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Montgomery County, MD  
08/24/2023 BB

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE NEW MARK COMMONS HOMES ASSOCIATION, INC.**

**THIS AMENDED AND RESTATED DECLARATION** of Covenants, Conditions and Restrictions (the "**Amended Declaration**"), is made this day of 7/24/2023, 2023 by the New Mark Commons Homes Association, Inc., a Maryland non-stock corporation.

**WHEREAS**, the original Declaration for the Association (defined herein below) was recorded among the Land Records of Montgomery County, Maryland (the "**Land Records**") at Liber 3679, folio 320 *et seq.*, and amended from time to time (including those recorded at Liber 6099 at folio 056, Liber 24426 at folio 244, and Liber 34187 at folio 001), collectively the "**Original Declaration**";

**WHEREAS**, in the Declaration of Covenants recorded in Land Records at Liber 6099, folio 056, the Declarant and Association added thirteen (13) Living Units to the Association, which are subject to the Original Declaration and this Amended Declaration;

**WHEREAS**, pursuant to Section 11B-116 of the Maryland Homeowners Association Act, the Association may amend the Original Declaration by the affirmative vote of lot owners in good standing having at least sixty percent (60%) of the votes in the Association. At an Association meeting on June 1, 2023, at least sixty percent (60%) of all members in good standing affirmatively voted to adopt this Amended Declaration;

**WHEREAS**, New Mark Commons - a 96-acre subdivision founded in 1967 as Rockville's fifth Planned Unit Development (PUD) - was recognized on August 1, 2017, for its national historic significance when it was included on the U.S. National Register of Historic Places. The historic designation recognized the design leadership of developer Edmund Bennett and architects Keyes Lethbridge and Condon in creating a mix of town and detached houses, open space (common areas), community facilities, and tree preservation all on a wooded, rolling landscape; and,

**WHEREAS**, these covenants and restrictions are for the purpose of continuing to preserve substantially the significance and harmony of the architecture and overall community landscaped environment as recognized by the U.S. National Register of Historic Places, to ensure ongoing architectural control for all residential townhouses and detached homes, to ensure ongoing landscape care and reforestation, to maintain the facilities and amenities on common Association property, and to provide for related powers, privileges, rights and obligations to ensure the same.

**NOW, THEREFORE**, the Original Declaration is hereby deleted in its entirety and replaced by the following Amended Declaration. The real property described in Article II is and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants"), which shall run with such real property and be binding on all parties having any right, title or interest in all or any portion of the real

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property described in Article II, their heirs, personal representatives, successors, transferees and assigns, which shall inure to the benefit of each Member.

## ARTICLE I

Section 1. Definitions. The following words when used in this Amended Declaration have the following meanings:

- (a) "Assessment" means all General Assessments, Special Assessments, and all other fees and charges, including all installments, as may be levied in accordance with this Amended Declaration.
- (b) "Association" means The New Mark Commons Homes Association, Inc., and its successors or assigns.
- (c) "Board of Directors" or "Board" means the Board of Directors of the Association, who are those persons appointed or elected in accordance with the Bylaws to exercise those powers and duties that are reserved to the Board of Directors pursuant to the Governing Documents and Maryland law.
- (d) "Common Areas" or "Community Facilities" means all real property owned by the Association for the benefit, use and enjoyment of its Members.
- (e) "Common Expenses" means the common expenses of the Association, as further defined in Article VI, Section 2 of this Amended Declaration.
- (f) "General Assessments" means assessments levied against the Lots to fund the Common Expenses pursuant to Article VI, Section 1 of this Amended Declaration.
- (g) "Governing Documents" mean the Amended Declaration, Articles of Incorporation, Association Bylaws, and all Association rules, regulations, policies, procedures, notices or codes of conduct adopted and published by the Board of Directors or its duly authorized committees.
- (h) "Living Unit" means any building situated upon the Property and designed and intended for use and occupancy as a residence.
- (i) "Lot" means any plot of land designated as a separate subdivided lot of record upon any recorded subdivision plat of the Property upon which the planned or actual improvements are primarily intended for use and occupancy as a Living Unit. The term Lot does not include Common Area or outlots of property dedicated for public use.
- (j) "Member" means every person, group of persons or entity who holds membership in the Association.

- (k) "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot situated on the Property, but excluding those having an interest in any such Lot solely as security for the performance of an obligation.
- (l) "Party wall" means a wall placed on the dividing line between Lots or Living Units.
- (m) "Property" means all real property described in Article II and such additions as may hereafter be made pursuant to the provisions of Article II.
- (n) "Special Assessment" means any assessment that may be levied by the Board of Directors in accordance with Article VI, Section 4 of this Amended Declaration.
- (o) "Town House" means any Living Unit which is joined by at least one party wall with any other Living Unit, whether or not either of such units is situated upon an individual Lot shown on any recorded subdivision plat of the Property.
- (p) "Utility Systems" mean all public and/or private utilities serving and/or benefiting all or any portion of the Property, including, without limitation, water, sewer, gas, electricity, cable television, telephones, storm drains, down spouts, yard drains, and all pipes, wires, cables, conduits, transmission lines and other related facilities and equipment.

## ARTICLE II

Section 1. Property Subject to the Amended Declaration. The real property which is and shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied, and improved subject to this Amended Declaration is located in the City of Rockville, County of Montgomery, State of Maryland, and is more particularly described on the attached "Exhibit A".

Section 2. Additions to the Property. Any real property that is not included on "Exhibit A" to this Amended Declaration but which is located contiguous to or in the vicinity of the real property described on "Exhibit A" may be annexed within the jurisdiction of the Association by consent of Members holding at least two-thirds (2/3) of the votes entitled to be cast by all of the Members. Any annexations made pursuant to this Section 2 must be made by recording a Declaration of Annexation among the Land Records, which Declaration of Annexation shall extend the scheme of this Amended Declaration and other Governing Documents to such annexed property. Any Declaration of Annexation made pursuant to the provisions of this Section 2 may contain such complementary or supplemental additions and modifications to the covenants, conditions, restrictions and easements set forth in this Amended Declaration or other Governing Documents as may be considered necessary or desirable by the Association to reflect the different character or use, if any, of the annexed property, including, without limitation, a partial or complete waiver of all or any portion of such covenants, conditions, restrictions and/or easements with respect to the annexed property, or additional or modified covenants, conditions,

restrictions and easements that are more or less restrictive than those set forth in this Amended Declaration or other Governing Documents.

### **ARTICLE III**

Section 1. Membership. Every person, group of persons or entity who is a record owner of a fee interest in any Lot which is or becomes subject by covenants of record to assessment by the Association shall be a Member of the Association, provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a member. When more than one (1) person or entity is a record owner of a Lot, all such persons and entities shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. All Members shall be Class A Members of the Association.

### **ARTICLE IV**

Section 1. Members' Right of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Areas and Community Facilities and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

- (a) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Areas and Community Facilities and to mortgage said property. In the event of a default and foreclosure upon any such mortgage, the lender shall have the right, after taking possession of such property, to charge admission and other fees as a condition to continued enjoyment by the Members, and, if necessary, for the protection of its security or the payment of the Association's obligations, to open the enjoyment of such property to a wider public until such times as the mortgage debt is satisfied, whereupon the possession of such property shall be returned to the Association and all rights of its Members hereunder shall be fully restored; and,
- (b) The right of the Association to levy reasonable admission and other fees on anyone who is not either an Association Member or a bona fide resident of a Member's Living Unit for the use of any recreational facility on Common Areas. A Member who rents or leases their Living Unit shall be subject to reasonable admission and other fees to the same extent as a non-Member if they grant the right to use such facilities to their tenants or lessees. Also, the Association may levy reasonable fees for the use of recreational facilities for private events by Members; and,
- (c) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas and Community Facilities against mortgage default and/or foreclosures; and,
- (d) The right of the Association to regulate and limit the use of Community Facilities, including but not limited to, the swimming pool, clubhouse, lake and sports courts on the Property by a Member, resident, guest, visitor, or invitee; and,

