

FIRST AMENDMENT AND RESTATEMENT

OF THE

DECLARATION OF CONDOMINIUM

FOR

KELSEY BROOK CONDOMINIUM

**Olde Canterbury Road
Northwood, NH**

Declarant: Kelsey Brook, LLC

THIS DECLARATION is made this ___ day of _____, 2023, by **KELSEY BROOK, LLC**, a New Hampshire limited liability company with a business address of 30 North River Lake Road, Northwood, New Hampshire, (hereinafter called the “Declarant”), for the purposes of submitting certain property located on Olde Canterbury Road, Northwood, New Hampshire to condominium use and ownership in accordance with the provisions of the New Hampshire Condominium Act, N.H. RSA Chapter 356-B (hereinafter sometimes called the “Act”);

WHEREAS, the Declarant owns a certain tract of land, with improvements thereon, situated on Olde Canterbury Road, Northwood, County of Rockingham, New Hampshire, as is more particularly described below, upon which it is in the process of constructing twenty-one (21) total units in ten (10) buildings which the Declarant intends by this instrument to submit to the condominium form of ownership and usage known as “**Kelsey Brook Condominium**” (sometimes hereinafter referred to as “the Condominium”); and,

WHEREAS, the Declarant intends to sell and convey condominium units in said condominium, subject to certain mutually beneficial restrictions, covenants, conditions, equitable servitudes, and charges which it desires to impose thereon under a general plan of improvement of the Condominium for the benefit of all of said Condominium Units and the future Owners thereof; and

WHEREAS, the Declaration of Condominium for Kelsey Brook Condominium dated July 19, 2023 was recorded in the Rockingham County Registry of Deeds at **Book 6495, Page 1801**,

and the Declarant hereby desires to amend, supersede and replace the same in its entirety by the recording of this First Amendment and Restatement thereto.

NOW THEREFORE, the Declarant hereby declares that all of the premises described in **Exhibit A** attached hereto, including all of the Units and other improvements located or to be located thereon, and all easements, rights, and the appurtenances belonging thereto shall be submitted to the provisions of the Act and are held and shall be held, conveyed, encumbered, leased, used, occupied, and improved subject to the following restrictions, covenants, conditions, uses, limitations, and obligations, all of which are declared and agreed to be in furtherance of the declaration of said premises into condominium use; and said restrictions, covenants, conditions, uses, limitations, and obligations are intended to enhance and protect the value and desirability of the condominium as a whole and to mutually benefit each of the servitudes upon each of the said Condominium Units in favor of each and all other Condominium Units therein; to create reciprocal rights and privity of contract and estate among all persons acquiring or owning an interest in any of said Condominium Units, including the Declarant, and its grantees, heirs, devisees, successors, and assigns, which shall be deemed to run with the land and be a burden and benefit to all such persons, including Declarant, its grantees, heirs, devisees, successors, and assigns.

ARTICLE 1 **DEFINITIONS**

Certain of the terms as used in this Declaration and in the Bylaws which are annexed hereto as **Exhibit B** and are made a part hereof, are defined and shall have meaning as follows, unless the context clearly indicates a different meaning, therefore.

- 1.1 “Act” means the New Hampshire Condominium Act (RSA Chapter 356-B).
- 1.2 “Assessment” means that portion of the cost of repairing, and managing the property which is to be paid by each Unit Owner.
- 1.3 “Association” or “Association of Owners” means the Unit Owners acting as a group in accordance with the Act, the Declaration, and the Bylaws.
- 1.4 “Buildings” mean the structures containing units subject to this Condominium.
- 1.5 “Bylaws” means the instrument attached hereto as **Exhibit B** and made a part hereof, which instrument provides for the self-government of the Condominium by the Association.

- 1.6** “Common Area” means all that portion of the Condominium, other than the Units, and is more particularly described in Article 2.4 hereof. Common Area includes Limited Common Area.
- 1.7** “Common Expenses” means all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the Condominium Instruments; “Future Common Expenses” shall mean Common Expenses for which assessments are not yet due and payable.
- 1.8** “Common Income” means all income collected or accrued by or on behalf of the Association, other than income derived from special assessments against the individual Units as provided for in Article 5 or Article 7 hereof.
- 1.9** “Condominium” means the real property and any interests therein described in **Exhibit A** hereof.
- 1.10** “Condominium Instruments” means this Declaration and the Exhibits annexed hereto as the same from time to time may be amended. Said exhibits are as follows:

Exhibit A - A legal description of the real property subject to this Declaration. Also included within the scope of **Exhibit A** are the following surveyor's and engineer's plans:

Exhibit B - Bylaws of the Kelsey Brook Condominium Association.

Exhibit C - Condominium Warranty Deed.

Exhibit D - Percentage Undivided Interest in Common Area of Units.

Also included in the definition of "Condominium Instruments" are the following plans prepared and recorded in conformance with NH RSA 356-B:20:

- a. the Condominium Site Plan dated July __, 2023 and recorded in the Rockingham County Registry of Deeds as _____, and
 - b. the Condominium Floor Plans dated July __, 2023 and recorded in the Rockingham County Registry of Deeds as _____.
- 1.11** “Condominium Rules” means such Occupancy Regulations as the Association from time

to time may adopt relative to the use of the Condominium, or any part hereof.

