

**ATHERTON COMMON CONDOMINIUM**  
**AMENDMENT TO DECLARATION AND BY-LAWS**

NOW COMES, Atherton Common Condominium Unit Owners' Association ("Association"), of Amherst, Hillsborough County, New Hampshire, by and through the President and Treasurer of the Association, and as accompanied by the certification of the Secretary ("Secretary") of the Association, pursuant to the authority granted to the Unit Owners in the Declaration Atherton Common Condominium recorded at Book 3136, Page 183 in the Hillsborough County Registry of Deeds on March 19, 1984, as amended at Book 3258, Page 465, and Book 3290, Page 119 and Bylaws of Atherton Common Condominium recorded at Book 5506, Page 1281 in the Hillsborough County Registry of Deeds on December 21, 1993, as amended at Book 5319, Page 360; Book 7394, Page 142; Page 8299, Page 666 and Book 8398, Page 2456 and pursuant to the required vote of the Owners at a duly held meeting of the Association on \_\_\_\_\_ AND DOES HEREBY AMEND the Bylaws of Atherton Common Condominium, A Condominium pursuant to the requirements of the Declaration, and New Hampshire Revised Statutes Annotated Chapter 356-B (Condominium Act) as follows:

**DECLARATION**

SECTION 3 Statutory Requirements.

**Amend and replace the following sentence in subparagraph (d) Description of Units, subsection (iii) fifth paragraph line 10:**

“The Owner of a Unit owns the interior walls and partitions which are contained in his Unit, the window and door glass, the entrance door and window frames (to the unfinished exterior surfaces thereof).”

**With the following amended sentence:**

“The Owner of a Unit owns the interior walls and partitions which are contained in the Unit, the windows, entrance door, door glass, window sills, and window frames (to the unfinished exterior surfaces thereof).”

**BY-LAWS**

ARTICLE I  
PLAN OF UNIT OWNERSHIP

**Amend paragraph 4 by deleting the last sentence in its entirety and replacing it with the following:**

4. Office. The mailing address of the Condominium shall be determined by the Board with notice to Unit Owners by publication on the Condominium's website or posted to the community in some other manner deemed reasonable by the Board.

ARTICLE II  
UNIT OWNERS' ASSOCIATION

**Amend paragraph 2 to add the following subparagraphs:**

2. Voting.

(a) Voting Without a Meeting. Voting can be conducted without a meeting by paper or electronic ballot.

(b) Ballot.

- a. Set forth each action and provide an opportunity to vote for or against the action.
- b. Indicate the number of responses needed to meet the quorum requirements.
- c. State the percent of votes necessary to approve each matter other than the election of directors.
- d. Specify the time and date by which a ballot must be delivered to the Association to be counted, which time and date may not be fewer than ten (10) days after the date the Association delivers the ballot.
- e. Describe the time, date and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

**Amend paragraph 5 by deleting in its entirety and replacing it with the following:**

5. Special Meetings. The Association must hold a Special Meeting of Unit Owners to address any matter affecting the Unit Owners or the Association if, its President, a majority of the Board of Directors, or Unit Owners having at least thirty percent (30%) of the votes in the Association request that the Secretary call the meeting. The notice shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice. If the Association does not notify unit owners of a special meeting within thirty (30) days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of the special meeting, the purpose of which shall be to present the issue to fellow residents and unit owners and to vote on any proposal set forth in the meeting notice. Only matters described in the meeting notice may be considered at a special meeting.

**Amend paragraph 6 by deleting in its entirety and replacing it with the following:**

6. Notice of Association Meeting. The Association shall deliver any notice required to be given by the Association under this chapter by either electronic mail or first class United States Mail as designated by the unit owner in writing to the Secretary. If the Unit Owner does not designate an address the Association shall deliver by United States mail to the mailing address of the unit. At least twenty-one (21) days in advance of the annual or regularly scheduled meeting, and at least seven (7) days in advance of any special meeting, The Secretary will provide to each Unit Owner notice of the time, place, and purpose or purposes of such meeting. If the purpose of the meeting is to change the budget or replace a Board Member, that must be stated in the notice. The notice must be in accordance with the requirements of law. The minimum time to give notice may be reduced or waived for a meeting called to deal with an emergency.