- (e) The right of the Association to suspend a Member's voting rights and the rights to use of the Common Area and Community Facilities for any period during which any assessment remains unpaid and for any period not to exceed thirty (30) days for any infraction of its Governing Documents; and,
- (f) The right of the Association, as more fully set forth in Article XIV, Section 3 of this Amended Declaration, to impose reasonable fines for any infraction of the provisions of the Governing Documents, provided, however, that any Member against whom a fine may be imposed shall have first been given notice and an opportunity for a hearing before the Board of Directors; and,
- (g) The right of the Association to dedicate or transfer all or any part of the Common Areas or Community Facilities to any public or municipal agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided, however, that no such dedication or transfer shall be effective unless approved by an affirmative vote of at least two-third (2/3rd) of the then Members of the Association in good standing agreeing to such dedication, transfer, purpose or conditions and is recorded among the Land Records, and unless written notice of the proposed agreement and action thereunder is sent to each Member at least ninety (90) days prior to the taking of any action. The term "in good standing" means not being more than ninety (90) days in arrears in the payment of any Assessment or charge due to the Association; and,
- (h) The rights of the fee owners of Lots to a perpetual easement over any Common Area or Community Facility for such portions of their Living Units that may overhang said Common Areas or Community Facilities, and for pedestrian and vehicular ingress and egress to and from any Lot over said Common Areas and Community Facilities; and,
- (i) The right of the fee owners of the Town Houses, their successors, tenants and assigns, to the use of parking spaces as provided in Section 3 of this Article.

Section 2. Rights Not Subject to Suspension. No admission or other fee shall be charged for the use of parking areas as may be maintained upon the Common Areas or Community Facilities, nor shall the rights and easements created in paragraphs (h) and (i) of Section 1 of this Article IV be suspended by the Association for any reason. Regardless of the foregoing, the Association may establish fees or charges for the use of the parking area in the Association clubhouse parking lot.

Section 3. Parking Rights. The Association shall maintain at least one (1) parking space located upon the Common Areas for each Town House that does not have a garage.

## ARTICLE V

Section 1. Easement for Installation of Post Lamps. Subject to any regulations or ordinances of the City of Rockville, the Association shall have a perpetual and

nonexclusive easement to install a post lamp on any Lot at any time, such easement to include, but not be limited to, the right to install, relocate and maintain all necessary underground wire and/or leads into any Living Unit situate upon the Property.

Section 2. Easement for Landscaping and Related Purposes. The Association retains a perpetual and nonexclusive easement over all Lots, or any Common Area or Community Facility, for a distance of ten (10) feet behind a lot line which parallels a street (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, entrance features and/or, "theme areas," lights, stone, wood or masonry wall features and/or related landscaping.

## ARTICLE VI

Section 1. Covenant for Assessments. Each person, group of persons or entity who becomes an Owner of a Lot by acceptance of a deed, regardless of whether such deed or other conveyance expressly references these covenants is deemed to covenant and agree to pay to the Association all Assessments as may be levied against such Lot in accordance with this Amended Declaration, including, without limitation, annual General Assessments or charges or Special Assessments that may from time to time be imposed upon such Lot.

### Section 2. Purpose of Assessment.

(a) The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation and welfare of the residents on the Property and in particular for the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and Community Facilities.

(b) The Common Expenses include all costs and expenses incurred by the Association in the proper conduct of its activities in accordance with this Amended Declaration, including, but not limited to: (i) the payment of real estate taxes, utility charges, management fees, insurance premiums, attorneys' fees and administrative expenses incurred by the Association; (ii) reserves for repairs and other expenses of a non-recurring nature; (iii) service contracts; (iv) repair, replacement, and additions of the Common Areas and Community Facilities, and for the cost of labor, equipment, and materials, management and supervision; (v) charges for the maintenance and repair of any property or facilities serving or benefiting the Property that the Association is obligated to maintain, whether or not such property or facilities are owned by the Association or are located with the Property, including, without limitation, stormwater management facilities and any property or facilities which the Association is authorized or obligated to maintain pursuant to this Amended Declaration; (vi) charges accruing under any cross-easement, reciprocal easement or other easement agreements; (vii) insurance premiums for liability and property insurance on the Common Areas and Community Facilities situated thereon, for directors and officers liability insurance, and for such other insurance as the Association may obtain with respect to its officers and directors, committee members, management agent, or the Common Area, the Community Facilities and/or the Living Units; and (viii)

payment of all other costs and expenses reasonably incurred by the Association in the proper conduct of its activities, for the administration and operation of the Association.

Section 3. Annual General Assessments; Budgets.

(a) The Board of Directors must set the annual General Assessment at an amount sufficient to meet the Common Expenses of the Association. Without limiting the generality of the foregoing, the Association shall, at all times, levy and collect annual General Assessments in sufficient amounts to (i) maintain the Common Area and Community Facilities, in accordance with sound property management standards, and (ii) establish necessary reserves for the future repair and replacement of any capital improvements within the Common Area and Community Facilities.

(b) The Board of Directors shall determine the amount of the annual General Assessment before the beginning of each fiscal year in connection with preparation of the Association's annual budget, and may do so at more frequent intervals should circumstances so require.

(c) Upon resolution of the Board of Directors, installments of annual General Assessments may be levied and collected on a monthly, quarterly, semi-annual, or annual basis. Any Member may prepay one or more installments of any annual General Assessment levied by the Association without premium or penalty.

(d) The Board of Directors shall cause a copy of the budget to be delivered to each Member at least thirty (30) days before its adoption by the Board. The budget shall include the estimated costs of operating the Association during the coming year, or, if available, the budget shall be based upon actual expenses for the previous fiscal year adjusted for inflation and any budget surplus, and shall also include an amount sufficient to establish and maintain a reserve fund in accordance with a reserve fund budget separately prepared by the Board of Directors and shall be approved by majority vote of the Board of Directors.

(e) Subject to the foregoing, all budgets approved by the Board shall become effective upon adoption by the Board. The Board shall submit the adopted annual budget to the Owners not more than thirty (30) days after the meeting at which the budget was adopted.

(f) If the Board of Directors fails for any reason to determine the budget for any fiscal year of the Association, then and until such time as a budget shall have been determined, the budget in effect for the then current fiscal year shall continue for the succeeding fiscal year.

Section 4. (a) Special Assessments by Membership Approval. The Board may propose to levy a Special Assessment or Special Assessments applicable to that year only for such purposes as it may deem appropriate. Such Special Assessment may include, without limitation, funding, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located upon the Common Areas, and to meet unforeseen or special expenditures as well as any budget deficit. Any such proposed



Special Assessment shall require an affirmative approval of at least sixty-seven percent (67%) of all Members present and voting, in person or by proxy, at any special meeting of the Association duly called for this purpose.

(b) Special Emergency Assessment by Board approval. Any Special Assessment required because of conditions which, if not corrected, could reasonably result in a threat to the health or safety of the Members or a significant risk of damage to the Common Areas may be approved by the Board of Directors without the vote of the Members under Subsection (a).

(c) Special Assessments may be collected in advance on a monthly, quarterly, semi-annual, or annual basis, or upon such other basis as may be determined by the Board of Directors.

(d) Assessment on a Member to Recover Costs Incurred. The Association may levy an Assessment against any Member to reimburse the Association for costs incurred in bringing the Member and/or such Member's Lot and/or Living Unit into compliance with the Governing Documents. Additionally, if the actions or activities of a Member cause or result in increased expenses for the Association, the Board of Directors may assess such increase in expenses against the Member and such Member's Lot. For example, and for purposes of illustration only, the Board of Directors may assess the amount of any insurance deductible paid by the Association against any Member and such Member's Lot if the Association is required to pay such deductible as a result of the misuse or neglect of the Member. Such Assessment shall be a lien against the Owner's Lot and shall be payable and collectible in the same manner as any other assessments required to be paid to the Association.

Any Assessment under this Subsection (d) may only be levied upon the affirmative vote of the Board of Directors, after reasonable notice and an opportunity for a hearing has been provided to the Member.

Section 5. Rate of Assessments. Both annual General Assessments and Special Assessments must be fixed at a uniform rate for all Lots unless otherwise provided herein, and may be collected in advance on a monthly, quarterly or semi-annual basis or upon such other basis as may be determined by the Board of Directors.