- 1.12 “Condominium Unit” means a Unit together with the undivided interest in the Common Area appertaining to that Unit.
- 1.13 “Declarant” means Kelsey Brook LLC, 30 North River Lake Road, Northwood, NH 03261.
- 1.14 “Declaration” means this instrument.
- 1.15 “Limited Common Area” means a portion of the Common Area reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the Units.
- 1.16 “Kelsey Brook Condominium” means the premises described in Exhibit A, including land, the building and other improvements, now or hereafter erected thereon, all easements, rights and appurtenances belonging thereto, and all personal property now or hereafter used in connection therewith, owned by Declarant which has been or is intended to be submitted to the provisions of the Act.
- 1.17 “Share” means the undivided interest in and to the Common Area attributed to each Unit as set forth in Article 2.6.
- 1.18 “Supplemental Declaration” means any Declaration of Covenants and Restrictions which by its terms is expressly made supplemental to this Declaration.
- 1.19 “Unit Owner” means one or more persons who own a Condominium Unit.

ARTICLE 2
INFORMATION REQUIRED BY SECTION 356-B:16

- 2.1 **Description of Land.** A legal description of the land on which the building and other improvements in the Condominium, is located is contained in **Exhibit A** attached hereto and made a part thereof.
- 2.2 **Description of Buildings.** Kelsey Brook LLC Condominium is intended to contain ten (10) buildings, with nine (9) buildings containing the twenty-one (21) residential units and one (1) building containing the common area Community Center.
- 2.3 **Description of Units.** The Unit number and the dimensions of each Unit are shown on the Site Plan and Floor Plans referred to in **Exhibit A**. The boundaries of each Unit with

respect to floors, ceilings, walls, doors and windows are as follows:

2.3.1 Horizontal Boundaries. The horizontal boundaries of the Units are as follows:

- (a) Ceilings: The upper horizontal boundary of each Unit shall be the plane of the underside of the interior wood framing to which the gypsum board shall be attached on the highest space level of each unit;
- (b) Floors: The lower horizontal boundary of each Unit shall be the plane of the upper surface of the concrete on the lowest floor, which is described on the floor plans contained in Exhibit A.

2.3.2 Vertical Boundaries. The vertical boundaries of the Units are as follows:

- (a) the plane of the interior concrete wall of basements or crawl spaces;
- (b) the plane of unfinished surface of the wooden stud to which gypsum board shall be attached, for both exterior building walls and interior partition walls;
- (c) as to doors providing access and egress to the units, the plane of the exterior surface of the door, trim and door material;
- (d) as to windows and doors containing glass, the planes of the exterior surfaces of the window and glass panel.

2.4 Description of Common Area. The Common Area includes, but not by way of limitation:

The land on which the buildings containing the Units is located, and the driveway, shrubbery, and other plantings, and other land and interests in land included in the description of the Condominium in **Exhibit A.**

Buildings: All portions and structural components of the Buildings, excluding the Units; the water supply, sewerage disposal, electrical, cable television and telephone systems serving the Buildings, to the extent said systems are located within the Buildings, and are not owned by the supplier of the utility service (but not including any portion thereof contained within and servicing a single unit unless such portions are entirely encased within other common area within the Unit).

The pipes, ducts, flues, chutes, conduits, plumbing, wires and other utility installations and facilities for the furnishing of utility services or waste removal not located within a Unit and any such facilities located within a Unit, which either serve parts of the Condominium other than the Unit within which they are located or are entirely encased by other Common Area within the Unit; and,

All parts of the "Community Center" building;

All other parts of the Condominium, including personal property acquired by the Association, necessary or convenient to its existence, maintenance, and safety, or normally in common use, and including any other easements set forth in **Exhibit A**.

2.5 **Description of Limited Common Area.** The Limited Common Areas of the Unit shall include heating apparatus, ventilation, ductwork, doorsteps, decks and porches, balconies, patios, walkways, driveways, and any other apparatus designated to serve a single unit but located outside the boundaries thereof, as well as any areas designated on the site plans and floor plans as limited common area.

2.6 **Unit Values.** An undivided interest in the Common Area is allocated to each Condominium Unit based on the square foot area of the Unit expressed as a percentage of the total area of all Units as shown on **Exhibit D**. There shall appertain to each Condominium Unit in the Condominium, for voting purposes in connection with meetings of the Association, a vote equal to the Unit's percentage interest in the Common Area. Where a particular Condominium Unit is owned by more than one person, said Owners may not divide the vote appertaining to that Unit.

2.7 **Statement of Condominium Use.** The Condominium is exclusively intended for residential use and occupancy by persons who are over the age of sixty-two (62); and the following provisions are in furtherance of this purpose.:

2.7.1 Each residential Unit shall be occupied and used only for private residential purposes by the Owner, or by lessees or guests of the owner, and not for any business use, except for home occupations permitted by ordinance, provided that the conduct of such occupation does not alter the residential character of the Units and/or Common Areas, and except for the rights retained by the Declarant in Article 2.7.6. This restriction shall not be construed to prohibit owners from leasing their Condominium Units so long as the lessees thereof occupy and use the leased premises in accordance with the provisions hereof and such leases have a term of twelve (12) months or more. If a tenant has been deemed a nuisance or is in

violation of these condominium instruments, by a vote of the Association, the Association may terminate the lease and institute eviction proceedings in the name of the Unit Owner and at the Unit Owner's expense.

- 2.7.2** 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 Association in repairing the same. Nothing shall be altered, constructed in, or removed from the Common Area without the prior written consent of the Association.
- 2.7.3** No noxious or unreasonably 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 shall 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 thereto. No use shall be made of any part of the Condominium which will increase the rate of insurance on the Common Area without the prior written consent of the Association.
- 2.7.4** Signs shall be permitted as long as they are in compliance with town ordinances and are permitted by the Town of Northwood.
- 2.7.5** The Board of Directors shall have authority to remove pets that have been deemed a nuisance after notice and an opportunity to be heard by the offending Unit Owner. Once a decision to remove a pet is made by the Board of Directors, the pet shall be removed within thirty (30) days of the decision of the Board of Directors.
- 2.7.6** The Declarant shall be deemed to be the owner of any Condominium Units not sold by the Declarant for voting and other purposes. The Declarant expressly reserves for itself, its representative and assigns, the right to show any such unit for the purpose of sale, including the displaying of signs; however, all of the foregoing shall not substantially interfere with the comfortable and convenient use of the Condominium Units by the respective Unit Owners.
- 2.7.7** The Association is empowered to adopt and amend, from time to time, Condominium Regulations concerning the use of the Condominium and various parts thereof, which Regulations shall be furnished in writing to all Unit Owners

and which Regulations shall not be violated.

