100 Dollar (\$10.00) late fee per month and costs, including reasonable attorneys' fees, shall be a lien upon the unit as provided in Section 46 of the Act. The lien may be enforced by a sale by the Board conducted with the law applicable to the exercise of a power of sale or other foreclosure of mortgages. In any foreclosure, the owner shall be required to pay the costs and expenses of such proceedings and reason-

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able attorneys' fees. Upon foreclosure, the owner shall immediately vacate the unit and if he fails to do so he shall be liable for a reasonable rental while he remains in possession. The Board, in behalf of the Association, shall have the power to purchase the unit at foreclosure or other sale and to hold, lease, mortgage and convey the unit thereafter.

ARTICLE VI

MISCELLANEOUS

SECTION 1.

Surplus. Any surplus of common expense payments by Owners over the actual expenses during a fiscal year shall be paid into the operating reserve for the following fiscal year.

SECTION 2.

Severability. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance hereof or of the Declaration.

SECTION 3.

Gender. The use of the masculine gender 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.

SECTION 4.

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

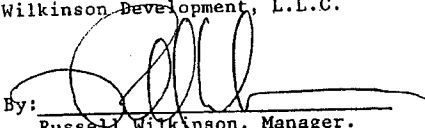
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SECTION 5.

Amendment. The bylaws may be amended in the same manner as set forth in Paragraph 21 of the Declaration; provided, however, that while Declarant holds all of the positions of directors pursuant to Section 2 of Article II of these Bylaws, these bylaws cannot be amended without the written assent of Declarant.

Dated at

Wilkinson Development, L.L.C.

By: 
Russell Wilkinson, Manager.

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DECLARATION OF CONDOMINIUM

THE BIRCHES, A CONDOMINIUM

Turkey Hill Realty, Co., Inc., a New Hampshire corporation of Manchester, New Hampshire (Declarant), declares:

1. SUBMISSION AND DECLARATION:

Declarant, owner in fee of the land described in Exhibit A, submits the land and all buildings and improvements now existing or hereafter constructed and all easements, rights and appurtenances to the provisions of RSA 356-B and creates with respect to the land a condominium with the condominium form of ownership.

2. DEFINITIONS:

Terms shall have the meanings specified in RSA 356-B:3 except as defined in this Declaration, the Bylaws (Exhibit B) and the Plans unless the context otherwise requires:

- A. "Act": The New Hampshire Condominium Act (RSA 356-B).
- B. "Association" or "Association of Owners": The owners acting as a group in accordance with the Act, the Declaration and the Bylaws. Each Unit Owner shall be a member of the Association.
- C. "Board" or "Board of Directors": The governing body of the Condominium elected pursuant to the Bylaws.
- D. "Bylaws": Exhibit B.
- E. "Common area": All that portion of the Condominium other than the units, and as more particularly described in Paragraph 3 (D). Common Area includes Limited Common Area although Limited Common Areas are reserved for the exclusive use of the Owners of the Units to which the Limited Common Areas are assigned.
- F. "Common expenses": All expenses incurred by the Association for the purposes of administration, maintenance, repair and replacement of the common area and for any other lawful purposes.
- G. "Condominium": The premises described in Exhibit A including land, all buildings and other improvements and structures now or hereafter 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.

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- H. "Condominium rules": Such rules and regulations as the Board from time to time may adopt relative to the use of the Condominium or of any part thereof.
- I. "Declarant": Turkey Hill Realty, Co., Inc., a New Hampshire corporation; provided, however, that no successor or assignee of Declarant shall have any rights or obligations of Declarant unless they are specifically set forth in the instrument of succession or assignment or unless such rights or obligations pass by operation of law. If another (Second Declarant) stands in the same relation to the Condominium as the first Declarant, the Second Declarant shall hold the same rights and obligations as the first Declarant would have held.
- J. "Declaration": This instrument.
- K. "Land": The real property described in Exhibit A.
- L. "Property": The land and all improvements.
- M. "Owner": Any person owning a Unit together with an undivided fee simple interest in the common area. No mortgagee shall be deemed an owner merely because of rights acquired under a mortgage.
- N. "Unit": A part of the Condominium and the appurtenant percentage of the common area designed and intended for independent ownership of fee or leasehold, all as more particularly described in Paragraph 3(C).

3. INFORMATION REQUIRED BY 356-B:16 OF THE ACT.

- A. Name and Location. This Condominium is The Birches, A Condominium, which is located in Merrimack, Hillsborough County, New Hampshire.
- B. Description of Land. Exhibit A contains a metes and bounds description of the land submitted to the Condominium Act.
- C. Description of Units.
 - 1. Buildings. The Condominium includes residential buildings containing 176 units in the townhouse style.
 - 2. Units. Each Unit may be transferred in the same manner as any other parcel of real property. Exhibit C lists all Unit designations, limited common area and appurtenant percentage of the common area.
 - 3. Unit Boundaries. Each Unit consists of the space within the following boundaries:

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Horizontal Boundaries: The upper and lower (horizontal) boundaries of each Unit shall be the following boundaries extended to an intersection with the vertical boundaries:

Upper Boundary: The unfinished interior surface of the uppermost ceiling.

Lower Boundary: The unfinished interior surface of the lowest floor.

Vertical Boundaries: The perimeter (vertical) boundaries of each Unit shall be the vertical plane of the interior surface of all walls bounding the Unit extended to intersections with each other and with the upper and lower boundaries; but the Unit extends to the exterior unfinished surfaces of the window frames and doors.

Each Unit includes the portion of the building within the above boundaries and the space enclosed by the boundaries, except any common area described in Paragraph 3 (D) below which may be located therein. The finished interior of the lowest floors, perimeter walls and uppermost ceiling of a Unit consisting of, without limitation, paint, paneling, wallpaper, flooring, carpeting, tiles, and any other materials constituting any part of the finishing materials and finished surfaces thereof are a part of each Unit. The owner of a Unit owns the interior walls and partitions which are contained in his Unit, and the window and door glass, and the entrance doors and window frames (to the unfinished exterior surfaces thereof). A Unit does not own any pipes, wires, cables, chutes, flues, conduits, utility lines, ventilation or other ducts, bearing walls, bearing columns, roof supports or stringers or structural portions of the building running through that Unit which are utilized for or serve more than one Unit or serve any portion of the Common Area, or Limited Common Area and such items are a part of the Common Area.