Section 6. Commencement of Annual General Assessments. The annual General Assessment for each Lot shall commence on the date a deed for the Lot to which such membership is appurtenant is recorded among the Land Records. The first annual General Assessment for any such membership shall be made for the balance of the calendar year and shall become due and payable and a lien on the date a deed for the Lot is delivered to the Member. Except as provided below, the Assessment for any Lot for any year, after the first year, shall become due and payable and a lien on the first day of said year.

The Board of Directors of the Association shall make reasonable efforts to fix the amount of the General Assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of

the Lots and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner upon reasonable notice to the Board. Written notice of the Assessment shall thereupon be sent to the Owner of any Lot subject thereto in accordance with this Amended Declaration.

#### Section 7. Reserves.

(a) The Association shall establish and maintain a reasonable reserve fund for the repair and replacement of the Common Area and Community Facilities situated thereon, in such amounts as are determined from time to time by the Board of Directors and as required by law. Such reserve fund may also be established for the repair and replacement of any property, improvements or facilities otherwise required or intended to be maintained by the Association pursuant to this Amended Declaration, or to any easement, agreement or the direction of any governmental authority or agency. The reserve fund contribution shall be included as part of the Association's annual budget, and shall be payable as part of the annual General Assessments.

(b) The Board of Directors shall cause to be prepared a reserve study at reasonable intervals, by an individual professionally qualified to prepare such a study (e.g. holding a Reserve Specialist (RS) designation as awarded by the Community Associations Institute (CAI) or similar qualifications), which shall take into account the number and nature of the replaceable assets of the Association, the expected life of each asset, and the expected repair or replacement cost of each asset. The Board of Directors shall set the required reserve fund contribution, if any, in an amount sufficient to meet the projected reserve needs of the Association, as shown on the reserve fund budget, with respect both to the amount and timing by the imposition of annual General Assessments over the period of the budget. The reserve fund contribution shall be fixed by the Board of Directors and included within the budget and General Assessment, as provided in this Section. Such reserve fund contribution shall be payable as part of the General Assessment, applicable to all Lots.

(c) The Association will account for operating and reserve accounts separately and according to accounting rules and standards.

Section 8. Assessment Certificates. The Association shall upon demand at any time furnish to any Owner liable for such Assessment a certificate in writing signed by an officer of the Association, setting forth the status of said Assessment, i.e. , whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any Assessment stated to have been paid. A reasonable charge in an amount to be determined in the discretion of the Board of Directors may be levied in advance by the Association for each certificate so delivered.

### **ARTICLE VII**

Section 1. Non-Payment of Assessment; Liens. Any Assessment levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest, cost of collection, late fees and reasonable attorney's fees, become a continuing lien upon the Lot of the then Owner, their heirs, devisees, personal

representatives and assigns. The Association may also charge a reasonable late fee against any Member who is more than fifteen (15) days delinquent in the payment of any assessment consistent with the Maryland Homeowners Association Act. Additionally, the entire balance of the unpaid annual General Assessment for the remainder of the fiscal year may be accelerated at the option of the Board of Directors and be declared due, payable and collectible in the same manner as the delinquent portion of such annual General Assessment. The personal obligation of the then Owner to pay such Assessment shall remain their personal obligation for the statutory period and shall not pass to their successors in title unless expressly assumed by them.

If the Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest up to the maximum rate permitted by law at the time the Assessment became due and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property provided the provisions of the Maryland Contract Lien Act are substantially fulfilled, in either of which events interest, costs, late fees and reasonable attorney's fees shall be added to the amount of each Assessment. No Owner may waive or otherwise escape liability for the Assessments by nonuse of the Common Areas or Community Facilities or abandonment of their Living Unit. The Owner shall also be obligated to pay all attorney's fees, court costs and administrative costs incurred in connection with the collection of Assessments if not paid when due. This Section shall not be deemed to limit or waive, and shall be without prejudice to, any and all rights, remedies, or recourses as may be available to the Association for non-payment of Assessments.

Section 2. Subordination Provision. The lien of the Assessments provided for in this Amended Declaration shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Lots subject to Assessment, provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

## ARTICLE VIII

Section 1. Party Walls. Each wall which is built as part of the original construction of the Living Units upon the Property and placed on the dividing line between Lots or Living Units shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto. If any portion of a party wall shall encroach upon any adjoining Lot, or upon the Common Area by reason of settlement or shifting of any building, or otherwise, a valid easement for the encroachment and right to maintain the same shall exist so long as the party wall remains in place.

Section 2. Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such

use. If any such party wall is damaged or destroyed through the act of one adjoining Owner (their family members, guests, agents, tenants or lessees etc.) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the Owner responsible for such damage shall forthwith proceed to rebuild and repair the same to as good condition as formerly, without cost to the adjoining Owner.

Section 3. Inspection rights. Owners of Living Units with party walls shall have the right, and are granted a perpetual easement and right of passage to the extent necessary, to enter upon or have a repair company enter upon any portion of adjoining properties that a party wall serves to inspect, repair, replace and generally maintain a party wall. Such easement shall include the right to enter upon any portion of the Property, including when other means of access are not available, the interior of a Living Unit, to inspect, repair, replace, and generally maintain, the party wall. However, reasonable notice shall be provided to any Owner of a Living Unit upon which entry is sought under this Section. When so notified, an Owner shall not unreasonably either delay a response or withhold consent to such request. An Owner seeking such access to an adjoining Living Unit shall take all reasonable steps to ensure that no damage occurs to the adjoining Living Unit.

Section 4. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of its restoration in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by their negligent or willful act causes the party wall to be exposed to the elements, including water intrusion, shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Easement for Utility Systems. The rights and duties of the Association and the Owners with respect to Utility Systems shall be governed by the following:

(i) Each Owner is granted a non-exclusive easement to connect to and use any Utility Systems located in the Property that serve such Owner's Lot. The easement under this Section shall also benefit the Association with respect to Utility Systems serving the Common Area.

(ii) The Property is subject to a non-exclusive perpetual easement and right of passage upon, across and under the Property for the benefit of the Association and the Owners for the installation, maintenance, repair, replacement, inspection, operation and use of all Utility Systems that service the Common Areas and the individual Lots.

(iii) Each Owner and the Association shall have a perpetual easement and right of passage to the extent necessary, to enter upon or have a utility or repair company enter upon any portion of the Property in which the Utility Systems lie, to inspect, repair, replace and generally maintain the Utility Systems that serve the Lot and Living Unit of such

Owner or the Common Area with respect to the Association. Such easement shall include, without limitation, the right to enter upon any portion of the Property, including private streets or parking areas, for the installation, replacement, repair and maintenance of Utility Systems.

(iv) The rights granted in Subsection (iii) above shall be only to the extent necessary to entitle the Association or the Owner serviced by the Utility Systems to the full and reasonable use and enjoyment of its property and provided further that anyone exercising said rights shall be responsible for reasonably restoring the surface of the easement so used to its condition prior to such use. If an Owner fails to do so, after notice and opportunity for a hearing, the Association may restore such damaged easement area and charge the costs to the Owner and shall be collectible in the same manner as an assessment pursuant to Article VI.

(v) The Property is subject to an easement and right of passage upon, under, and across the Property for the drainage and discharge of water from any properly installed and functioning storm drain, downspout or yard drain, and the Owners may not alter or obstruct such drainage or flow of water to the detriment of any other Owner or the Common Area. The Association shall have an easement to enter any portion of a Lot or Living Unit for the performance of its duties hereunder, including, without limitation, fenced or other similar areas.

(vi) A mutual right and easement for the Utility Systems is established for the benefit of all Owners such that no Owner shall take any action which would interfere with the Utility Systems being provided to other Owners within the Property. An Owner may temporarily interrupt utility service to other Lot(s) and Living Unit(s) if necessary in connection with the development, maintenance or repair of such Owner's Lot or Living Unit, provided that the consent of all affected Owners is obtained, such consent not to be unreasonably withheld or delayed, but in all events with due regard to business hours and fire protection and securing during any interruption of utility service. If the Lot contains any utility pipes, ducts, conduits, wires or other Utility Systems that are for the benefit, in whole or in part, of other Owners within the Property, then the Owner of such Lot shall promptly, at such Owner's expense, repair any damage to such Utility Systems caused by the Owner.