2.7.8 Any consent of the Association referred to in this Article 2.7.1 through 2.7.9 may be withdrawn by the Association whenever it deems such withdrawal to be in the best interests of the Condominium.

2.7.9 None of the rights and obligations of the Owners created herein or in any deed conveying a Condominium Unit from the Declarant to a purchaser thereof, shall be altered in any way by encroachments, except to the extent that any Unit or Common Area encroaches on any other Unit or Common Area, whether by reason of any deviation from the Site Plan and the Floor Plans in the construction, repair, renovation, restoration, or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, and valid easements for such encroachments shall exist; provided, however, that in no event shall a valid easement for an encroachment be created in favor of an owner or owners if said encroachment occurred due to the willful and intentional misconduct of said owner or owners or their agents or employees.

2.7.10 No smoking shall be permitted in any area of the Condominium.

2.7.11 Elderly Housing Covenants. To assure compliance with the Northwood Zoning Ordinances and the Site Plan approvals for elderly housing, the following covenants are hereby adopted by The Declarant, and binds The Declarant, and shall bind, the Owner of each Unit within the Condominium:

(a) The Condominium has been approved by the Northwood Planning Board, as an elderly housing development as set forth in the Northwood Development Ordinance, Zoning Ordinance, adopted March 9, 1999 and amended through March 13, 2018 (the "Zoning Ordinance"), on the basis that it comply with the Elderly Housing Development restrictions of the Zoning Ordinance, including, without limitation that all Units be used as the primary residence for and by persons who are all over the age of sixty-two (62) years.

(b) The Condominium is being established and shall be maintained in compliance with 42 USC §3607(b) et seq. and 24 CFR Part 100, §§ 100.304, 100.305, 100.306 and 100.307, RSA § 354-A, et seq., RSA § 161-M, et seq., Hum 300 et seq., as amended from time to time and as they may be applicable, and in accordance with the provisions of the Zoning Ordinance currently in existence.

- (c) To this end, Units shall only be sold to Buyers who produce photographic identification and documents establishing that each of the proposed residents of the unit are at least sixty-two (62) years old and who execute an affidavit that:
 - (i) Such Buyers are not acquiring the Unit for purposes of or with the intent to allow occupancy of such Unit by any occupant under the age of sixty-two (62); and
 - (ii) So long as such Buyer owns such Unit, all of the residents thereof is or will be at the time of occupancy, at least sixty-two (62) years of age or older.
- (d) These elderly housing covenants shall be included in each Unit Deed and shall run with the land and be for the benefit of and be enforceable by the Association and the Town of Northwood.
- (e) In order to comply with 42 USC §3607(b), RSA §354-A:15 and 356-B, et seq., Hum 303.02 et seq., as amended from time to time, NONE of the Units may be occupied by any person except persons all of whom are at least sixty-two (62) years old or older.
- (f) Definitions and Administration of the Provision Under Section 2.7.11
 - (i) A permanent resident, who is sixty-two (62) years old or older, shall be deemed to be a Qualifying Occupant. For purposes of this Section 2.7.11, an occupant shall not be considered a Permanent Occupant unless such Occupant considers the Unit to be his or her legal residence and actually resides in the Unit for at least six (6) months during every calendar year.
 - (ii) No Unit shall be occupied by any person under the age of eighteen (18) years. For purposes of this Section 2.7.11, a Unit shall be deemed to be occupied if it is occupied by any person who stays overnight in the Unit for more than twenty-one (21) days in any sixty (60) day period or for more than thirty (30) days in any twelve (12) month period.
 - (iii) Nothing in this Section 2.7.11 is intended to restrict the ownership of or transfer of title to any Unit; provided, no Owner may occupy the Unit unless the requirements of this Section 2.7.11 are met nor shall any Owner permit occupancy of the Unit in violation of this Section 2.7.11. Unit Owners shall be responsible for including the statement that the Units within the Condominium are intended for the housing of persons sixty-two (62) years of age or older, as set forth in this Section

2.7.11 in its entirety, in conspicuous type in any lease or other occupancy agreement or contract of sale relating to such Owner's Unit, which agreements or contracts shall be in writing and signed by the tenant or purchaser, and for clearly disclosing such intent to any prospective tenant, purchaser, or other potential occupant of the Unit. Every lease of a Unit shall provide that failure to comply with the requirements and restrictions of this Section 2.7.11 shall constitute a default under the lease.

(iv) The Board SHALL NOT be authorized to waive the Elderly Housing Covenants set forth in this Section 2.7.11. The Association shall not make any amendment to these covenants or the Declaration that would cause the Condominium to fail to qualify as an elderly housing development in accordance with 42 USC §3607(b), RSA §354-A:15 and 356-B, et seq., Hum 303.02 et seq., and the Zoning Ordinance, as each may be amended from time to time

(v) In the event of any change in occupancy of any Unit, as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of permanent residence, or otherwise, the Owner of the Unit shall immediately notify the Board in writing and provide the Board the names and ages of all current occupants of the Unit and such other information as the Board may reasonably require to verify the age of each occupant. In the event that an Owner fails to notify the Board and provide all required information within ten (10) days after a change in occupancy occurs, the Association shall be authorized to levy monetary fines against the Owner and the Unit for each day after the change in occupancy occurs until the Association receives the required notice and information, regardless of whether the occupants continue to meet the requirements of this Section 2.7.11, in addition to all other remedies available to the Association under this Declaration and New Hampshire law.