D. Description of Common Area. The common area includes, but not by way of limitation:

1. The land described in Exhibit A;
2. The water supply, sewage disposal, electrical and telephone and other utility systems serving the Condominium to the extent the systems are located within the property and are not owned by the supplier of the utility service, but not including any portions within and serving a single Unit.
3. The roofs, roof supports or stringers, foundations (other than the finished interior surfaces), columns and supports of the buildings, the perimeter walls, and floors of each Unit to the interior surfaces thereof; and the pipes, ducts, flues, chutes,

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conduits, plumbing, wires, meters, meter housings and other facilities for the furnishing of utility services or waste removal not located within a Unit and such facilities located within a Unit, which serve parts of the Condominium other than the Unit within which they are located.

4. The Limited Common Area assigned to each Unit is designated upon plan entitled "The Birches, a Condominium - Floor Plans", Stephen D. Wojcik, Registered Architect dated _____ indicated in Exhibit C and is exclusively and permanently assigned. The Limited Common Area includes a deck.

E. Percentage of Interest and Voting. Each Unit has an equal percentage of undivided interest in the common area and one vote. If a Unit has more than one Owner, the vote must be cast as a whole. Each deed of a Unit shall convey the undivided interest appurtenant to the Unit.

F. Statement of Purposes and Restrictions of Condominium Use. The Condominium is intended for residential use and the following provisions, together with the provisions of the Condominium Bylaws and rules, are in furtherance of this purpose:

1. Each Unit shall be occupied and used only for private residential purposes by the Owner and his family, or by tenants or guests of the Owner, except for such limited professional use as the Board, upon application of an Owner, from time to time may authorize as not being incompatible with the residential character of the Condominium. The occupancy and use of the Unit shall be in accordance with the Merrimack Zoning Ordinance and other applicable municipal ordinances. This restriction shall not be construed to prohibit owners from leasing their units so long as the tenants occupy and use the units in accordance with these provisions and any restrictions imposed by the Board.
2. The common area shall not be used in a manner which is inconsistent with the residential character of the Condominium. 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 expense incurred by the Board in repairing it; and nothing shall be stored in the common area without the prior written consent of the Board. Nothing shall be altered, constructed in or removed from the common area without the prior written consent of the Board.
3. No noxious or offensive use shall be made of any part of the Condominium and nothing shall be done therein which is or will become an annoyance or nuisance to other owners. No use shall be made of any part of the Condominium which will constitute a fire hazard or which will result in the cancellation of insurance on any part of the Condominium or which is in violation of any law, ordinance or governmental regulation applicable

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thereon. No use shall be made of any part of the Condominium which will increase the rate of insurance on the common area without prior written consent of the Board. No Owner shall place or operate mobile homes, manufactured housing, unregistered motor vehicles or snowmobiles upon the common area.

- 4. Ninety six (96) of the Condominium Units shall be occupied only by a family unit in which the head of the household or spouse is 55 years old. Those units and the buildings in which they are located are as follows:

Plasic Road-----Units 1-2-3-4-5-6-7 & 8 (2 bldgs.)
Winrow Drive-----Units 34-36-38-40-42-44-46 & 48 (2 bldgs.)
Joston Drive-----Units 10-12-14-16-18-20-22 & 24 (2 bldgs.)
Vanden Road-----Units 1-3-5-7-10-12-14 & 16 (2 bldgs.)
Wellington Circle---Units 1-2-3-4-5-6-7 & 8 (2 bldgs.)
Lynn Drive-----Units 1-2-3-4-5-6-7-8-9-10-11-12-14-15-16 & 17
(4 bldgs.)
Rollins Court-----Units 1-2-3-4-5-6-7-8-10-12-14 & 16 (3 bldgs.)
Adams Avenue-----Units 1-2-3-4-5-6-7-8-9-10-11-12-14-15-16 & 17
(4 bldgs.)
Burberry Court-----Units 1-2-3-4-5-6-7-8-10-12 & 14 (3 bldgs.)

G. Insurance and Voting in the Event of Damage.

- 1. Insurance to be Obtained. The Board of Directors shall obtain and maintain to the extent obtainable, the following insurance:

- (a) Fire insurance with extended coverage, vandalism and malicious mischief endorsements insuring the building comprising the Condominium including without limitation all such portions of the interior of the building as are for insurance purposes normally deemed to constitute part of the building and customarily covered by such insurance, such as heating and other service machinery, interior walls, all finished wall surfaces, and bathroom, heating and lighting fixtures, except for improvements made by individual owners which exceed a total value of One Thousand and 00/100 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 building and to be payable to the Board as trustees for the owners and their mortgagees as their respective interests may appear.
- (b) Public liability insurance in such amounts as the Board may from time to time determine, but in no event shall the limits of liability be less than One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury and property damage per occurrence, insuring each member of the 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.

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- (c) Workmen's compensation insurance as required by law.
- (d) Blanket fidelity bond coverage for any person, partnership or corporation, or any other entity which either handles or is responsible for funds held or administered by the Unit Owners' Association, whether or not they receive compensation for their services. Any management agent that handles funds for the Owners' Association must be named as obligee and any premiums must be included as a common expense by the Unit Owners' Association. The fidelity bond must cover the maximum funds that will be in the custody of the Unit Owners' Association or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least equal the sum of three (3) month's assessments on all units in the project plus all of the Unit Owners' Association's reserve funds. The fidelity bond must include a provision that calls for ten (10) days written notice to the Unit Owners' Association or insurance trustee, before the bond can be cancelled or substantially modified for any reason. The same notice must be given to any servicer that services a FNMA owned mortgage in the project.

(e) Such other insurance as the Board may determine.

2. General Insurance Provisions.

- (a) The 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(G) (1) and shall review with the insurer or insurance agent, at least annually, the coverage under the policies, such review to include an appraisal of improvements within the Condominium, and shall make any necessary changes in the policy provided for under Paragraph 3(G) (1) (a) (prior to the expiration date set forth in any agreed amount endorsement contained in the policy) in order to meet its coverage requirements.
- (b) The Board shall be required to make every effort to see that all policies of physical damage insurance provided for under Paragraph 3(G) (1): (i) shall contain waivers of subrogation by the insurer as to claims against the association, its employees, members of the Board, owners and members of the family of any Owner who reside with said Owner, except in cases of arson and fraud; (ii) shall contain a waiver of defense of invalidity on account of the conduct of any of the owners over which the association has "no control"; (iii) 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 and all mortgagees of units in the Condominium; (iv) shall provide

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that in no event shall the insurance under the policies be brought into contribution with insurance purchased individually by owners or their mortgagees; and (v) shall exclude policies obtained by individual owners from consideration under any "no other insurance" clause.