**Amend paragraph 6 by adding the following subparagraph:**

(a) Affidavit. The Secretary or other duly authorized member of the Board of Directors of the Unit Owners' Association, must prepare an affidavit which shall be accompanied by a list of addresses or email addresses of all Unit Owners currently on file with the Association and shall attest that notice of the Association Meeting was provided to all Unit Owners on that list in a manner conforming with the Act. A copy of the affidavit and Unit Owners list shall be available at the noticed meeting for inspection by all owners then in attendance and shall be retained with the minutes of that meeting. The affidavit required in this section must be available at the offices of the Association for inspection by Unit Owners for at least three (3) years after the date of the subject meeting.

**Amend paragraph 9 by adding the following sentence to the end of the paragraph:**



9. Quorum. If a quorum is not met for an Annual Meeting, the board shall reschedule the meeting within sixty (60) days and provide proper notice and proxies for use at the rescheduled meeting.

**Amend paragraph 10 to add the following subparagraphs:**

10. Conduct of Meeting.

- (a) Opportunity to Comment. Unit Owners shall be given a reasonable opportunity at any annual or special meeting to comment regarding any matter affecting the Association.
- (b) Electronic Participation. Meetings of Unit Owners may be conducted by telephonic, video, or other conferencing process, as provided the Act.

### ARTICLE III BOARD OF DIRECTORS

**Amend paragraph 1 to add the following sentence to the end of the paragraph:**

1. Powers and Duties. The Board of Directors shall have a fiduciary relationship to members of the Unit Owners' Association. The Board of Directors must exercise the care and loyalty required by officers of voluntary corporations. For the purpose of receipt of notification by a municipality of a local land use board hearing, the officers shall be responsible for serving as agents of the Association.

**Amend paragraph 2 to add the following subparagraph:**

2. Managing Agent.

- (a) Background check. Each employee of a Managing Agent or the Association shall submit to a background check prior to employment as deemed appropriate. The cost of the background check shall be borne by the Agent or employee.

**Amend paragraph 6 by deleting in its entirety and replacing with the following:**

6. Regular Meetings.

Meeting of the Board of Directors shall be held in accordance with the provisions of the Act at such time and place as determined, from time to time, by a majority of the directors, but at least one meeting each quarter shall be held during each twelve (12) month period after the annual meeting of the Unit Owners' Association. Notice of regular meetings of the Board of Directors shall be posted to the community and given to each director, personally or by mail, e-mail, telephone or telegraph, at least ten (10) days prior to the day of the meeting, except that no notice shall be required for a regular meeting held immediately after, and at the same place as the annual meeting of the Association. Directors may attend, vote and participate at meetings by telephone or e-mail. At least once each quarter the Board shall afford owners an opportunity to comment on any matter affecting the Association. Notice of the meeting and any materials distributed to the Board shall be available to the owner. Non public meetings of the board must be recorded and the recording made available to unit owners for up to thirty (30) days. Notice of the meeting must be provided ten (10) days in advance.

**Amend paragraph 6 to add the following subsection:**

(a) Executive Session. The Board of Directors may hold an executive session only during a regular or special meeting of the Board. No final vote or action may be taken during an executive session. An executive session may be held only to:

- (1) Consult with the Association's attorney.
- (2) Discuss existing or potential litigation or mediation, arbitration, or administrative proceedings.
- (3) Discuss labor or personnel matters.
- (4) Discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the Association at a disadvantage or prevent public knowledge of the matter to be discussed if the Board of Directors determines that public knowledge would violate the privacy of any person.

**Amend paragraph 7 by deleting the second sentence in its entirety and replacing with the following sentence:**

7. Special Meetings of the Board.

Such notice shall be given personally or by mail, telephone, telegraph or e-mail, and such notice shall state the time, place and purpose of the meeting.

**Amend paragraph 13 by adding the following to the end of paragraph:**

13. Conduct of Meetings.

The Board of Directors shall make copies of the minutes of all meetings available to the unit owners within sixty (60) days of the date of the meeting or fifteen (15) days of the date the minutes are approved by the Board whichever occurs first. The Association may opt to provide the minutes electronically or post them on the Association website in which case the owners shall be informed of the web address.

**Amend by adding the following new paragraph 18:**

18. Committees.

When deemed necessary and appropriate by the Board of Directors, the Board and its President may create committees and appoint members to serve on said committees to ensure the reasonable and efficient governance of the Association.

ARTICLE IV  
OFFICERS

**Amend paragraph 4 by deleting the second sentence in its entirety and replacing with the following:**

4. President.

The President shall have general and active management of the business of the condominium and shall see that all orders and resolutions of the Board are carried into effect.