(vi) The Association shall be responsible for maintaining age records on all occupants of Units. The Board shall adopt Rules and Regulations to monitor and maintain compliance with this Section 2.7.11, including policies regarding visitors, updating of age records, granting exemptions pursuant to State and Federal law, and enforcement. The Association shall periodically distribute such Rules and Regulations to the Owners and make copies available to Owners, their tenants, and institutional Lenders upon reasonable request. Such Rules and Regulations shall be copied to the Board of Selectmen.

(vii) The Association shall have the power and authority and the responsibility to

enforce this Section 2.7.11 in any legal manner available, as the Board deems appropriate, including, without limitation, conducting a census of the Occupants of Units, requiring copies of birth certificates or other proof of age for each occupant of the Unit to be provided to the Board on a periodic basis, and taking action to evict the Occupants of any Unit which does not comply with the requirements and restrictions of this Section 2.7.11. EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT, OR OTHERWISE REMOVE THE OCCUPANTS OF HIS OR HER UNIT AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS SECTION. Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Unit which the judgment of the Board are reasonably necessary to monitor compliance with this Section 2.8.11. The Town of Northwood shall also have the right and authority, but not the obligation, to enforce the provisions of Section 2.8.11, by all lawful means.

(viii) Each Owner shall be responsible for ensuring compliance of its Units with the requirements and restrictions of this Section 2.7.11 and the Rules and Regulations of the Association adopted hereunder by itself and by its tenants and other Occupants of its Unit. EACH OWNER, BY ACCEPTANCE OF TITLE TO A UNIT, AGREES TO INDEMNIFY, DEFEND, AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, AND CAUSES OF ACTION WHICH MAY ARISE FROM FAILURE OF SUCH OWNER'S UNIT TO SO COMPLY.

2.7.12 Except as to the restrictive covenants contained in Section 2.7.11 above, the Association and any aggrieved Unit Owner shall have the right to enforce the terms of this Declaration, the Bylaws, or the Rules and Regulations of the CONDOMINIUM against any Unit Owners or the Association who, if such owner fails to comply with requirements of the Condominium Instruments or the decision made by the Association, by seeking injunctive relief in the Rockingham County Superior Court. The restrictive covenants contained in Section 2.7.11 above may be enforced only by the Association or by the Town of Northwood, who may, in addition to other remedies, seek injunctive relief in the Rockingham County Superior Court.

2.8 Person to Receive Service of Process.

2.8.1 Any member of the Association who occupies a unit in the Condominium shall be

the person to receive service of any lawful process in any proceeding arising under the act against the Association.

- 2.8.2** Service of any process in any proceeding arising under the Act against the Declarant may be made by serving the Declarant at its address stated herein.

ARTICLE 3

INSURANCE AND VOTING IN THE EVENT OF DAMAGE OR DESTRUCTION

- 3.1** **Insurance to be Obtained.** The Association shall obtain and maintain, to the extent obtainable, the following insurance:

3.1.1 A master casualty policy affording fire and extended coverage in an amount equal to the full replacement value of the buildings and the common elements that are located within the Common Area.

3.1.2 A master liability policy in such amounts as the Association from time to time determine, but in no event shall the limits of liability be less than One Million Dollars (\$1,000,000.00) for Bodily Injury and Property Damage per occurrence, insuring the Association, all persons acting or who may come to act as agents or employees of the Association with respect to the Condominium, and all Unit Owners and other persons entitled to occupy any Unit, or other portion of the Condominium, and with cross liability coverage with respect to liability claims of any one insured thereunder against any of the other insured thereunder. This insurance, however, shall not insure against the individual liability of an owner for negligence occurring within his Unit or within the Limited Common Area over which he has exclusive use.

3.1.3 Workmen's compensation insurance as required by law; and,

3.1.4 Such other insurance as the Association may determine including, any specialized policies covering lands or improvements in which the Association has or shares ownership or other rights.

- 3.2** **General Insurance Provisions.**

3.2.1 The Association shall deal with the insurer or the insurance agent in connection with the adjusting of all claims covered by insurance policies provided for under Article 3.1 above, and shall review with the insurer or insurance agent, at least

annually, the coverage under said policies, said review to include an appraisal of improvements within the Condominium, and shall make any necessary changes in the policy provided for under Paragraph 3.1 above (prior to the expiration date set forth in any agreed amount endorsement contained in said policy) in order to meet the coverage requirements of such Article.

3.2.2 The Association shall be required to make every effort to see that all policies of physical damage insurance provided for under Paragraph 3.1, above:

- (a) Shall contain waivers of subrogation by the insurer as to claims against the Association, its employees, members of the Association, owners, and members of the family of any owner who reside with said owner, except in cases of arson or fraud;
- (b) Shall contain an agreed amount endorsement suspending co-insurance provisions and 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”;
- (c) Shall provide that such policies may not be canceled or substantially modified without at least thirty days’ written notice to all of the insureds thereunder (including Unit Owners) and all mortgagees of Condominium Units in the Condominium;
- (d) Shall provide that in no event shall the insurance under said policies be brought into contribution with insurance purchased individually by owners or their mortgagees; and,
- (e) Shall exclude policies obtained by individual owners from consideration under any “no other insurance” clause.

3.2.3 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 Association pursuant to Article 3.1 above, and each Owner hereby assigns to the Association the proceeds of any such policy to the extent that any such policy does, in fact, result in a decrease in such coverage. Said proceeds are to be applied pursuant to the terms hereof as if produced by such coverage. Copies of all such policies (except policies covering only personal property owned or supplied by individual owners) shall be filed with the

Association.