- (c) 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 Board pursuant to Paragraph 3(G)(1), and each Owner assigns to the Board the proceeds of any such policy to the extent that any such policy does in fact result in a decrease in such coverage, the proceeds to be applied pursuant to these terms 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 Association.
- (d) Each Owner should obtain insurance for his own benefit and at his own expense insuring all personal property presently or hereafter located in his Unit and all improvements to his Unit which exceed a total value of One Thousand and 00/100 Dollars (\$1,000.00) and which are not reported in writing to the Board.

3. Procedure in the Event of Damage.

If the Condominium is damaged, all or part, by fire or other casualty:

- (a) The Board shall arrange for the prompt repair and restoration of the damage and shall disburse the insurance proceeds to the contractors in appropriate progress payments unless the damage is eighty percent (80%) or more of the replacement value of all of the buildings of the Condominium, and the Association, by a vote of eighty percent (80%) of the owners' total voting power made within ten (10) days of the damage, elects not to repair and reconstruct but to terminate the Condominium. The cost of repair and restoration exceeding the insurance proceeds shall constitute a common expense. If the cost of such repair and restoration is less than the amount of the insurance proceeds, then the excess of the insurance proceeds over the cost shall be added to the Condominium reserves or, in the discretion of the Board, distributed by the Board to the owners and their mortgagees, as their interests may appear, in accordance with the percentages set forth in Paragraph 3(E). If the harm to the Condominium is less than eighty percent (80%) of such value, the arrangement by the Board for the repair and reconstruction of the property shall be deemed a determination by the Association to repair and reconstruct.

(b) If the owners elect to terminate the Condominium, the Board shall record at the Hillsborough County Registry of Deeds a notice to that effect and upon the filing of the notice the Condominium in its damaged condition shall be deemed to be removed from the provisions of the Act and to be owned in common by the individual owners, each owning an undivided interest equal to the percentage set forth in Paragraph 3 (E), any liens on any Condominium being deemed to be transferred to the undivided interest of the Owner of the encumbered Condominium in accordance with the then-existing priorities; and upon the recording of the notice, the property shall be subject to a petition by any Owner to the Board for its sale and for distribution of the net proceeds of such sale. In the event of such a petition, the property shall be sold as a whole or in parts and at one or more sales, upon such terms and conditions as the 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 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.

4. OTHER APPROPRIATE MATTERS:

- A. Changes in Price. Declarant reserves the right, so long as it or its assignee is the Owner of any unsold Unit, to change its price. No change in price of a Unit, however, will vary the percentage of interest of any Unit in the common area nor the annual common charge.
- B. Easements for Structural Encroachments. None of the rights and obligations of the owners shall be altered in any way by encroachments 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 if the encroachment occurred due to the willful conduct of the Owner.
- C. Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines and Other Common Area Located Inside of Units; Support. Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common area serving such other Units or the Common Area and located in such Unit. The Board of Directors shall have a right of access to each Unit to inspect it, to correct violations of the Rules or Bylaws and to maintain, repair or replace the Common Area contained therein or elsewhere in the buildings. Every portion of a Unit which

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contributes to the structural support of a building shall be burdened with an easement of structural support for the benefit of all other Units and the Common Area.

- D. Units Subject to Declaration, Bylaws and Rules and Regulations. This Declaration, the Bylaws, and rules and regulations adopted by the Board of Directors, and decisions and resolutions of the Board of Directors or its representatives, as amended from time to time, all contain, or will contain restrictions as to use of the units and other parts of the Condominium. Each Owner shall comply therewith and failure to comply with any such provision, decision or resolution shall be grounds for an action to recover sums due, for damages or for injunctive relief. All such actions in law or at equity shall be authorized by resolution of the Board of Directors and the Condominium Unit Owners' Association shall be entitled to recover all reasonable costs and expenses of such actions including attorneys' fees. All present or future owners, tenants and occupants of units, or any other person who might use the facilities of the Property in any manner are subject to the provisions of this Declaration, the Bylaws and the rules. The acceptance or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws and the rules, as they may be lawfully amended from time to time, are accepted and ratified by such Owner, tenant or occupant and all of such provisions shall be deemed and taken to be enforceable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were recited and stipulated at length in each and every deed of conveyance or lease thereof.
- E. Easement to Complete Construction. Declarant and its assignee as the Owner of any units which have been constructed may make such use of the Condominium as may facilitate the completion of construction and sales, including without limiting the generality of the foregoing, the right to enter the common area and Limited Common Area for construction purposes, to store materials, to maintain a sales/rental office, to show property and to display signs.
- F. Sales Office. The Declarant may use such Units within the Condominium as sales office which it selects in its discretion.
- G. Rules. The Board of Directors is empowered to adopt and amend, from time to time, rules concerning use of the Condominium and its various parts. Such rules shall be furnished in writing to all owners and shall not be violated.
- H. Easement for Ingress and Egress. Each Unit Owner shall have and each Unit shall be subject to an easement in common with the other owners for ingress and egress through, and use and enjoyment of all common area.

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- I. Subdivision. No Unit may be divided or subdivided into a smaller Unit. The common area shall remain undivided and no Unit Owner or other person shall bring any actions for partition or division, nor shall the common area be abandoned by any act or omission unless the Condominium shall be terminated pursuant to this Declaration or the Condominium Act.
- J. Real Estate Tax. Each Unit Owner shall be responsible for payment of his real estate taxes to the Town of Merrimack for the fee simple ownership of his Unit together with a proportionate share of the real estate taxes for the Common Area.
- K. Town of Merrimack Planning Board Approval of Amendments. No amendment to the Declaration or Bylaws which changes the use of the Condominium or which changes the obligations of any Unit Owner, or which affects the Town of Merrimack shall be effective unless approved by the Town of Merrimack Planning Board, or its successor, or unless a waiver of approval is obtained from the Board.
- L. Occupancy Permit Required. No individual Unit may be sold or rented by the Declarant until a Certificate of Occupancy has been issued by the Town of Merrimack. No individual Unit shall receive an Occupancy Permit until all Units within the same building are complete.