(vii) All costs of maintenance, repairs and replacement of any Utility Systems (including reasonable restoring of surface of the easement), that only serve a particular Lot and Living Unit shall be paid by such Owner.

(viii) Owners are responsible for the costs of the maintenance, repairs and replacement of any Utility System that serves only that Lot and Living Unit, whether or not such Utility System passes over or under Common Area. Passage of such Utility System over or under Common Area does not create any responsibilities on the Association for payment of any such maintenance, repairs or replacement (including reasonable restoring of surface of the easement) costs.

Section 7. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

## ARTICLE IX

Section 1. Owners' Maintenance. The Owner of each Lot shall keep the Lot and Living Unit in good order and repair and free of debris in a manner and with such frequency as is consistent with good property management, including any part of the property owned by the Owner located within public utility easement areas. In the event an Owner shall fail to maintain the Lot and the Living Unit and any other appurtenances or improvements only serving that Lot and Living Unit, the Association or its Management Agent shall have the right to enter upon said Lot to repair, maintain and restore the property and such improvements. Whenever entry is not required to address an emergency situation, the Association shall afford the Owner reasonable notice and opportunity to cure the problem prior to entry. All costs related to such correction, repair or restoration shall be collectible from the Owner of such Lot in the same manner as Assessments as provided in Article VI.

Section 2. Association Maintenance. The Association shall maintain, repair and replace the Common Area and Community Facilities, and shall keep the Common Area and Community Facilities in good order at all times. This obligation shall include, without limitation, (i) the maintenance, repair and, as necessary, replacement of any private roads, parking areas, pathways, sidewalks, trails and walkways constructed within the Common Area, provided that the Association shall not be obligated to maintain, repair or replace any portion of a pathway, sidewalk, trail or walkway leader within any Lot (the maintenance, repair and replacement of any such pathway, sidewalk, trail or walkway leader shall be the obligation of the Owner), and (ii) the removal of accumulated snow and ice from all private roads, parking areas pathways, sidewalks, trails, walkways, required to be maintained by the Association pursuant to this Section. Further, the Association shall maintain, repair and replace (i) any rights-of-way, median strips, entry strips, signage, and entrance features or improvements that are situated within or that are appurtenant to and serve the Property, including, without limitation, any landscaping and other flora and improvements situated thereon, and (ii) any other real and personal property, facilities and equipment as the Association is obligated or elects to maintain pursuant to this Amended Declaration, or any lease, easement or agreement, or the direction of any governmental authority or agency. The expenses of all such maintenance, repair and replacement shall be a Common Expense of the Association, including, but not limited to, reserves for the maintenance, repair and replacement of any such property or improvements. Such maintenance responsibilities of the Association do not include any utility lines or pipes that serve only a Lot and may be located on or within the Common Area.

## ARTICLE X

### Section 1. Architectural Control Committee.

(a) There shall be an Architectural Control Committee ("ACC") composed of at least three (3) members appointed by the Board of Directors. If an ACC is not appointed

or duly constituted, the Board shall exercise all rights and powers that could be exercised by the ACC. Members of the ACC serve at the pleasure of the Board. The ACC is responsible for ensuring that exterior work by Owners of Living Units respects the original design of the community and is harmonious in design, materials, location, and color with that original design. Exterior change includes, without limitation, building, fencing, wall or other structure, repair and repainting. Plantings are not considered to be an exterior change unless they are proposed as a means to screen equipment or trash cans.

Applications to the ACC shall clearly show and explain the proposed work. No exterior change whatsoever to the Lot or exterior of a Living Unit, except plantings, may be made without first applying for and receiving the approval of the ACC. The ACC shall adopt, publish and maintain architectural guidelines and application procedures, subject to Board approval. Such application procedures may include procedures to consider any concerns or objections from Owners whose Lots or Living Units may be impacted by a proposed design or architectural change.

(b) In the event the ACC fails to approve or disapprove the application and notify the Owner within forty-five (45) calendar days after said plans and specifications have been submitted to it, the Owner must notify the ACC. The Owner may notify the Board of Directors of such failure and may demand to appear at the next regularly scheduled Board meeting to address their application. After a fair opportunity for a hearing on the application, the Board must either approve (with or without modification) or reject the application submitted by the Owner.

(c) Once an application is approved, the Owners must ensure that any exterior changes made to the Living Unit or Lot are consistent with the application that was approved. If the Owner makes or intends to make any alterations, replacements or noticeable repairs to the approved change, the Owner must reapply for approval under this Section and obtain the ACC's approval.

(d) Any changes approved by the Board or the ACC under this Section shall remain protected against any subsequent enforcement action by the Board or the ACC so long as the previously approved change lasts.

(e) Any existing structures, additions, or changes to Living Units or Lots that are not in compliance with the Association's architectural guidelines or were made without prior approval by the ACC or the Board ("non-compliant changes") shall not serve as precedent for any other non-compliant changes. Owners of any other Living Unit or Lot may not seek approval of changes on the basis of the existence of the aforementioned non-compliant changes.

(f) If a Living Unit is occupied by someone other than an Owner (e.g., a tenant or a lessee), the Owner shall be responsible for ensuring that the occupant complies with the requirements stated above.

## Section 2. Prohibited Uses, Nuisances, and Permitted Uses.

- (a) No noxious or offensive trade or activity shall be carried on within the Common Areas or Community Facilities or upon any Lot or within any Living Unit situate upon the Property, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood or residents.
- (b) The maintenance, keeping, boarding and/or raising of animals, livestock or poultry of any kind, regardless of number, is prohibited on any Lot or within any Living Unit, except that this shall not prohibit the keeping of dogs, cats and/or other domestic pets provided they are not kept, bred or maintained for commercial purposes.
- (c) No burning of any trash and no accumulation or storage of litter, new or used building materials, or trash of any other kind shall be permitted on any Lot.
- (d) No trees shall be removed from any Lot without the prior written approval of the Board of Directors and/or its designated committee.
- (e) Except as may be provided elsewhere, no junk vehicle or other vehicle on which current registration plates are not displayed, trailer, truck, camper, camp truck, house trailer, boat (unless parked entirely within a garage) or the like, shall be kept upon the Property nor shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. No commercial trucks with commercial license plates or commercial signage on such truck shall be kept upon the Property. The Association may, in the discretion of its Board of Directors, provide and maintain a suitable area designated for the parking of such vehicles or the like. The Board of Directors may establish supplemental rules and regulations regarding parking and traffic control within the Association.
- (f) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. The Board may grant an exception for Lots where there is insufficient space to store such containers out of public view or where compliance would cause undue hardship on the Lot's occupants.
- (g) The Board of Directors may regulate the dimension, placement, and appearance of clotheslines on Lots. The Board of Directors is also authorized to prohibit the placement of clotheslines on Lots.
- (h) No trailer, tent, shack, shed, barn or other outbuilding, or structure of a temporary character, shall be used on any Lot at any time, unless otherwise provided by the Board of Directors or ACC. Temporary playhouses or the like may be so maintained provided that their primary purpose is the promotion of juvenile recreation.
- (i) The following signs on Lots are permitted: one sign not exceeding two (2) square feet in area and not illuminated may be attached to a Living Unit where a professional office (as defined below) is maintained, and one temporary real estate



sign not exceeding six (6) square feet in area may be erected upon any Lot or attached to any Living Unit placed upon the market for sale or rent.

- (j) No structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels.
- (k) Nothing shall be done or kept in any Lot or Living Unit or in the Common Area which will increase the rate of insurance for the Association applicable for residential use without the prior written consent of the Board of Directors. No Owners shall permit anything to be done or kept in their Lot or Living Unit or in any Common Areas which shall result in the cancellation of insurance or increase in premium carried by the Association, or which would be in violation of any law. No waste will be committed in any Common Areas.
- (l) No Lot or Living Unit may be used for transient or hotel purposes or for any commercial rental purposes. All leases must be for a term of at least six (6) months, unless otherwise approved by the Board of Directors. Garages within Living Units may only be rented or leased to the tenant or lessee of a Living Unit. Except for garages within Living Units, no portion of a Lot and the Living Unit (other than the entire Lot and Living Unit) may be rented unless the prior written approval of the Board of Directors is obtained. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of Maryland law, the Governing Documents, and that any failure of the lessee to comply with the terms of such provisions shall be a default under the lease, which default may be remedied by the Owner in accordance with the lease or by the Board of Directors, in accordance with Maryland law. All leases must be in writing.
- (m) The Association shall be entitled to involuntarily remove any vehicle violating the provisions of the Governing Documents and the Board of Directors may charge the owner of the vehicle for any costs incurred by the Association in connection with such removal.