3.2.4 Each Owner must obtain insurance for his benefit and at his own expense, insuring all personal property presently or hereafter located in his Unit or Limited Common Area.

3.3 **Procedure in the Event of Damage or Destruction.** In the event of damage or destruction of all or part of the Condominium, as a result of fire or other casualty the proceeds of the Master insurance policy shall be used to repair, replace or restore the structure or common area damaged by casualty unless the Unit Owners vote to terminate the condominium in accordance with RSA 356-B:34.

ARTICLE 4

EXTENT OF OWNERSHIP AND POSSESSION BY OWNER

4.1 Subject to the provisions of this Declaration, each Owner shall be entitled to the exclusive ownership and possession of his unit.

4.2 Each Unit Owner shall own an undivided interest in the Common Area equal to his percentage as set out in Exhibit D. No such interest shall be altered in a manner which is contrary to the provisions of the Act, as amended from time to time, and no such interest shall be separated from the Unit to which it appertains, it being deemed to be conveyed or encumbered with the Unit even though it is not expressly mentioned or described in the instrument of conveyance or encumbrance. Subject to the provisions of this Declaration, each Unit Owner may use the Common Area, in accordance with the purposes for which it is intended, so long as he does not hinder or encroach upon the lawful rights of the other owners or otherwise violate the provisions hereof or of any Condominium Residency Regulations adopted pursuant to said provisions.

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

ARTICLE 5

OWNER'S OBLIGATION TO REPAIR

Each Unit Owner shall, at his own expense, keep his Condominium Unit and its equipment and appurtenances in good order, condition, and repair. In addition to keeping the interior of the Unit in good repair, each Owner shall be responsible for the maintenance, repair, or replacement of any bathroom, kitchen fixtures, plumbing fixtures, water heater, appliances, heating equipment, air conditioning equipment, lighting fixtures, doors, windows and window frames, and other property which are not Common Area and are either located in his Unit or designated as Limited Common Area for his Unit, to include the exterior spaces or areas designed as Limited Common Area, such as the driveways, walkways, porches, covered decks, and lawn or garden areas. All maintenance or repairs conducted by an Owner pursuant to this section shall be done in accordance with Town of Northwood ordinances, including Historic District Commission regulations. Each Owner shall immediately notify the Association or its agents of any damage to or malfunction of any facilities for the furnishing water services or waste removal which are Common Area within his Condominium Unit. In the event an Owner fails to make such repairs after thirty (30) days' written notice of the need for the same is given to him by the Association, the Association may enter and make such repairs, the expense of which shall be borne by said Owner. No Owner shall permit any repair or other work in his Unit by any one unless such person or entity has furnished written evidence that it has obtained reasonably adequate Public Liability and Workmen's Compensation insurance in forms and amounts which are satisfactory to the Association, and unless such repair or other work is performed in compliance with governmental laws, ordinances, rules and regulations. Each Unit Owner shall have an easement as necessary to repair or replace plumbing and heating apparatus which serves his Unit.

ARTICLE 6 **PROHIBITION AGAINST CHANGES BY OWNER**

No Unit Owner shall, without first satisfying the requirements regarding repair or other work set forth in Article 5 above, and, in addition, obtaining the written consent of the Association:

- (a) Make or permit to be made any structural alteration, improvement, or addition in or to his Condominium Unit or in or to any other part of the Condominium;
- (b) Tamper with any bearing wall or take any action or permit any action to be taken that will impair the structural soundness or integrity or safety of the building or any other structure in the Condominium;
- (c) Impair any easement or right or personal property which is a part of the Condominium;

- (d) Paint or decorate any portion of the exterior of the Building.
- (e) Make or permit to be made any exterior alteration, improvement, or addition in or to his Condominium Unit or in or to any other part of the Condominium. Any exterior alterations, improvements or additions must be made in accordance with the ordinances of the Town of Northwood.

ARTICLE 7
ENTRY FOR REPAIRS

The Association shall have the irrevocable right, to be reasonably exercised by the Association or its agent, with prior written (or electronic) notice, to enter any Unit or Limited Common Area to inspect the same, to remove violations therefrom, or to perform any repair, maintenance, or construction for which the Association is responsible and shall have the irrevocable right, to be reasonably exercised by the Association or its agents, or by two or more Unit Owners acting as a group, to enter any Condominium Unit or 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 Unit Owner as practicable, and any damage caused thereby or expenses in connection therewith shall be repaired or satisfied by the Association out of the Common Expenses unless such emergency repairs are necessitated by the negligence of one or more Unit Owners, in which case the negligent Unit Owner or Unit Owners shall bear the expense of such repairs.

In the case of an emergency, the Association will notify the affected Unit(s) as soon as practicable following the emergency access of those Units.

ARTICLE 8
BYLAWS

The Bylaws shall be as set forth in **Exhibit B** attached hereto. The Bylaws may be amended as set forth therein or in the Act 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 upon recording in the Rockingham County Registry of Deeds.

ARTICLE 9
CONVEYANCES

- 9.1** The sale and leasing and mortgaging of Condominium Units shall be subject to the following provisions notwithstanding anything herein elsewhere contained;
- 9.2** A Unit may be sold or leased by its Owner without the approval of the Declarant or the Association, provided however, that any lease or rental agreement must be in writing and no Unit may be leased or rented for less than twelve (12) months.
- 9.3** **Notice to Association.** The Unit Owner intending to make a sale of his Condominium Unit shall give notice to the Association of the name and address of the intended purchaser and such other information as the Association may reasonably require for record keeping purposes, but this shall not be construed as granting the Association the right of approval of Unit sales.