5. PERSON TO RECEIVE SERVICE OF PROCESS:

Gary Gladstone at 15 Congress Street, Nashua, New Hampshire, shall be a person to receive service of process in accordance with the Act until turnover. Thereafter such person shall be the President of the Unit Owners' Association.

6. DECLARANT'S OBLIGATION TO COMPLETE:

Declarant has no obligation to complete improvements labeled NOT YET COMPLETED OR NOT YET BEGUN on the site plans.

7. WARRANTY:

Declarant warrants the units and all of the common area against structural defects for one (1) year pursuant to RSA 356-B:40II.

8. ENTRY FOR REPAIRS:

The Association shall have the irrevocable right, to be reasonably exercised by the Board or its agents, to enter any Limited Common Area to inspect it, to remove violations therefrom and to perform any repair, maintenance or construction for which the Board is responsible, and shall have the irrevocable right, to be reasonably exercised by the Board or its agents, or by any two or more

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owners acting as a group, and in an emergency only, to enter any Limited Common Area for the purpose of making emergency repairs necessary to prevent damage to other parts of the Condominium. 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 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.

9. BYLAWS:

The Bylaws are set forth in Exhibit B. The Bylaws may be amended as set forth in RSA 356-B:38 at any meeting of the association provided a copy of the proposed amendment has been included in the written notice of the meeting as provided for in RSA 356-B:37. Any amendment shall be effective on recording in the Strafford County Registry of Deeds.

10. ASSESSMENTS:

Each Owner shall pay all common expenses assessed against him and all other assessments made against him by the Board in accordance with the terms of the Declaration and Bylaws, and unpaid assessments shall be secured by a lien (RSA 356-B:46). No Owner shall convey, mortgage, sell or lease his Unit until he shall have paid all assessments due. Within ten (10) days after receiving a request and payment of Ten and 00/100 Dollars (\$10.00), the Board shall supply a certificate executed by a Director stating the amount of any unpaid assessment secured by a lien against a Unit in accordance with the Act, the Declaration and the Bylaws, and the amount 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 Association. A purchaser of a Unit shall be liable for the payment of any such expenses or assessments against the Unit prior to its acquisition by him which are unpaid as of the time of 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 mortgagee who purchases at such foreclosure sale or 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.

11. RESALE:

A prospective buyer shall have the right to request and to receive within ten (10) days of the receipt of such request (and before the closing of the sale of a Unit if requested ten (10) days prior thereto) from the president or treasurer of the Association the following:

- A. The amount of any unpaid assessment under RSA 356-B:46 VIII;

- B. A statement of any capital expenditures and major maintenance expenditures anticipated by the Association within the current or succeeding two (2) fiscal years;
- C. A statement of the status and amount of any reserve for the major maintenance or replacement fund and any portion of such fund earmarked for any specified project by the Board of Directors;
- D. A copy of the income statement and balance sheet of the Association for the last fiscal year for which such statement is available;
- E. A statement of the status of any pending suits or judgments in which the Association is a party defendant;
- F. A statement setting forth what insurance coverage is provided for all Unit owners by the Association and what additional insurance coverage would normally be secured by each individual Unit Owner; and
- G. A statement that any improvements or alterations made to the Unit, or the limited common areas assigned thereto, by the prior Unit Owner are not known to be in violation of the Condominium instruments.

12. CONDEMNATION:

If any part of the common area is taken by eminent domain the award shall be allocated to the Unit owners in respect to their undivided interests; provided that the portion of the award attributable to the taking of any permanently assigned Limited Common Area shall be allocated to the Unit Owner of the Unit to which such area was so assigned at the time of the taking.

13. WAIVER:

The failure of the Board 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 which shall remain in full force and effect. The receipt by the 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 Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

14. LIABILITY OF THE BOARD:

The members of the 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 below. The owners shall inden-

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nify and hold harmless each of the members of the Board against all contractual liability to others arising out of contracts made by the Board in behalf of the Condominium 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 Board who are directors or officers of the Declarant to contract with the Declarant and affiliated corporations without fear of being charged with self-dealing. It is intended that the members of the Board shall have no personal liability, other than as owners, with respect to any contract made by them in behalf of the Condominium 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 Board or out of the indemnity in favor of the members of the Board shall be limited to such proportion of the total liability thereunder as his interest in the common area bears to it (except that the personal liability of owners who are members of the 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 14 do not apply to and shall not preclude claims for property damage and personal injury by owners against the Board or any other insured under the liability insurance required by Paragraph 3 (G) (1) (b).

15. ENFORCEMENT:

Each Owner, tenant or occupant shall comply with this Declaration, the Bylaws, the Condominium rules and with decisions adopted pursuant to the Declaration, Bylaws and Condominium rules. Failure to comply shall be grounds for relief under RSA 356-B:15.

16. PERSONAL PROPERTY:

The Board may acquire and hold, for the benefit of the owners, tangible and intangible personal property and may dispose of it by sale or otherwise; and the beneficial interest in such property shall be owned by the owners in the same proportion as their respective interests in other common area. A transfer of a Unit shall transfer the beneficial interest in such personal property, whether or not it is specifically mentioned therein.

17. NOTICES:

All notices hereunder and under the Bylaws to the Association or the Board shall be sent by registered or certified mail to the Board at the Condominium, or to such other address as the Board may designate from time to time by notice in writing to all owners. All notices of change of address shall be deemed to have been given when received.

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18. SEVERABILITY:

The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity of any part of this Declaration shall not affect in any manner the validity, enforceability or effect of the balance of the Declaration.

19. GENDER:

The use of the masculine gender is deemed to include the feminine gender and the use of the singular is deemed to include the plural whenever the context so requires.

20. 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.

21. AMENDMENT:

Except as otherwise provided herein and in the Act, this Declaration may be amended by the vote of sixty-seven percent (67%) or more of the total voting power of all owners cast in accordance with these provisions and the Bylaws; provided, however, that,

- A. No amendment to the Declaration shall be effective until recorded at the Hillsborough County Registry of Deeds.
- B. So long as Declarant owns a Unit, no amendment shall be adopted that could interfere with the construction, sale, lease or other disposition of a Unit.