**Amend paragraph 6 by deleting the last sentence in its entirety.**

**Amend by adding the following new paragraph 10:**

10. Delegation. The officers of the Board shall within their discretion be allowed to utilize reasonable business judgment to work with the property manager and other professionals to best further the business and operation of the Association.



ARTICLE V  
OPERATION OF THE PROPERTY

**Amend paragraph 1 by deleting subparagraph b entitled “Preparation and Approval of Budget” in its entirety and replacing with the following:**

1. (b) Budget Ratification. The board of directors shall annually adopt a budget for the unit owners’ Association for consideration by the unit owners at a meeting. The board of directors shall, within thirty (30) days of adoption of the budget, provide the owners a summary of the budget, including any reserves and a statement of the basis on which any reserves are calculated and funded. The board of directors shall set a date not less than ten (10) days or more than sixty (60) days after providing the budget summary to consider rejection of the budget. Unless at that meeting, two-thirds (2/3) of all unit owners reject the budget, the budget is ratified whether or not a quorum is present. If no budget is proposed or the proposed budget is rejected, the last budget ratified by the owners shall be in effect until a new budget is ratified by the owners.

**Add the following subsections to subparagraph (c) of paragraph 1:**

1. (c) Assessment and Payment of Common Expenses.

i. Special Assessments. The board of directors at any time may propose and adopt a special assessment for a specific purpose. Not later than thirty (30) days after adoption of the special assessment, the Board of Directors must provide to all the Unit Owners a summary of the special assessment, and schedule a meeting not less than ten (10) days nor more than sixty (60) days later. The special assessment must be presented at a meeting for the unit owners to consider rejection. Unless two-thirds (2/3) or more of the owners reject the special assessment, the special assessment is ratified.

(ii) Emergency Special Assessment. An emergency special assessment can be levied if the Board of Directors determines by a two-thirds (2/3) vote that a special assessment is necessary to respond to an emergency. The special assessment becomes effective immediately in accordance with the terms of the vote. Notice of the special assessment shall be provided promptly to all Unit Owners. The Board of Directors may spend the funds paid on account of the special assessment only for the purposes described in the vote.

**Amend paragraph 4, subparagraph (a) by deleting in its entirety and replacing with:**

4. Maintenance and Repair.

(a) By the Board of Directors.

Except as provide in sub-section (b) below, the Board shall be responsible for the

maintenance, repair and replacement (unless necessitate by the negligence, misuse or neglect of an Owner, or of a person gaining access with said Owner's actual or implied consent, in which case such expense shall be charge to such Owner), of all of the Common Area and Limited Common Area, including areas outside of the Units, which are generally common to other units, including, the water system, sewer system, exterior maintenance, roadways, driveways, original walkways (between driveways and front decks), front decks, or screened porches, the cost of which shall be charged to all Owners as a Common Expense. The expense of maintaining the structural integrity of enclosed porches shall be treated as a common expense except to the extent that any portion thereof may be defined as a part of the unit by the Declaration, as amended from time to time. The Board shall have the right to grant permits, licenses, and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium.

**Amend paragraph 4, subparagraph (b) by deleting in its entirety and replacing with:**

**(b) By the Owner.**

Except as provided in sub-section (a) above, each Owner, at his own expense, shall be responsible for the maintenance, repair, and replacement of his Unit or any part thereof including, but not limited to, any interior walls and partitions, windows including glass, frame and sills, entrance doors including glass, frame and sills, bulkheads, skylights including glass and frame, finished interior surfaces of ceilings and floors, kitchen and bathroom fixtures and appliances, and those parts of the heating and air conditioning, plumbing and electrical systems including furnace flues, fireplace flues, interior and exterior chimney masonry which are wholly contained within or attached to his Unit and serve no other. Each owner shall be responsible for the maintenance, repair and replacement of screened porches to which said unit owner has made additions or alterations thereto, as well as such maintenance repair or replacement necessitated by the negligence, misuse, or neglect of an Owner or of a person gaining access with said Owner's actual or implied consent. Unit owners who benefit from the maintenance, repair or replacement by the Board of limited common areas, including, but not limited to, rear decks, front deck extensions, added walkways, porch-to-ground or deck to ground stairways, and the interior of enclosed porches, shall be responsible for expenses associated with said maintenance, repair or replacement. Each Owner shall be responsible for maintaining the structural integrity of enclosed porches if any portion of the porch is defined as part of the unit by the Declaration, as amended from time to time. Each Owner shall keep the interior of his Unit and its equipment and appurtenances in good order and condition and shall do all the redecorating, painting and varnishing, which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition, each Owner shall be responsible for all damage to any and all other Units or to the Common Area or Limited Common Area resulting from his failure to make any of the repairs required to be made by him by this Section. Each owner shall perform his



responsibility in such manner as shall not unreasonably disturb or interfere with other Owners. Each Owner shall promptly report to the Board or the Manager, any defects or need for repairs for which the Board is responsible.