Section 3. Right of Association to Remove or Correct Violations of this Article. The Association may, after reasonable notice to the Owner, enter upon any Lot or the exterior of any Living Unit at reasonable hours on any day, except Sunday, for the purpose of inspecting or removing or correcting any violation or breach or any attempted violation of any of the covenants and restrictions contained in this Article, or for the purpose of abating anything defined as a prohibited use or nuisance, provided, however, that no such action shall be taken without a resolution of the Board of Directors of the Association. Any costs incurred by the Association to remove or correct such violation shall be assessed against the Owner and collectible in the same manner as Assessments pursuant to Article VI.

## ARTICLE XI

Section 1. Residential Use. All Living Units shall be used for private residential purposes exclusively, except for the following: (i) a professional office may be maintained in a Living Unit, provided that such maintenance and use is limited to the person actually residing in the dwelling and one other professional associate, and, provided further, that such maintenance and use is in strict conformity with the provisions of any relevant zoning law or ordinance; and (ii) that the use of a Living Unit for a “no-impact home-based business”, as defined in Section 11B-111.1 of the Maryland Homeowners Association Act, shall be permitted, provided that: (a) before any Living Unit may be used for a no-impact home-based business the Owner and/or resident of such Living Unit shall notify the Association, in writing, at least thirty (30) days prior to the opening of the no-impact home based business; (b) in no event shall the Common Area be used by or in connection with any permitted no-impact home based business; and (c) the use is in compliance with local zoning ordinances, governmental guidelines or restrictions and has obtained all necessary governmental approvals.

Section 2. Professional Office. “Professional office” shall mean rooms used for office purposes but not by more than two members of any recognized profession, including doctors, dentists, lawyers, accountants, engineers, architects, but not including medical or dental clinics.

Section 3. Family Child Care Home. The use of any Living Unit as a “family child care home” as defined in Section 11B-111.1 of the Maryland Homeowners Association Act is prohibited. The prohibition on family child care homes may be eliminated and family child care homes may be approved by a simple majority of the total eligible voters of the Association under the voting procedures contained in the Amended Declaration or Bylaws.

## ARTICLE XII

Section 1. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfers their Lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants set forth in this Amended Declaration. In any event, the failure to do so shall not absolve the successor Owner from compliance with the covenants and restrictions set forth in this Amended Declaration.

### Section 2. Leasing and Rentals.

(a) All leases or rental agreements for an entire Lot and Living Unit or a portion of the same as approved under Article X, Section (2)(1) of this Amended Declaration shall (i) contain provisions advising the tenants of their obligation to comply with the Governing Documents, and (ii) provide that the Association shall have the right to terminate the lease or rental agreement upon default by the tenant in observing any of the provisions of the Governing Documents or of any other document, agreement or instrument governing the Lots and/or the Property.

(b) Prior to the Association taking any action to terminate a lease or rental agreement, the Owner and tenant shall be given at least forty-eight (48) hours prior written notice of any such default and twenty-four (24) hours within which to cure any such default.

(c) The Owner(s) of a leased or rented Lot shall notify the Association in writing of the Owners' current address.

(d) The Owner(s) of a leased or rented Lot shall be jointly and severally liable along with their tenant(s) to the Association to pay any claim for injury or damage to persons or property caused by any action or omission, including, without limitation, the negligence of the tenant(s). Every lease shall be subordinate to any lien filed by the Association, whether before or after such lease was entered into.

### **ARTICLE XIII**

Section 1. Substantial Damage or Destruction. In the event of substantial damage or destruction to any of the Common Area or Community Facilities, the Association shall give prompt written notice of such damage or destruction to each Owner and Eligible Mortgagee (defined as a first mortgagee of record who has requested such notices from the Association in writing). No provision of the Governing Documents shall entitle any Owner to any priority over the holder of any first mortgage of record on such Owner's Lot with respect to the distribution to such Owner of any insurance proceeds paid or payable on account of any damage or destruction of any of the Common Area or Community Facilities.

Section 2. Condemnation or Eminent Domain Proceeding. In the event any part of the Common Area or Community Facilities is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, the Association shall give prompt written notice of any such proceeding or proposed acquisition to each Owner and Eligible Mortgagee. No provision of the Governing Documents shall entitle any Owner to any priority over the holder of any first mortgage of record on such Owner's Lot with respect to the distribution to such Owner of the proceeds of any condemnation or settlement relating to a taking of any of the Common Area or Community Facilities.

Section 3. Individual Lot Insurance. By virtue of taking title to a Lot, each Owner of a Lot covenants and agrees that they shall carry blanket all risk casualty insurance on the Living Unit and all structures located upon their Lot. At a minimum, such coverage shall provide coverage against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any insured hazard. Each Owner of a Lot further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction to the Living Unit and other structures constructed on the Lot, the Owner shall proceed promptly to repair or to reconstruct the Living Unit and other damaged structures in a manner consistent with the original construction. Each Owner of a Lot covenants and agrees that in the event that such Living Unit is totally destroyed, the Owner shall proceed promptly to repair or to reconstruct the Living Unit in a manner consistent with the original construction, unless approval to do otherwise is obtained from the Board of Directors.

## ARTICLE XIV

Section 1. Amendment. All covenants, conditions and restrictions set forth in this Amended Declaration shall run with and bind the land and shall be perpetual unless expressly stated otherwise in this Amended Declaration. This Amended Declaration may be amended by the affirmative vote of at least sixty percent (60%) of all Owners in good standing. Any amendment must be recorded in the Land Records. The term "in good standing" means not being more than ninety (90) days in arrears in the payment of any Assessment or charge due to the Association.

### Section 2. Enforcement.

(a) Enforcement of these covenants shall be by any proceeding at law or in equity against any person violating or attempting to violate any covenant, either to restrain or enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure or forbearance by the Association or any Owner to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter. There shall be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants cannot be adequately remedied by action at law or by recovery of damages.

(b) The Association is not required to adjudicate or arbitrate any dispute between Owners concerning any violations of these covenants and restrictions that affect only their Living Units or Lots. If an Owner brings a dispute to the Board that involves a violation of covenants relating to private property, after hearing the details of the case, the Board will determine whether it needs to take an action to enforce covenants or if the case is a dispute between Owners. The Association is not required to adjudicate or arbitrate any dispute between Owners.

However, if any such dispute between Owners affecting their Living Units or Lots also affects the Property or the rights of Association Members to use the Common Area and Community Facilities, the Association retains the right to seek enforcement of covenants and restrictions that may be involved in any such dispute involving the Owners.

Section 3. Fines. In addition to the means for enforcement provided elsewhere herein, the Association, acting through the Board of Directors, shall, after notice and an opportunity for a hearing, have the right to levy reasonable fines against an Owner for a violation by such Owner, his guests, relatives, tenants, lessees and/or invitees of any provision of the Governing Documents. Each day a violation continues or reoccurs shall be deemed a separate violation, subject to a separate fine. The fine amounts shall be determined by the Board of Directors.

Section 4. Attorney Fees and Costs. In any dispute involving a violation of governing documents, ordinarily each party will bear its own legal fees and costs. However, an unsuccessful party may be ordered to pay the other party's legal fees and costs if it is found to have not acted in good faith, filed a frivolous complaint, or unreasonably refused to take

part in any required mediation effort. If the party awarded legal fees and costs under this Section is the Association, such award shall become a binding, personal obligation of the Owner of the Lot, and such cost shall also be a lien upon the Lot of such Owner as provided by Maryland law.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or court order shall in no way affect any other provision, each of which shall remain in full force and effect.

Section 6. Perpetuities. If any of the covenants, conditions, easements, restrictions, or other provisions of this Amended Declaration shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the Majority and Minority Leaders of US Senate, the Speaker and Minority Leader of US House of Representatives, Associate Justices of the US Supreme Court, the President of Maryland Senate and the Speaker of Maryland House of Delegates, as of the date this Amended Declaration is approved by Association Members. (See Attached Exhibit B, listing names of office holders).