22. FHLMC-FNMA PROVISIONS:

Notwithstanding anything to the contrary herein contained, the following provisions shall govern and be applicable insofar and for so long as they are required in order to qualify mortgages of units in the Condominium for sale to the Federal Home Loan Mortgage Corporation (FHLMC) or Federal National Mortgage Association (FNMA), as applicable, under laws and regulations applicable thereto:

- A. Any first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage or by foreclosure of the mortgage will not be liable for such unit's unpaid common expenses, charges, or dues which accrue prior to the acquisition of title to such Unit by the mortgagee.

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- B. Except as provided by statute in case of condemnation or substantial loss to the units and common areas and facilities of the Condominium project, unless at least sixty-seven percent (67%) of the first mortgagees (based upon one vote for each first mortgage owned), and owners (other than the sponsor, developer, or builder) of the individual units have given their prior written approval, neither the Unit owners, nor the Board, nor the Association shall take any of the following actions (by amendment to this Declaration or otherwise):
1. By act or omission, seek to abandon or terminate the Condominium;
 2. Change the pro rata interest or obligations of any individual Unit for the purpose of: (a) levying assessments or changes or allocating distributions of hazard insurance proceeds or condemnation awards, or (b) determining the pro rata share of ownership of each Unit in the common areas and facilities;
 3. Partition or subdivide any Unit;
 4. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common areas and facilities (the granting of easements for public utilities or for other public purposes consistent with the intended use of the common areas and facilities in the Condominium 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 the common areas and facilities) for other than the repair, replacement or reconstruction of such Condominium property;
 6. Perform any restoration or repair of the Condominium after partial condemnation or damage due to an insurable hazard unless the same be done substantially in accordance with the terms of the Declaration and the plans recorded therewith;
 7. Establish self management by the Board where professional management had been previously required by any first mortgage holder;
- C. No provision of the Declaration shall give a Unit Owner or any other party priority over any rights of the first mortgagee of the Unit pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of units and/or common areas and facilities.
- D. Condominium dues or charges shall include an adequate reserve fund for maintenance, repair and replacement of those portions of the common areas and facilities that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments. In addition, a working capital fund shall be established equal to at least a two (2) months' estimated common area

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charge for each Unit and shall be maintained in a segregated account. The purpose of the working capital fund is to insure that there will be cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the fund are not to be considered as advance payment of regular assessments.

- E. Upon written request to the Board, identifying the name and address of the holder and the Unit number or address, any first mortgagee will be entitled to timely notice of:
- (1) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which said mortgagee holds the first mortgage;
 - (2) Any default in the performance by the individual Unit Owner of any obligation under the Declaration or Bylaws which is not cured within sixty (60) days;
 - (3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
 - (4) Any proposed action which would require the consent of a specified percentage of first mortgagees as specified in sub-paragraphs (b) and (f) of this section.
- F. Any agreement for professional management of the Condominium, or any other contract providing for services of the developer, sponsor, or builder or any lease may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.
- G. Any holder of a first mortgage of a Unit shall be entitled upon written request to an audited financial statement for the immediately preceding fiscal year free of charge. Any financial statement so requested shall be furnished within a reasonable time following such request.
- H. Any holder of a first mortgage of a Unit shall also be entitled to current copies of the Declaration, Bylaws, or the rules concerning the project and the books, records and financial statements of the Association.
- I. Without the consent of the holders of the first mortgages on units which have at least fifty-one percent (51%) of the beneficial interest hereunder, no material provision of the Declaration or Bylaws shall be added or amended which establishes, provides, governs, or regulates any of the following:
- (1) Voting;

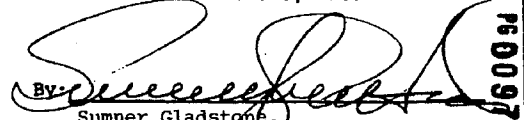
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- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of the common areas and facilities;
- (4) Insurance or fidelity bonds;
- (5) Rights to use of the common areas and facilities;
- (6) Responsibility for maintenance and repair of the several portions of the Condominium;
- (7) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (8) Boundaries of any Unit;
- (9) The interests in the common areas or limited common areas and facilities;
- (10) Convertibility of units into common areas and facilities or of common areas and facilities into units;
- (11) Leasing of units;
- (12) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his Unit;
- (13) Any provisions which are for the express benefit of first mortgage holders on units.

Any first mortgage holder which does not deliver or mail to the Board a negative response within thirty (30) days of a written request by the Board for approval of any addition or amendment pursuant to this paragraph shall be deemed to have consented to the addition or change set forth in such request. An affidavit by the Board making reference to this section, when recorded at the Hillsborough County Registry of Deeds shall be conclusive as to the facts therein set forth as to all parties.

Dated at Methuen, MA on this 27th day of February, 1987.

TURKEY HILL REALTY CO., INC.

By: 
Sumner Gladstone,
President and Treasurer
hereto duly authorized

BM 3988 PE0097

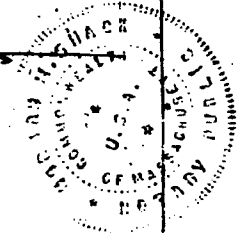
COMMONWEALTH OF MASSACHUSETTS
ESSEX, SS

February 27, 1987

Then personally appeared Sumner Gladstone, President and
Treasurer of Turkey Hill Realty Co., Inc., as aforesaid, and
acknowledged the foregoing instrument to be his and said
corporation's free act and deed, before me,



Norman M. Shack
Notary Public
Comm. expires: 12/3/93



BK 3988 P60098

Exhibit A

The tract of land in Merrimack, Hillsborough County, New Hampshire shown as New Lot 286, Map 4C on a consolidation plan entitled "The Birches" owned by Realtek Corporation dated December 19, 1983 by Hamilton Engineering Associates, Inc. recorded in the Hillsborough County Registry of Deeds as Plan No. 17988 bounded as follows:

Beginning at the most northerly corner of the premises at the intersection of the south line of West Chamberlain Road with the west line of the F. E. Everett Turnpike; thence