**Amend paragraph 12 by deleting in its entirety and replacing with the following:**

12. Initial Assessment.

Upon the sale of any unit at Atherton Common Condominiums, the buyer of said unit will be assessed the sum equal to two months of assessments as a contribution to the capital reserve 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 Unit Owners' Association or its agents within five (5) days of recording of the unit deed.

ARTICLE VI  
INSURANCE

**Amend paragraph 3 by deleting the first sentence and replacing with following two sentences:**

3. Individual Policies. As set forth in Article VII, Section 4.1 and 4.2, the Association has the right to assess some or all of any deductible under any Association insurance coverage to the owners. The Association assumes that all owners have obtained at his or her expense appropriate insurance to cover any assessment to the Unit as a result of any portion of a claim that is covered by the Master Insurance but subject to a deductible commonly referred to as loss assessment coverage. In addition, the Owner may obtain at his or her own expense additional insurance.

**Amend by deleting paragraph 4 in its entirety and replacing with the following:**

4. Notice to Owners. When any policy of insurance has been obtained on behalf of the Association, written notice thereof and of any subsequent changes therein or termination thereof must be promptly furnished to each Owner by the Board of Directors. Such notice shall be sent to all Owners of record at the address of their respective Units or to such other addresses, including electronic mail addresses, as any of them may have designated; or such notice may be hand-delivered, provided there is a receipt of acceptance of such notice from the Owner.

ARTICLE XI  
MORTGAGES

**Delete paragraph 1 entitled "Notice to the Board" in its entirety.**

ARTICLE XIII  
COMPLIANCE AND DEFAULT

**Add the following subsection to paragraph 1:**

2. Relief.

(f) Rent Collection Upon Default of Payment of Assessments. In the event that a Unit Owner fails to pay the Common Expenses assessed to such Owner by the Board within sixty (60) days of the date that it was due, the Board may, subject to the existing rights of a holder of a first mortgage of record, collect from any tenant renting the unit any rent then or thereafter due to the owner of such unit as provided in the Act, as amended from time to time.

**Add the following subsection to Paragraph 2:**

(d) The Association may collect an amount of up to six (6) months' common expense assessments in advance from unit owners and hold the amount so collected in escrow and, upon default by any unit owner in the payment of common expense assessments, apply the same to cure such default.

ARTICLE XIV  
COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS


**Add the following paragraph to the end of this section:**

6. Conflict. In the event of a conflict between the Declaration or Bylaws, the provisions of the Act (RSA 356-B) shall control.

[Signature page follows]




This Amendment is executed this 27 day of July, 2020 by the following Officers of the Atherton Common Condominium Unit Owners' Association. This Amendment will take effect upon the date it is recorded at the Hillsborough Registry of Deeds.


  
By: John Learoyd, President  
Atherton Common Condominium Unit Owners' Association

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 27 day of July, 2020 by John Learoyd, President of Atherton Common Condominium Unit Owners' Association on behalf of the Association.



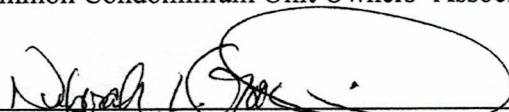
  
Notary Public/Justice of the Peace  
DEBORAH L. GOODWIN, Notary Public  
State of New Hampshire  
My commission expires December 2, 2020

  
By: Kevin Eagan, Treasurer  
Atherton Common Condominium Unit Owners' Association

STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH


*Kevin Eagan* The foregoing instrument was acknowledged before me this 27 day of July, 2020 by Kevin Eagan Treasurer of Atherton Common Condominium Unit Owners' Association on behalf of the Association.



  
Notary Public/Justice of the Peace  
DEBORAH L. GOODWIN, Notary Public  
State of New Hampshire  
My commission expires December 2, 2020

CERTIFICATION OF SECRETARY

I, Joan Ferguson, Secretary of the Atherton Common Condominium Unit Owners' Association, do hereby certify that the above Amendment was approved by more than sixty-six and two thirds percent (66 2/3%) of the unit owners in the Association pursuant to the requirements of the Declaration of Atherton Common Condominium and the Condominium Act of New Hampshire.

  
\_\_\_\_\_, Secretary