ARTICLE 10
ASSESSMENTS

- 10.1** Each Unit Owner shall pay all common expenses assessed against him, all expenses for which he is liable under Article 5 or Article 7 hereof, and all other assessments made against him by the Association in accordance with the terms of the Declaration and Bylaws and all expenses so incurred and sums so assessed but unpaid shall be secured by a lien as provided in RSA 356-B:46. No owner shall convey, mortgage, sell, or lease his condominium unit unless and until he shall have paid in full to the Association all such expenses theretofore incurred and sums theretofore assessed by the Association against his condominium unit which are due and unpaid. Any Unit Owner or purchaser of a condominium unit, having executed a contract for the disposition of said condominium unit, shall be entitled upon request to a recordable statement, signed by the Treasurer of the Association, setting forth the amount of the unpaid assessments currently levied against that condominium unit. Such a request shall be in writing and shall be directed to the Association. The statement shall be binding on the Association and every Unit Owner. Payment of a fee not exceeding Ten Dollars (\$10.00) may be required as a prerequisite to the issuance of such a statement. A purchaser of a condominium unit shall be liable for the payment of any such expenses or assessments against said condominium 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 an institutional mortgagee or other purchaser at the foreclosure sale of said institutional mortgage or the grantee in a deed in lieu of such foreclosure shall not be liable for the payment of expenses or assessments

unpaid and due as of the time of his acquisition, if the law does not make such mortgagee or purchaser liable, but shall be liable for unpaid expenses and assessments becoming due thereafter.

- 10.2** The Association shall have the right to charge interest at Eighteen (18%) per annum, or at the maximum lawful interest rate for unpaid common expenses or other expenses or assessments from the due date. In addition, it shall have the right to charge Unit Owners \$5.00 per month for duplicate billing charges, and other costs including reasonable attorney's fees in the event the Association is required to proceed with collection to obtain payment of such expenses. Any lien may be exercised for any unpaid common expense or other expenses or assessments or costs after thirty (30) days from the due date. The lien for unpaid common expenses or other expenses or assessments, once perfected, shall have the priority set forth in RSA 356-B:46, I. The lien, including interest, costs and reasonable attorney's fees may be foreclosed in the manner provided by the laws of the State of New Hampshire for the foreclosure of power of sale mortgage, or by suit brought in the name of the Association, acting on behalf of the Association. The suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same, and foreclosure shall be available without bringing suit to recover a money judgment.
- 10.3** The Association shall have the right, in accordance with RSA 356-B:46-a, to collect from any tenant renting the delinquent Owner's unit any rent then or thereafter due to the owner of such unit. Any rental payments collected by the Association shall be applied against the amount owed to it by the unit owner. This right is distinct and separate from all rights set forth herein and does not preclude the right to place a lien on the unit.

ARTICLE 11 **EMINENT DOMAIN**

The provisions of RSA 356-B:6 shall control in the event of the condemnation of all or any part of The Condominium.

ARTICLE 12 **WAIVER**

The failure of the Association 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 in the future of such term, covenant, condition,

restriction, or right, but such term, covenant, condition, restriction, or right shall remain in full force and effect. The receipt by the Association of payment of any assessment from Unit Owner with knowledge of the breach of any covenant hereto shall not be deemed a waiver of such breach and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Association.

ARTICLE 13
LIABILITY OF THE MEMBERS OF THE ASSOCIATION

The members of the Association shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willfulness, misconduct, or bad faith and except as provided for below. The association shall indemnify and hold harmless each of the members of the Association against all contractual liability to others arising out of contracts made by the Association on behalf of The Condominium. It is intended that the members of the Association shall have no personal liability, other than as Unit Owners, with respect to any contract made by them on behalf of the Condominium. It is also intended that the personal liability of each Unit Owner arising out of any contract made by the Association or out of the aforesaid indemnity in favor of the members of the Association shall be limited to such proportion of the total liability thereunder as his interest in the Common Area bears to the interests of all the Unit Owners in the Common Area (except that the personal liability of Unit Owners who are members of the Association 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 Article 13 do not apply to and shall not preclude claims for property damage and personal injury by Unit Owners against the Association or any other insured under the liability insurance required by Paragraph 3.1.2.

ARTICLE 14
ENFORCEMENT

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

ARTICLE 15
PERSONAL PROPERTY

The Association may acquire and hold, for the benefit of the Unit Owners, personal

property and may dispose of the same by sale or otherwise; and the beneficial interest in such property shall be owned by the Unit Owners in the same proportion as their respective shares in other Common Area. A transfer of a condominium unit shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property, whether or not such personal property is specifically mentioned therein.

ARTICLE 16
CONTROL BY THE DECLARANT

The Declarant shall have the right to exercise the powers and responsibilities assigned by the condominium instruments and by RSA 356-B, to the Association of Owners, either directly or through its appointed manager. The right to control herein reserved to the Declarant shall continue for a period of two (2) years from the date of recording of this Declaration, or until three-quarters (3/4) of the units have been conveyed whichever occurs first. The Declarant shall, during this period, have the right to appoint the manager and exercise all functions of the Association as provided in RSA 356-B:36.

ARTICLE 17
FHLMC/FNMA COMPLIANCE

Notwithstanding the provisions of this Declaration and the Bylaws relating to amendments, the duly adopted regulations of the Federal Home Loan Mortgage Corporation, FHLMC, and the Federal National Mortgage Association, FNMA, as amended from time to time, shall control the procedure and substance of amendments that affect the rights of eligible mortgage holders, as such rights are defined in those regulations. The Association, in accordance with RSA 356-B:34, II, by a vote of at least 66-2/3% of the members, is authorized to consider and adopt amendments to this Declaration and to the Bylaws that may be required in order to comply with the duly adopted regulations of the FHLMC or the FNMA.