1. South 15° 55' 24" East 165.68 feet by the Turnpike to a New Hampshire Highway Department bound found; thence
2. Continuing southeasterly by the Turnpike and by a curve to the right having a radius of 5580 feet, 500.64 feet to a point; thence
3. South 17° 23' 27" West by land believed to be the State of New Hampshire 941.78 feet to a bound found; thence
4. South 16° 24' 32" West 1385.10 feet by land believed to be the State of New Hampshire to an iron pipe found; thence
5. South 16° 24' 32" West by land believed to be the State of New Hampshire 196.30 feet to a point; thence
6. North 1° 19' 55" West 478.50 feet to a point; thence
7. North 28° 32' 58" West 772.66 feet to a point; thence
8. North 15° 18' 46" West 264.00 feet to an iron pipe found; thence
9. South 58° 48' 53" West 1579.06 feet to a point in the east line of Turkey Hill Road; thence
10. North 46° 29' 3" West 325.74 feet by the east line of Turkey Hill Road to an iron pipe found; thence
11. North 61° 16' 44" East 1060.00 feet through an iron pipe found to a point; thence
12. North 9° 50' 16" West 206.00 feet through an iron pipe found to a point; thence
13. North 89° 41' 46" West 153.60 feet to a point; thence
14. North 89° 44' 46" West 174.00 feet to a point; thence

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- 15. North 3° 54' 7" West 214.44 feet to a point in the south line of Oxford Street; thence
- 16. Easterly, northerly and westerly by the curve of a cul-de-sac having a radius of 50 feet, 261.65 feet to a point at an iron pipe found in the north line of Oxford Street; thence
- 17. North 12° 16' 26" West 788.73 feet to an iron pipe found; thence
- 18. North 77° 43' 34" East 200.01 feet to a point in the west line of Burlington Street; thence
- 19. South 12° 16' 26" East 115.00 feet to a point; thence
- 20. North 77° 43' 34" East 500.02 feet to a stone bound to be set; thence
- 21. North 12° 16' 26" West 271.40 feet to a stone bound to be set in the south line of West Chamberlain Road; thence ;by the south line of West Chamberlain Road in courses 22 - 30;
- 22. Easterly by a curve having a radius of 725.00 feet, 197.89 feet to a stone bound to be set; thence
- 23. Easterly by a curve having a radius of 1275.00 feet, 113.47 feet to a stone bound to be set; thence
- 24. North 63° 7' 17" East 69.84 feet to a stone bound to be set; thence
- 25. Easterly by the curve having a radius of 350.00 feet, 175.72 feet to a stone bound to be set; thence
- 26. South 88° 6' 43" East 194.66 feet to a stone bound to be set; thence
- 27. Easterly by a curve having a radius of 325.00 feet, 114.36 feet to a stone bound to be set; thence
- 28. North 66° 26' 16" East 165.21 feet to a stone bound to be set; thence
- 29. Easterly by a ;curve having a radius of 1475.00 feet, 97.50 feet to a stone bound to be set; thence
- 30. North 70° 13' 30" East 431.48 feet to the point of beginning.

For Declarant's title, see deed of Realtek Corporation, dated February 15, 1985, recorded with said Hillsborough Deeds at Book 3269, Page 71.

BM 3988 750100

Exhibit B

BYLAWS

THE BIRCHES, A CONDOMINIUM
UNIT OWNERS' ASSOCIATION

ARTICLE I

Purpose and Definitions

SECTION 1.

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 s ubject to these Bylaws, the Declaration and the Condominium Rules.

SECTION 2.

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 3.

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 4.

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 Plasic Road , Merrimack, New Hampshire.

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ARTICLE II

Board of Directors

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;

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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, insurances, 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 Three Thousand and 00/100 Dollars (\$3,000.00) 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.

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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. This section is not subject to amendment.

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

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(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 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.

SECTION 8.

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 9.

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 10.

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 members 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.

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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 mailed by certified mail, return receipt requested, 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

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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.

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 person 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 by certified mail, return receipt requested, 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 persons 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

3988 107-107

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.

ARTICLE IV

OFFICERS OF THE ASSOCIATION

SECTION 1.

General. The officers of the association shall be a President, Vice President and Secretary/Treasurer, all of whom shall be elected annually by, and may be removed and replaced by, the Board. The officers shall hold office at the pleasure of the Board and until their successors are elected. During the period that the Declarant holds all of the positions of members of the Board, Declarant, in its discretion, may hold any of the offices of the association. The Board may appoint an assistant secretary and an assistant treasurer and such other officers as, in its discretion, may be necessary. The President must be a member of the Board, but the other officers need not be members of the Board or Owners.

SECTION 2.

President. The President shall preside at meetings of the Association and meetings of the Board and the President shall have such other powers and duties as are provided in the Declaration, these Bylaws or by law and as are ordinarily exercised by the presiding officer of an Association, including the appointment of committees from among the Owners, and as may be delegated to him by the Board or the Association from time to time.

SECTION 3.

Vice President. The Vice President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board shall prescribe.

SECTION 4.

Secretary/Treasurer. The Secretary/Treasurer shall record the proceedings of meetings of the Board and of meetings of the Association, shall keep such records and all other records, documents and other papers of the Board and of

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the Association, shall give notice of the annual and special meetings of the Owners, and shall have such other powers and duties as may be delegated to him by the Board or the Association from time to time. He shall be responsible for the funds of the Association and shall be responsible for keeping or having kept full and accurate financial records and books of account showing all receipts and disbursements of the Association and any other financial data required by the Board or by the Association. He shall be responsible for the deposit of all funds in the name of the Board or the association in such depositories as may be designated by the Board from time to time and shall have such other powers and duties as may be delegated to him by the Board or the Association from time to time. The Board may delegate such of the Secretary/Treasurer's powers and duties to the manager or managing agent as it deems to be advisable.

ARTICLE V

Common Expenses

SECTION 1.

Fiscal Year. The fiscal year of the Association shall be a twelve (12) month period beginning January 1st and terminating December 31st of each year, provided that the Board may change the fiscal year.

SECTION 2.

