

SECOND AMENDMENT
TO THE
DECLARATION OF CONDOMINIUM
FOR
KELSEY BROOK CONDOMINIUM

**Property Location: Olde Canterbury Road
Town of Northwood, Rockingham County, N. H.**

Declarant: Kelsey Brook, LLC

WHEREAS, the Declarant declared that certain original "Declaration of Condominium for Kelsey Brook Condominium" (hereafter the "Original Declaration") dated July 19, 2023 (the "Declaration") that was recorded in the Rockingham County Registry of Deeds at **Book 6495, Page 1801**, as amended and restated by virtue of that certain "First Amendment and Restatement to the Declaration of Condominium for Kelsey Brook Condominium" dated April 2, 2024 (hereafter the "Amended Declaration") and recorded in said Registry at Book 6540, Page 2652; and

WHEREAS pursuant to Article 22 of the Amended Declaration entitled "Amendment" the Declaration may be amended by vote of two-thirds (2/3rds) of more of the total voting power of all Unit Owners; and

WHEREAS the Declarant desires to amend certain terms of the Declaration relative to the age restriction for Ownership of the Units within the Condominium as set forth in Article 2.7 entitled "Statement of Condominium Use" by changing the age restriction from sixty-two (62) years of age to fifty-five (55) years of age; and

WHEREAS the Declarant is the Owner of record of fifteen (15) Units in the twenty-one (21) Unit Condominium and approves amending the Declaration as set forth below; and

WHEREAS the remaining Unit Owners other than the Declarant have all voted in the affirmative to approve amending the Declaration as set forth below, resulting in the unanimous approval of this amendment by all Unit Owners; and

WHEREAS, the Town of Northwood Planning Board have approved this proposed amendment to the Declaration; and

WHEREAS, the New Hampshire Attorney General's office has approved this proposed amendment to the Declaration.

NOW THEREFORE, the Declarant does hereby amend the terms of the Declaration set forth in Article 2.7 "Statement of Condominium Use" by deleting the said Article 2.7 in its entirety, to be replaced with the following amended Article 2.7, to wit:

2.7 Statement of Condominium Use. The Condominium is intended for residential use and occupancy by persons who are over the age of fifty-five (55) in accordance with federal and state law relative to age-restricted housing for persons aged fifty-five (55) years or older as are set forth herein; 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 any one 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 unreasonable 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, as varied by the Zoning Board of Adjustment by Notice of Decision dated _____ (hereafter the “Notice of Decision”), 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, as the said age restriction was modified by virtue of the said Notice of Decision permitting the age-restriction to be lowed to fifty-five (55) years of age;
- (b) The Condominium is being established and shall be maintained in compliance with 42 USC §3607(b), 24 C.F.R. Part 100, Subpart E, Section 100 et. seq., NH RSA §354-A:15(VIII) and NH. Code. Adm. R. BEA 500 et seq., as they may be amended from time to time, and in accordance with the provisions of the said Notice of Decision;
- (c) To this end, Units shall only be sold to Buyers who produce photographic identification and documents establishing that at least one of the proposed Owners and residents of the Unit are at least fifty-five (55) years old and who execute an affidavit that:
 - (i) Such Buyer(s) 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 fifty-five (55);

and

- (ii) So long as such Buyer owns such Unit, at least one of the residents thereof is or will be at the time of occupancy, at least fifty-five (55) 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) These provisions shall be interpreted, applied and enforced in accordance with the statutes and rules governing age-restricted housing for persons fifty-five (55) years of age or older as set forth in 42 USC §3607(b), 24 C.F.R. Part 100, Subpart E, Section 100 et. seq., NH RSA §354-A:15(VIII) and NH. Code. Adm. R. BEA 500 et seq., as they may be amended from time to time.
- (f) Definitions and Administration of the Provision Under Section 2.7.11
 - (i) A permanent resident, who is fifty-five (55) 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 more than twenty percent (20%) of the Units shall be occupied by any person or persons under the age of fifty-five (55) years. In no event shall any Unit be occupied by any person or persons less than eighteen (18) years of age; this restriction may not be waived by the Board of Directors. 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 fifty-five (55) 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), 24 C.F.R. Part 100, Subpart E, Section 100 et. seq., NH RSA §354-A:15 (VIII) and NH. Code. Adm. R. BEA 500 et seq., and the Northwood Zoning Ordinance, as relief therefrom was granted in the said Notice of Decision, 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.

That except as amended hereby, the Amended Declaration of Condominium remains in full force and affect.

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

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: _____