ARTICLE 18
NOTICES

All notices hereunder, and under the Bylaws and the Act to the Association shall be sent by United States mail to the Association at ____ Olde Canterbury Road, Northwood, New Hampshire 03261, or to such other address as the Association may designate from time to time, by notice in writing to all Unit Owners. All such notices to Unit Owners shall be sent to the address of the owners at their respective Units and to such other addresses as any of them may have designated to the Association. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received, and except

as otherwise provided herein.

ARTICLE 19
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.

ARTICLE 20
GENDER

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

ARTICLE 21
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.

ARTICLE 22
AMENDMENT

Except as otherwise provided herein and in the Act, this Declaration may be amended by the vote of two-thirds (2/3) or more of the total voting power of all Unit Owners, cast in accordance with the provisions hereof and of the Bylaws, and executed by the President and Secretary, which amendment shall become effective upon recordation at the Rockingham County Registry of Deeds. So long as the Declarant owns one or more units, no amendment to the Declaration shall be adopted which could interfere with the sale, lease or other disposition of such units, except with the consent, in writing, of the Declarant. No such amendment shall be contrary to the provisions of the Condominium Act. Any amendment to Section 2.7.11 shall require the approval of the Northwood Planning Board as an amendment to the approved site plan or as otherwise directed by the Northwood Planning Board and/or its Town Planner.

ARTICLE 23
ARBITRATION

In the event of a disagreement between Owners and in order to break a tie vote, the issue or issues, at the request of either party, shall be submitted to a third party for a binding decision. The cost of such referral shall be shared equally by the two Unit Owners and shall be an assessment against their unit. In the event the Unit Owners are not able to agree on the identity of the third party, both parties are required to nominate a person to act as arbitrator. The two arbitrators selected are then obligated to select a third arbitrator and the three arbitrators will then resolve the dispute by a binding decision. The cost of the arbitration will be borne by the Unit Owner or Owners in such proportion as the arbitrators decide. If one party refuses to select an arbitrator as provided above, the other Unit Owner shall submit the dispute to a single arbitrator who shall decide the issue and assess the costs against the recalcitrant Unit Owner.

IN WITNESS HEREOF, the Declarant, Kelsey Brook LLC, has executed this Declaration on the date and year first above written.

Kelsey Brook LLC

By: _____
Curtis A. Naleid, Member

THE STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD, ss

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Curtis A. Naleid, Member of Kelsey Brook LLC, as Declarant of Kelsey Brook Condominium Association, for the purposes herein contained.

Before me,

Notary Public/Justice of the Peace
My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION

NORTHWOOD, ROCKINGHAM COUNTY

A certain tract or parcel of land situated in the Town of Northwood, County of Rockingham, State of New Hampshire, being shown on that certain plan entitled "Kelsey Brook Condominium Site Plan - Tax Map 110, Lots 29-2 Thru 29-5, Olde Canterbury Road, Northwood, New Hampshire" prepared by Civil Consultants dated June 28, 2023, Revised July 5, 2023, said plan recorded in the Rockingham County Registry of Deeds as Plan _____, said tract or parcel of land being more particularly bounded and described as follows:

Beginning at a granite bound set at a point along the southerly sideline of Olde Canterbury Road, so-called, said point being the northeasterly corner of Tax Map 216, Lot 24 as shown on said plan; thence turning and running S 77° 02' 02" E along said Olde Canterbury Road a distance of 133.50 feet, more or less, to a granite bound set; thence continuing S 77° 02' 02" E along said road a distance of 142.99 feet, more or less, to a granite bound set; thence turning and running S 81° 21' 18" E along said road a distance of 7.03 feet, more or less, to a granite bound set; thence continuing S 81° 21' 18" E along said road a distance of 33.17 feet, more or less, to a granite bound set; thence turning and running N 79° 37' 41" E along said road a distance of 116.83 feet, more or less, to a granite bound set; thence continuing N 79° 37' 41" E along said road a distance of 40.48 feet, more or less, to a granite bound set; thence turning and running N 76° 03' 21" E along said road a distance of 140.25 feet, more or less, to a point in the center of Kelsey Brook as shown on said plan, which point is located on a tie line of N 74° 45' 06" E a distance of 27.03 feet, more or less, from a 3/4" rebar with cap set at a point along said road; thence turning and running along the centerline of said Kelsey Brook on a tie line of S 38° 51' 55" E a distance of 502.58 feet, more or less, to a 2" iron pipe set in water; thence turning and running along said centerline of Kelsey Brook on a tie line of S 26° 59' 24" E a distance of 278.70 feet, more or less, to a 2" iron pipe set in water; thence turning and running S 74° 07' 25" W along Tax Map 110 Lot 29 a distance of 467.18 feet, more or less, to a 5/8" rebar with ID cap set; thence turning and running N 62° 51' 02" W along said Lot 29 a distance of 302.87 feet, more or less, to a 5/8" rebar with ID cap set; thence continuing N 62° 51' 02" W along said Lot 29 a distance of 141.73 feet, more or less, to a point; thence continuing N 62° 51' 02" W along said Lot 29 a distance of 37.57 feet, more or less, to a 5/8" rebar with ID cap set; thence continuing N 62° 51' 02" W along said Lot 29 a distance of 189.85 feet, more or less, to a point; thence continuing N 62° 51' 02" W along said Lot 29 a distance of 29.87 feet, more or less, to a