Section 7. Conflict. In the event of any conflict between this Amended Declaration and/or the Articles of Incorporation or the Bylaws, the provisions of this Amended Declaration shall control.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Association has caused this **Amended and Restated Declaration of Covenants, Conditions and Restrictions for The New Mark Commons Homes Association, Inc.** to be executed by Kathleen Moran, its President, and does hereby appoint Ruth O. Katz as its true and lawful attorney-in-fact to acknowledge and deliver this Amended Declaration on the day and year first above written.

ATTEST:

DocuSigned by:  
Joseph Jordan  
D788E169AE004C8  
Joseph Jordan, Secretary

THE NEW MARK COMMONS  
HOMES ASSOCIATION, INC.  
DocuSigned by:  
Kathleen Moran  
2B68277D04834BE  
Kathleen Moran, President

[Corporate Seal]

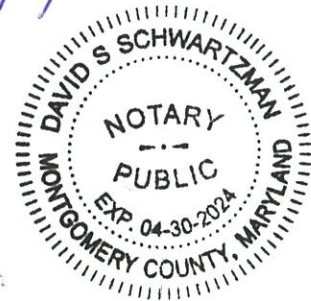
STATE OF MARYLAND: ss

I hereby certify that on this 21 day of AUGUST, 2023, before me, the subscriber, a Notary Public in and for the jurisdiction aforesaid, Kathleen Moran personally appeared in said jurisdiction, personally known to me to be the person who executed the foregoing instrument bearing date on the 21 day of AUGUST, 2023, and personally well-known to me to be the President of The New Mark Commons Homes Association, Inc., and acknowledged the same to be the act and deed of the Association, and that the same was executed for the purposes therein contained.

WITNESS my hand and seal the year and day first above written.

David S. Schwartzman  
Notary Public

My Commission Expires: 4/30/2024



CERTIFICATION OF VOTE  
OF THE MEMBERS OF  
THE NEW MARK COMMONS HOMES ASSOCIATION, INC.

In accordance with §11B-116 of the Maryland Homeowners Association Act, the enclosed **Amended and Restated Declaration of Covenants, Conditions and Restrictions for The New Mark Commons Homes Association, Inc.** was approved by the affirmative vote of members in good standing having at least 60% of the votes in the Association.

ATTEST:

THE NEW MARK COMMONS  
HOMES ASSOCIATION, INC.

DocuSigned by:  
*Joseph Jordan*  
D788E189AE604C8...

\_\_\_\_\_  
Joseph Jordan, Secretary

DocuSigned by:  
*Kathleen Moran*  
2B68277D04834BE...

\_\_\_\_\_  
Kathleen Moran, President

Return recorded copy to:

Ruth O. Katz, Esq.  
Lerch, Early & Brewer, Chartered  
7600 Wisconsin Avenue, Suite 700  
Bethesda, Maryland 20814

## EXHIBIT A

The real property which is and shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied, and improved subject to this Amended Declaration is located in the City of Rockville, County of Montgomery, State of Maryland, and is more particularly described as follows:

Being parts of tracts of land called "Spittlefields", "Smock Alley", "Exchange and New Exchange Enlarged", "The Resurvey on the Wheel of Fortune", "The Resurvey of Valentines' Garden" and "Partnership", or by whatever name or names the same may be known or called, conveyed by two (2) deeds, the first to Edmund J. Bennett and Edmund J. Bennett Associates, Inc., dated February 28, 1966, recorded among the Land Records of Montgomery County, Maryland, in Liber 3474 at Folio 541, and the second (2<sup>nd</sup>) deed to Edmund J. Bennett Associates, Inc., dated March 7, 1966, recorded among the aforesaid Land Records in Liber 3486 at Folio 15, and also the hereinafter set forth descriptions being intended to include all of the land which was the subject of the abandonment proceedings filed among the records for the Circuit Court of Montgomery County, Maryland, Equity Numbers 30956 and 31405.

Beginning for the same at a point in the 18<sup>th</sup> line of a conveyance made December 3, 1896 by Hattersly W. Talbott to J. Maury Dove, recorded among said Land Records in Liber JA 55 at Folio 316, the said point of beginning being North 38° 42' 31" West 27.58 feet from the beginning point used in a conveyance made June 10, 1914 by Malcolm S. McConike to Henry A. Dawson and recorded among said Land Records in Liber 242 at Folio 333, thence with the outline of the Talbott to Dove conveyance reversed the following six courses:

- 1) North 38° 42' 31" West 637.56 feet
- 2) North 06° 59' 50" West 61.85 feet
- 3) North 00° 27' 45" East 647.95 feet
- 4) South 88° 55' 37" West 418.78 feet
- 5) North 01° 24' 15" East 851.08 feet, and
- 6) South 89° 51' 35" West 636.74 feet to a point on the easterly side of the Potomac Valley Road, thence with the easterly side of the said road with a curve to the left whose radius is 325.00 feet (whose chord is North 25° 59' 37" West 32.00 feet) an arc distance of 32.01 feet and North 28° 48' 55" West 244.66 feet to a point on the second line of a quit claim deed made June 22, 1964 by Edison W. Mollohan to Thomas S. Jackson recorded among said Land Records in Liber 3288 at Folio 328, thence with the outlines of the said Mollohan to Jackson conveyance the following three courses:

- 1) North 74° 21' 35" West, 130.46 feet
- 2) North 61° 23' 50" East, 637.35 feet



- 3) South 16° 38' 25" West, 85.22 feet to a point on the southeasterly side of Maryland Avenue as same appears on a plat of "Rockville Heights" recorded in Plat Book A at Plat 56, thence with the said side of Maryland Avenue

North 61° 23' 50" East 1728.00 feet to a point at the terminus of the second line of a conveyance made December 1, 1923, by Malcolm S. McConike to Thomas J. Viers recorded among said Land Records in Liber 342 at Folio 128, thence with the 3<sup>rd</sup> and 4<sup>th</sup> lines of the said McConike to Viers conveyance.

South 00° 37' 25" West 191.32 feet and

South 89° 22' 35" East 220.69 feet to a point on the west side of Adams Street as laid down on the aforementioned plat of "Rockville Heights", thence with the lines of Adams Street the following three courses:

- 1) South 00° 37' 25" West, 145.30 feet
- 2) South 89° 22' 35" East 50.00 feet, and
- 3) North 00° 37' 25" East, 128.26 feet to the beginning of the 3<sup>rd</sup> line of a conveyance made May 21, 1951 by Malcolm S. McConike to Allison H. Chapin, recorded among said Land Records in Liber 1529 at Folio 557, thence with the said 3<sup>rd</sup> line of the said conveyance.

South 89° 25' 46" East 97.31 feet to the beginning of the 3<sup>rd</sup> line of a conveyance made May 9, 1951 by Malcolm K. McConike to Charles E. West, recorded among the said Land Records in Liber 1525 at Folio 223, thence with the 3<sup>rd</sup> line of said conveyance

South 57° 26' 04" East 120.16 feet to a point at the end of the 2<sup>nd</sup> line of a conveyance made April 11, 1951 by Malcolm S. McConike to Thomas O. Crown, recorded among said Land Records in Liber 1519 at Folio 510, thence with the 2<sup>nd</sup> line of the said conveyance reversed

South 57° 03' 10" East 120.17 feet to a point in the line of John F. Thompson, his Deed being recorded in Liber 1028 at Folio 266 among said Land Records, thence with Thompsons' lines

South 28° 54' 38" West 44.96 feet and thence

South 60° 45' 55" East 113.52 feet to a point at the end of the 4<sup>th</sup> line of a conveyance made November 4, 1940 by Malcolm S. McConike to Julia C. Foley, recorded among said Land Records in Liber 803 at Folio 105, thence with the 5<sup>th</sup> line of the said McConike to Foley conveyance and continuing with the 3<sup>rd</sup> and 2<sup>nd</sup> lines of a conveyance made August 13, 1941 by Malcolm S. McConike to Eugene S. Robb, recorded among said Land Records in Liber 842 at Folio 22, reversed