Assessment. The common expenses shall include any amounts necessary to pay for the items obtained pursuant to Article II, Section 1, any amounts necessary to make up any deficit for the fiscal year, reserves for operations and replacements of the Common Area and for working capital and any amounts required for the purchase of a unit by the Association pursuant to Section 4 of this Article. The Board of Directors shall adopt a budget showing estimated common expenses and owner assessments and make a reasonable effort to submit it to Owners 15 days before the start of the fiscal year. Common expenses shall be assessed to the Owners pursuant to the percentages set forth in Appendix D of the Declaration. Declarant is excused from the payment of any assessment during the time it pays any expenses of the Association incurred during that time and not funded by assessments receivable from the other members; otherwise, Declarant shall pay for each completed but unoccupied Unit a full monthly assessment. If the sum estimated proves inadequate for any reason, including nonpayment of any owner assessment, the Board may at any time levy a further assessment, which shall be assessed to the Owners according to Exhibit C percentages, unless otherwise provided herein. Each owner shall be obligated to pay the assessments made against him to the Board, and such payments shall be due in equal

3988 160109

installments on or before the first day of each installment term. If a unit is rendered uninhabitable by fire or other casualty, the Board, in its discretion, may abate all or a portion of the common expenses assessed against the owner of the unit while it remains uninhabitable.

The Board of Directors shall build up and maintain an operating reserve and reserve for replacement of the common area which shall be funded by the monthly payment. The funds collected for the reserve for replacement of common area shall be placed in a separate account, apart from general operating funds and used only for such purpose. If the reserve is inadequate a further assessment, lump sum or by installments may be levied.

The Board of Directors shall establish a working capital fund reserve equal to two months common area charge exclusive of other reserves which shall be collected at the initial conveyance of a unit.

The failure of the Board to fix the assessments for such a twelve (12) month period prior to the commencement of such a period shall not be deemed a waiver or modification in any respect of the provisions hereof, or a release of the Owners from the obligation to pay the assessments, or any installment thereof for such period, but the assessment fixed for the preceding twelve (12) month period shall continue until a new assessment is fixed. Amendments to this Section shall be effective only upon unanimous written consent of the Owners. No owner may exempt himself from liability for his assessment of the common expenses by waiver of the use or enjoyment of any of the common area or by abandonment of his unit.

The Board shall submit an audited financial statement within 120 days of the end of a fiscal year.

SECTION 3.

Records. The Treasurer shall keep detailed, accurate records in chronological order of the receipts and expenditures by the Association specifying and itemizing the maintenance and repair expenses and any other expenses incurred. The records shall be available for examination by the Owners, or their agents, at convenient times.

SECTION 4.

Default in Payment of Assessments. Each assessment of common expenses, and each special expense and assessment shall be separate, distinct and personal debts and obligations of the owner against whom they are assessed and shall be collectible as such. Suit for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing it. The amount of any assessment which is not paid on its due date, plus a Ten and 00/100 Dollar (\$10.00) late fee per month and costs, including reasonable attorneys' fees, shall be a lien upon the unit as provided in Section 46 of the Act. The lien may be enforced by a sale by the Board conducted with the law applicable to the exercise of a power of sale or other foreclosure of mortgages. In any foreclosure, the owner shall be required to pay the costs and expenses of such proceedings and reason-

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able attorneys' fees. Upon foreclosure, the owner shall immediately vacate the unit and if he fails to do so he shall be liable for a reasonable rental while he remains in possession. The Board, in behalf of the Association, shall have the power to purchase the unit at foreclosure or other sale and to hold, lease, mortgage and convey the unit thereafter.

ARTICLE VI

MISCELLANEOUS

SECTION 1.

Surplus. Any surplus of common expense payments by Owners over the actual expenses during a fiscal year shall be paid into the operating reserve for the following fiscal year.

SECTION 2.

Severability. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance hereof or of the Declaration.

SECTION 3.

Gender. The use of the masculine gender 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.

SECTION 4.

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

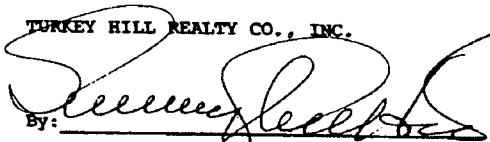
BN 3988 PG 111

SECTION 5.

Amendment. The Bylaws may be amended in the same manner as set forth in Paragraph 21 of the Declaration; provided, however, that while Declarant holds all of the positions of directors pursuant to Section 2 of Article II of these Bylaws, these Bylaws cannot be amended without the written assent of Declarant.

Dated at Methuen, MA this 27th day of February, 1987.

TURKEY HILL REALTY CO., INC.



By: _____
Sumner Gladstone,
President and Treasurer
hereto duly authorized

COMMONWEALTH OF MASSACHUSETTS
ESSEX, SS

February 27, 1987

Then personally appeared Sumner Gladstone, President and Treasurer of Turkey Hill Realty Co., Inc., as aforesaid, and acknowledged the foregoing instrument to be his and said corporation's free act and deed, before me,



Norman M. Shack
Notary Public
Comm. expires:

1/2/93



BK 3988 PG 0112

Exhibit C

BUILDING NO.	UNIT NO.	COMMON INTEREST	VOTE	LIMITED COMMON AREA DECK
<u>PHASE I</u>				
1	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
2	7	1/176	1	X
	2	1/176	1	X
	4	1/176	1	X
3	6	1/176	1	X
	8	1/176	1	X
	9	1/176	1	X
4	11	1/176	1	X
	15	1/176	1	X
	17	1/176	1	X
	10	1/176	1	X
5	12	1/176	1	X
	14	1/176	1	X
	16	1/176	1	X
	19	1/176	1	X
5	21	1/176	1	X
	23	1/176	1	X
	25	1/176	1	X
<u>PHASE II</u>				
6	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
7	7	1/176	1	X
	2	1/176	1	X
	4	1/176	1	X
8	6	1/176	1	X
	8	1/176	1	X
	9	1/176	1	X
9	11	1/176	1	X
	15	1/176	1	X
	17	1/176	1	X
	10	1/176	1	X
10	12	1/176	1	X
	14	1/176	1	X
	16	1/176	1	X
	18	1/176	1	X
11	20	1/176	1	X
	22	1/176	1	X
	24	1/176	1	X
	26	1/176	1	X
11	28	1/176	1	X
	30	1/176	1	X
	32	1/176	1	X