5/8" rebar with ID cap set; thence continuing N 62° 51' 02" W along said Lot 29 a distance of 91.64 feet, more or less, to a 5/8" rebar with ID cap set at a point in an unidentified brook; thence turning and running along the southerly edge of said brook on a tie line of N 44° 34' 37" W a distance of 380.42 feet, more or less, to a 3/4" rebar with ID cap set; thence turning and running N 18° 01' 26" E along Tax Map 110, Lot 29-1 a distance of 268.80 feet, more or less, to a 3/4" rebar with ID cap set at a point along the southerly sideline of said Olde Canterbury Road; thence turning and running S 74° 09' 54" E a distance of 16.50 feet, more or less, to a 3/4" rebar with ID cap set at the northwesterly corner of Map 216, Lot 26 as shown on said plan; thence turning and running S 17° 54' 58" W along said Lot 26 a distance of 134.58 feet, more or less, to a 3/4" rebar with ID cap set; thence turning and running S 74° 12' 07" E along said Lot 26 a distance of 82.30 feet, more or less, to a 3/4" rebar with ID cap set; thence turning and running S 73° 35' 53" E along Map 216, Lot 25 as shown on said plan a distance of 81.66 feet, more or less, to a granite bound set; thence turning and running N 18° 35' 25" E along said Lot 25 a distance of 38.17 feet, more or less, to a 5/8" rebar with ID cap set; thence turning and running S 75° 10' 25" E along Tax Map 216, Lot 24 as shown on said plan a distance of 122.26 feet, more or less, to a 5/8" rebar with ID cap set; thence turning and running N 21° 34' 45" E along said Lot 24 a distance of 94.05 feet, more or less, to the granite bound set, being the point begun at. Containing 631,453 square feet (14.462 acres), more or less, according to said plan.

Meaning and intending to describe hereby the same premises conveyed to Kelsey Brook, LLC by deed of Chestnut & Cape, Inc., said deed dated April 6, 2023 and recorded in the Rockingham County Registry of Deeds at Book 6476, Page 734.

EXHIBIT C

Draft Condominium Deed

CONDOMINIUM WARRANTY DEED

Know all persons by these presents that **KELSEY BROOK, LLC**, a New Hampshire limited liability company with a business address of 30 North River Lake Road, Town of Northwood, State of New Hampshire 03261, *for consideration paid*, grants unto

(Insert Buyer here), of _____ (address), as *joint tenants with rights of survivorship*, with *warranty covenants*, the following described premises:

NORTHWOOD, ROCKINGHAM COUNTY:

A certain Condominium Unit in the condominium known as "**Kelsey Brook Condominiums**" situated on Old Canterbury Road in the Town of Northwood, County of Rockingham, State of New Hampshire, said Unit being more particularly described as follows:

Condominium Unit # of the "**Kelsey Brook Condominium**," said condominium having been established pursuant to R.S.A. 356-B by a "Declaration of Kelsey Brook Condominium" recorded in the Rockingham County Registry of Deeds at **Book** ____, **Page** ____, and the "Bylaws of Kelsey Brook Condominium Association" recorded in the said Registry at **Book** ____, **Page** ____, as the same may be amended from time to time. TOGETHER with an undivided 1/21st interest as Tenants-in-Common in the Common Areas appurtenant to said Unit, and with certain Limited Common Area appurtenant to said Unit as set forth in the above referenced Declaration and the below referenced Site Plan.

Said Unit is shown on the Site Plan entitled "Kelsey Brook Condominium Site Plan - Tax Map 110, Lots 29-2 Thru 29-5, Old Canterbury Road, Northwood, New Hampshire" dated July ____, 2023 and recorded at the Rockingham County Registry of Deeds as **Plan** _____, and further shown on the "Kelsey Brook Condominium Floor Plans, Olde Canterbury Road, Northwood, New Hampshire" recorded in said registry as **Plan** _____.

This conveyance is made SUBJECT TO and is granted TOGETHER WITH the following:

1. The provisions, terms, conditions, restrictions, obligations, covenants and easements as contained in the said Declaration of Condominium and Bylaws of Kelsey Brook Condominium referred to above;

2. The provisions of RSA 356:B, "including, but not limited to, declarant's warranty against structural defects for a period of one year pursuant to RSA 356-B:41, II;

3. All rights-of-way, easements, covenants, conditions and restrictions of record;

4. The use restrictions contained in the Declaration of Condominium;

5. Unpaid real estate taxes of the current year.

This is NOT homestead property.

Meaning and intending to convey a portion of the premises conveyed to the Grantor herein by deed of Chestnut & Cape, Inc., said deed dated April 6, 2023 and recorded in the Rockingham County Registry of Deeds at Book 6476, Page 734.

Signed this the ____ day of _____, 202__.

Kelsey Brook, LLC

By: Curtis A. Naleid, Member

STATE OF NEW HAMPSHIRE
COUNTY OF _____, ss.

The foregoing instrument was acknowledged before me by Curtis A. Naleid, Member of Kelsey Brook, LLC, a New Hampshire limited liability company, on behalf of the limited liability company. Before me,

Dated: _____

Notary Public/Justice of the Peace
My commission expires: _____

EXHIBIT D

Percentage of Undivided Interests of Common Area

Each of the Twenty-One (21) Units shall have an equal undivided interest in the Common Area as set forth below:

Formula: There are 21 units. One Hundred Percent (100%) of the Common Area divided by 21 units equals four and seven hundred sixty two hundredths percent interest in the common area per unit, rounded to the hundredths.

<u>Unit #</u>	<u>Unit Percentage of Undivided Interest</u>
Unit 1	4.762 %
Unit 2	4.762 %
Unit 3	4.762 %
Unit 4	4.762 %
Unit 5	4.762 %
Unit 6	4.762 %
Unit 7	4.762 %
Unit 8	4.762 %
Unit 9	4.762 %
Unit 10	4.762 %
Unit 11	4.762 %
Unit 12	4.762 %
Unit 13	4.762 %
Unit 14	4.762 %
Unit 15	4.762 %
Unit 16	4.762 %
Unit 17	4.762 %
Unit 18	4.762 %
Unit 19	4.762 %
Unit 20	4.762 %
Unit 21	4.762 %