South 29° 03' 39" West 263.47 feet and

South 60° 08' 27" East 416.53 feet to a point on the northwesterly side of Monroe Street as said Street is shown on a plat of "Rockville Heights" in Plat Book A at Plat 56, thence with the said side of Monroe Street

South 26° 18' 43" West 560.81 feet to a point of intersection with Waddington Circle, thence with Waddington Circle with a curve to the left whose radius is 400.00 feet (whose chord is South 26° 18' 43" West 798.44 feet) an arc distance of 1206.61 feet to a point on the aforementioned northwesterly side of Monroe Street, thence with Monroe Street

South 26° 18' 43" West 1432.41 feet to the point of beginning; saving and excepting therefrom a tract of land described as follows:

Beginning at a point on the easterly or South 00° 11' 26" East, 345.75 foot line of New Mark Esplanade, as shown on a plat of subdivision entitled "Plat One, New Mark Commons", recorded among the aforesaid Land Records in Plat Book 81 as Plat No. 8291, 275.00 feet from the beginning thereof, said point being also the southwesterly most corner of Parcel F as shown on a plat of subdivision entitled "Plat Four, New Mark Commons", recorded among the aforesaid Lane Records in Plat Book 82 as Plat No. 8517 and running with part of the outline of said Parcel F and the adjacent Parcel E the following two (2) courses and distances:

- 1) North 89° 48' 34" East, 435.00 feet to a point; and thence
- 2) South 00° 11' 26" East, 160.00 feet to a point; thence leaving the aforesaid outline of Parcel E and running through the property as described in the aforesaid deeds the following five (5) courses and distances;
- 3) South 89° 48' 34" West, 210.00 feet to a point; thence
- 4) South 00° 11' 26" East, 143.00 feet to a point; thence
- 5) South 89° 48' 34" West, 8.00 feet to a point; thence
- 6) South 00° 11' 26" East, 100.00 feet to a point; and thence
- 7) South 89° 48' 34" West, 217.00 feet to a point in the easterly or South 00° 11' 26" East, 360.00 foot line of New Mark Esplanade, as shown on the aforesaid plat, recorded in Plat Book 81 as Plat No. 8291; thence running with the easterly line of New Mark Esplanade
- 8) North 00° 11' 26" West, 403.00 feet to the point of beginning; leaving a net area of 93.14559 acres.

All that piece or parcel of land conveyed by Ervin Atlantic Company to Cebco, Inc., by Deed dated December 31, 1975 and recorded in liber 4734 at folio 488 among the Land Records of Montgomery County, Maryland, and described as follows:

Beginning for the same at a point in the easterly or South 00° 11' 26" East 345.75 foot line of New Mark Esplanade, 60 feet wide, as shown on a plat of subdivision entitled "Plat One, New Mark Commons", recorded among the aforesaid Land Records in Plat Book 81 at Plat No. 8291, 275.00 feet from the beginning thereof, said point being also the southwesternmost corner of Block "D" as shown on a plat of subdivision entitled "Plat Eight, New Mark Commons" recorded among the Land Records in Plat Book 85 as Plat No. 8932; thence leaving the said New Mark Esplanade and running reversely, along the southerly or South 89° 48' 34" West 288.00 foot line of Block "D", as shown on the aforesaid Plat Eight and continuing the same course along the southerly or South 89° 48' 34" West 147.00 foot line of Block "D" as shown on a plat of subdivision entitled "Plat Eleven, New Mark Commons", recorded among the aforesaid Land Records in Plat Book 86 as Plat No. 9073,

1. North 89° 48' 34" East 435.00 feet to a point; thence running, reversely, along the westerly or North 00° 11' 26" West 36.00 foot line of Block "D" as shown on the aforesaid Plat Eleven and continuing the same course along a portion of the westerly or North 00° 11' 26" West 204.00 foot line of Block "D" as shown on a plat of subdivision entitled "Plat Twenty, New Mark Commons" recorded among the aforesaid Land Records in Plat Book 92 as Plat No. 10013,
2. South 00° 11' 26" East 160.00 feet to a point; thence leaving the said Block "D" and running within the aforesaid deed the following five (5) courses and distances
3. South 89° 48' 34" West 210.00 feet to a point; thence
4. South 00° 11' 26" East 143.00 feet to a point; thence
5. South 89° 48' 34" West 8.00 feet to a point; thence
6. South 00° 11' 26" East 100.00 feet to a point; and thence
7. South 89° 48' 34" West 217.00 feet to a point in the easterly line of the aforesaid New Mark Esplanade as shown on the aforesaid Plat One; thence running along the said line of the said New Mark Esplanade,
8. North 00° 11' 26" West 403.00 feet to the point of beginning; containing 123,475 square feet or 2.8346 acres.

Being property conveyed to record owner by Deed dated December 21, 1975 and recorded in liber 4734 at folio 488 among the aforesaid Land Records.

## **EXHIBIT B**

As of the date that the Amended Declaration was approved by Association Members, the following individuals served in the following offices:

- i. The Majority Leader of the U.S. Senate is Charles E. Schumer
- ii. The Minority Leader of the U.S. Senate is Mitch McConnell
- iii. The Speaker of the U.S. House of Representatives is Kevin McCarthy
- iv. The Minority Leader of the U.S. House of Representatives is Hakeem Jeffries
- v. The Associate Justices of the U.S. Supreme Court are:
  1. Clarence Thomas
  2. Samuel A. Alito, Jr.
  3. Sonia Sotomayor
  4. Elena Kagan
  5. Neil M. Gorsuch
  6. Brett M. Kavanaugh
  7. Amy Coney Barrett, and
  8. Ketanji Brown Jackson
- vi. The President of the Maryland Senate is Bill Ferguson
- vii. The Speaker of the Maryland House of Delegates is Adrienne A. Jones

Tax Identification Numbers			
<u>Account</u>	<u>Street</u>	<u>Map</u>	<u>Parcel</u>
04 00241233	1 BASILDON CIR	GR31	0
04 00241200	2 BASILDON CIR	GR31	0
04 00240626	3 BASILDON CIR	GR31	0
04 00241197	4 BASILDON CIR	GR31	0
04 00240193	BENTANA CT	GR31	0
04 00240650	1 BENTANA WA\	GR31	0
04 00240284	2 BENTANA WA\	GR31	0
04 00241472	3 BENTANA WA\	GR31	0
04 00240717	4 BENTANA WA\	GR31	0
04 00241404	5 BENTANA CT	GR31	0
04 00241084	6 BENTANA CT	GR31	0
04 00240182	7 BENTANA CT	GR31	0
04 00241734	8 BENTANA CT	GR22	0
04 00240876	9 BENTANA CT	GR22	0
04 00240887	10 BENTANA CT	GR31	0
04 00240810	11 BENTANA WA\	GR31	0
04 00241574	12 BENTANA WA\	GR31	0
04 00240648	13 BENTANA WA\	GR31	0
04 00241530	14 BENTANA CT	GR31	0
04 00241940	15 BENTANA WA\	GR31	0
04 00240637	16 BENTANA WA\	GR31	0
04 00240171	17 BENTANA WA\	GR31	0
04 00241038	18 BENTANA WA\	GR31	0
04 00241528	19 BENTANA WA\	GR31	0
04 00241450	1 CUMBERNAULD CT	GR31	0
04 00241608	2 CUMBERNAULD CT	GR31	0
04 00239695	3 CUMBERNAULD CT	GR31	0
04 00240397	4 CUMBERNAULD CT	GR31	0
04 00240386	5 CUMBERNAULD CT	GR31	0
04 00240375	6 CUMBERNAULD CT	GR31	0
04 00240364	7 CUMBERNAULD CT	GR31	0
04 00240353	8 CUMBERNAULD CT	GR21	0
04 00240342	9 CUMBERNAULD CT	GR31	0
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04 00240854	2 BRACKNELL CIR	GR31	0
04 00240400	3 BRACKNELL CIR	GR31	0
04 00240238	4 BRACKNELL CIR	GR31	0
04 00241676	5 BRACKNELL CIR	GR31	0
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04 00241448	1 DON MILLS CT	GR21	0
04 00241175	2 DON MILLS CT	GR31	0
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04 00241687	4 DON MILLS CT	GR21	0
04 00239673	5 DON MILLS CT	GR21	0
04 00239731	6 DON MILLS CT	GR31	0