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BUILDING NO.	UNIT NO.	COMMON INTEREST	VOTE	LIMITED COMMON AREA DECK
12	19	1/176	1	X
	21	1/176	1	X
	23	1/176	1	X
	25	1/176	1	X
13	34	1/176	1	X
	36	1/176	1	X
	38	1/176	1	X
	40	1/176	1	X
14	27	1/176	1	X
	29	1/176	1	X
	31	1/176	1	X
	33	1/176	1	X
15	42	1/176	1	X
	44	1/176	1	X
	46	1/176	1	X
	48	1/176	1	X
<u>PHASE III</u>				
16	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
	7	1/176	1	X
17	2	1/176	1	X
	4	1/176	1	X
	6	1/176	1	X
	8	1/176	1	X
18	9	1/176	1	X
	11	1/176	1	X
	15	1/176	1	X
	17	1/176	1	X
19	10	1/176	1	X
	12	1/176	1	X
	14	1/176	1	X
	16	1/176	1	X
20	19	1/176	1	X
	21	1/176	1	X
	23	1/176	1	X
	25	1/176	1	X
21	18	1/176	1	X
	20	1/176	1	X
	22	1/176	1	X
	24	1/176	1	X
<u>PHASE IV</u>				
22	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
	7	1/176	1	X
23	2	1/176	1	X
	4	1/176	1	X

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BUILDING NO.	UNIT NO.	COMMON INTEREST	VOTE	LIMITED COMMON AREA DECK
	6	1/176	1	X
	8	1/176	1	X
24	9	1/176	1	X
	11	1/176	1	X
	15	1/176	1	X
	17	1/176	1	X
25	10	1/176	1	X
	12	1/176	1	X
	14	1/176	1	X
	16	1/176	1	X
26	19	1/176	1	X
	21	1/176	1	X
	23	1/176	1	X
	25	1/176	1	X
27	18	1/176	1	X
	20	1/176	1	X
	22	1/176	1	X
	24	1/176	1	X
28	27	1/176	1	X
	29	1/176	1	X
	31	1/176	1	X
	33	1/176	1	X
<u>PHASE V</u>				
29	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
	7	1/176	1	X
30	2	1/176	1	X
	4	1/176	1	X
	6	1/176	1	X
	8	1/176	1	X
31	9	1/176	1	X
	11	1/176	1	X
	15	1/176	1	X
	17	1/176	1	X
32	10	1/176	1	X
	12	1/176	1	X
	14	1/176	1	X
	16	1/176	1	X
<u>PHASE VI</u>				
33	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
	7	1/176	1	X
34	2	1/176	1	X
	4	1/176	1	X
	6	1/176	1	X
	8	1/176	1	X

BUILDING NO.	UNIT NO.	COMMON INTEREST	VOTE	LIMITED COMMON AREA DECK
<u>PHASE VII</u>				
35	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
	7	1/176	1	X
36	2	1/176	1	X
	4	1/176	1	X
	6	1/176	1	X
37	8	1/176	1	X
	10	1/176	1	X
	12	1/176	1	X
	14	1/176	1	X
	16	1/176	1	X
<u>PHASE VIII</u>				
38	2	1/176	1	X
	4	1/176	1	X
	6	1/176	1	X
	8	1/176	1	X
39	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
40	7	1/176	1	X
	10	1/176	1	X
	12	1/176	1	X
	14	1/176	1	X
41	16	1/176	1	X
	9	1/176	1	X
	11	1/176	1	X
	15	1/176	1	X
	17	1/176	1	X
<u>PHASE IX</u>				
42	2	1/176	1	X
	4	1/176	1	X
	6	1/176	1	X
	8	1/176	1	X
43	1	1/176	1	X
	3	1/176	1	X
	5	1/176	1	X
44	7	1/176	1	X
	10	1/176	1	X
	12	1/176	1	X
	14	1/176	1	X
45		1/176	1	N/A

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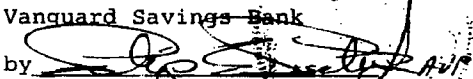
CONSENT TO CONDOMINIUM REGIME

Vanguard Savings Bank, a Massachusetts corporation with a principal place of business at Holyoke, Hampden County, Massachusetts (hereinafter "Mortgagee"), being holder of a Mortgage to it from Turkey Hill Realty Co., Inc. (hereinafter "Declarant"), said Mortgage dated November 6, 1986, and recorded with Hillsborough County Registry of Deeds, Book 3765, Page 311 and further being holder of a Collateral Assignment of Leases and Rentals to it dated November 6, 1986, and recorded with said Deeds at Book 3765, Page 320, and further being a holder of a UCC-1 Financing Statement to it recorded with said Deeds at Book 3765, Page 324, which instruments cover premises located off Chamberlain Road, Merrimack, Hillsborough County, New Hampshire, for good and valuable consideration paid, hereby consents to the execution and recordation of the Declaration and related Exhibits of The Birches, A Condominium in said Merrimack, recorded with said Hillsborough Deeds at Book *, Page, and as amended of record, and hereby acknowledges that the aforesaid mortgage and related financing instruments referred to above are all subject and subordinate to all of the terms, conditions and provisions of said Declaration and related Exhibits, so that in the event that the said premises, or portions thereof, encumbered by said mortgage, is acquired by mortgagee, its successors or assigns, whether by foreclosure or by deed in lieu of foreclosure, title thereto shall be and remain subject to the said Declaration and related Exhibits.

Nothing contained herein shall be deemed to modify or amend any of the terms and conditions contained in the aforesaid mortgage, nor to affect the lien priority thereof, nor to impose upon mortgagee any of the responsibility of Declarant as set forth and described in said Declaration or related Exhibits.

Executed as a sealed instrument this 20th day of February, 1987 by Philip E. Pettitt, Jr., A.V.P., duly authorized officer of Vanguard Savings Bank.

* Inst. # 714467
Mar 3, 1987

Vanguard Savings Bank
by 
Philip E. Pettitt, Jr. Asst. Vice President
its duly authorized officer

COMMONWEALTH OF MASSACHUSETTS
Hampden, SS

February 20, 1987

Then personally appeared the above named Philip E. Pettitt, Jr. Assistant Vice President duly authorized officer as aforesaid, and acknowledged the foregoing instrument to be the free act and deed of Vanguard Savings Bank, before me,


Susan M. Tuller
Notary Public
My Commission Expires: 12/7/90

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