04 00241461	7 DON MILLS CT	GR31	0
04 00239720	8 DON MILLS CT	GR31	0
04 00241984	9 DON MILLS CT	GR31	0
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04 00240763	2 FARSTA CT	GR31	0
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04 00241860	4 FARSTA CT	GR31	0
04 00241973	5 FARSTA CT	GR31	0
04 00241778	6 FARSTA CT	GR31	0
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04 00239707	8 LAKESIDE OV	GR32	0
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04 00241437	11 LAKESIDE OV	GR31	0
04 00241153	12 LAKESIDE OV	GR31	0
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04 00240581	3 LETCHWORTH CIR	GR31	0
04 00240570	4 LETCHWORTH CIR	GR22	0

04 00240568	5 LETCHWORTH CIR	GR31	0
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04 00241073	2 RADBURN CT	GR31	0
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04 00239946	5 RADBURN CT	GR31	0
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04 00239888	8 RADBURN CT	GR31	0
04 00239924	9 RADBURN CT	GR31	0
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04 01507528	11 SCANDIA WAY	GR31	0
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04 00240912	13 WATCHWATER WA`	GR31	0
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04 00241027	21 WATCHWATER WA`	GR31	0
04 00240843	22 WATCHWATER WA`	GR31	0
04 00240923	23 WATCHWATER WA`	GR31	0
04 00240490	9 WELWYN WAY	GR31	0
04 00240488	10 WELWYN WAY	GR31	0
04 00240477	11 WELWYN WAY	GR31	0
04 00240466	12 WELWYN WAY	GR31	0
04 00240455	13 WELWYN WAY	GR31	0
04 00240444	14 WELWYN WAY	GR31	0
04 00240433	15 WELWYN WAY	GR31	0
04 00240422	16 WELWYN WAY	GR31	0
04 00242011	17 WELWYN WAY	GR31	0
04 00240411	18 WELWYN WAY	GR31	0
04 00240331	23 WELWYN WAY	GR21	0
04 00240320	24 WELWYN WAY	GR21	0
04 00240318	25 WELWYN WAY	GR31	0

**State of Maryland Land Instrument Intake Sheet**

**Baltimore City**     **County:** Montgomery  
 Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.  
 (Type or Print in Black Ink Only—All Copies Must Be Legible)

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<b>1</b>	<b>Type(s) of Instruments</b>	<input type="checkbox"/> Check Box if addendum Intake Form is Attached.						
	<input type="checkbox"/> Deed <input type="checkbox"/> Deed of Trust	<input type="checkbox"/> Mortgage <input type="checkbox"/> Lease	<input checked="" type="checkbox"/> Other amended <input type="checkbox"/> Dec Covenants	<input type="checkbox"/> Other				
<b>2</b>	<b>Conveyance Type</b> Check Box	<input type="checkbox"/> Improved Sale Arms-Length [1]	<input type="checkbox"/> Unimproved Sale Arms-Length [2]	<input type="checkbox"/> Multiple Accounts Arms-Length [3]	<input type="checkbox"/> Not an Arms- Length Sale [9]			
<b>3</b>	<b>Tax Exemptions</b> (if applicable) Cite or Explain Authority	Recorlation _____ State Transfer _____ County Transfer _____						
<b>4</b>	<b>Consideration and Tax Calculations</b>	<b>Consideration Amount</b>		<b>Finance Office Use Only</b> <b>Transfer and Recordation Tax Consideration</b>				
		Purchase Price/Consideration	\$	Transfer Tax Consideration	\$			
		Any New Mortgage	\$ 0.00	X ( ) %	- \$			
		Balance of Existing Mortgage	\$	Less Exemption Amount	- \$			
		Other:	\$	Total Transfer Tax	= \$			
		Other:	\$	Recordation Tax Consideration	\$			
		Full Cash Value:	\$	X ( ) per \$500	- \$	TOTAL DUE	\$	
<b>5</b>	<b>Fees</b>	<b>Amount of Fees</b>		<b>Doc. 1</b>		<b>Doc. 2</b>		Agent: _____ Tax Bill: _____ C.B. Credit: _____ Ag. Tax Other: _____
		Recording Charge	\$	75.00	\$			
		Surcharge	\$	40.00	\$			
		State Recordation Tax	\$	0.00	\$			
		State Transfer Tax	\$		\$			
		County Transfer Tax	\$		\$			
		Other	\$		\$			
<b>6</b>	<b>Description of Property</b> SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).	<b>District</b> 04	<b>Property Tax ID No. (1)</b> See Document	<b>Grantor Liber/Folio</b>	<b>Map</b>	<b>Parcel No.</b>	<b>Var. LOG</b> <input type="checkbox"/> (5)	
	<b>Subdivision Name</b> New Mark Commons	<b>Lot (3a)</b>	<b>Block (3b)</b>	<b>Sect/AR (3c)</b>	<b>Plat Ref.</b>	<b>SqFt/Acreage (4)</b>		
	<b>Location/Address of Property Being Conveyed (2)</b>							
	Rockville, Maryland							
	<b>Other Property Identifiers (if applicable)</b>					<b>Water Meter Account No.</b>		
	<b>Residential</b> <input checked="" type="checkbox"/> or <b>Non-Residential</b> <input type="checkbox"/>	<b>Fee Simple</b> <input checked="" type="checkbox"/> or <b>Ground Rent</b> <input type="checkbox"/>	<b>Amount:</b>	N/A				
	<b>Partial Conveyance?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	Description/Amt. of SqFt/Acreage Transferred: N/A						
	If Partial Conveyance, List Improvements Conveyed: N/A							
<b>7</b>	<b>Transferred From</b>	<b>Doc. 1 – Grantor(s) Name(s)</b>			<b>Doc. 2 – Grantor(s) Name(s)</b>			
		New Mark Commons Homes Association, Inc.						
		<b>Doc. 1 – Owner(s) of Record, if Different from Grantor(s)</b>			<b>Doc. 2 – Owner(s) of Record, if Different from Grantor(s)</b>			
<b>8</b>	<b>Transferred To</b>	<b>Doc. 1 – Grantee(s) Name(s)</b>			<b>Doc. 2 – Grantee(s) Name(s)</b>			
		New Mark Commons Homes Association, Inc.						
		<b>New Owner's (Grantee) Mailing Address</b>						
<b>9</b>	<b>Other Names to Be Indexed</b>	<b>Doc. 1 – Additional Names to be Indexed (Optional)</b>			<b>Doc. 2 – Additional Names to be Indexed (Optional)</b>			
<b>10</b>	<b>Contact/Mail Information</b>	<b>Instrument Submitted By or Contact Person</b>						
		Name:	Nura Rafati, Esquire					
		Firm:	Lerch, Early & Brewer, Chartered					
		Address:	7600 Wisconsin Avenue, #700 Bethesda, Maryland 20814      Phone: (301) 986-1300					
<b>11</b>	<b>Assessment Information</b>	IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Will the property being conveyed be the grantee's principal residence? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Does transfer include personal property? If yes, identify: _____ Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).						
		<b>Assessment Use Only – Do Not Write Below This Line</b>						
		<b>Terminal Verification</b>	<b>Agricultural Verification</b>	<b>Whole</b>	<b>Part</b>	<b>Tran. Process Verification</b>		
		<b>Transfer Number</b>	<b>Date Received:</b>	<b>Deed Reference:</b>	<b>Assigned Property No.:</b>			
		Year	20	20	Geo.	Map	Sub	Block
		Land			Zoning	Grid	Plat	Lot
		Buildings			Use	Parcel	Section	Occ. Cd.
		Total			Town Cd.	Ex. St.	Ex. Cd.	
		REMARKS:						

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LR - Covenant  
Recording Fee 75.00  
Declarant Name: NEW  
MARK COMMONS HOA  
Ref:  
LR - Covenant  
Surcharge 40.00  
=====

SubTotal:	115.00
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Total:	115.00
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08/30/2023 02:24  
CC15-Red  
#17522591 CC0602 -  
Montgomery  
County/CC06.02.05 -  
Register 05



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**KAREN A. BUSHELL**  
Clerk of the Circuit Court for Montgomery County  
50 Maryland Avenue  
Rockville, Maryland 20850  
Recording and Licensing  
(240) 777-9470