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Paul Ferguson, Clerk
Arlington County Clerk
Grantor Tax: \$.00
State Tax: \$.00
Recording Fee:\$40.00

See attached for RPC numbers

**FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

WITNESSETH:

WHEREAS, THE FIRST BALLSTON COMMONS HOMEOWNERS ASSOCIATION, INC. ("Association") is a residential community with permanent open spaces and other common facilities for the benefit of said community; and

WHEREAS, the Association, to provide for the continued preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities, and the real property subject to the covenants, restrictions, easements, conditions, charges and liens, hereinafter set forth, which shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof; and

WHEREAS, the Association holds the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges herein after created; and

WHEREAS, the Association is incorporated under the laws of the State of Virginia, as a non-stock corporation, THE FIRST BALLSTON COMMONS HOMEOWNERS ASSOCIATION, INC., for the purpose of exercising the functions aforesaid; and

WHEREAS, the Association, through the authority granted in Section 55.1-1830 of the Virginia Property Owners' Association Act ("Act"), and with approval of at least two-thirds (2/3) of the Board of Directors, hereby amends the Declaration to delete obsolete references to the Declarant which is no longer the Owner of the real property described in Article IV and to incorporate amendments previously adopted by the Declarant and the ownership.

NOW, THEREFORE, the Association declares that the real property described in Article IV is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, conditions, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration (Unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to "THE FIRST BALLSTON COMMONS HOMEOWNERS ASSOCIATION, INC."

(b) "The Properties" shall mean and refer to that certain real property referred to in Article II.

(c) "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association, and shall be taken and construed to embrace all of the Areas designed as – Parcel "A" - Common Area (Open Space) and easement for ingress, egress, public utilities, sidewalks, drainage, sanitary sewer, water lines, driveway and parking purposes, and Parcel "B" and Parcel "C" – Common Area (Open Space) and easement for ingress, egress, public utilities and sidewalk purposes.

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded Subdivision map of The Properties, excepting the Common Area as heretofore defined.

(e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of The Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(f) "Member" shall mean and refer to all those owners who are members of the Association as provided in Article V, Section 1, hereof.

(g) "Declarant" shall mean and refer to the former developer of the Property, Ballston Commons Limited Partnership, which no longer Owns or develops upon any real property within the Association.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Arlington County, Virginia, and is more particularly described as:

BEGINNING at a point in the Westerly right-of-way line of North Utah Street, said point also marking the Northeasterly corner of Lot 38, Moncure's Addition to Ballston; thence departing North Utah Street and running with the Northerly line of Lot 38, N. 89° 29' 00" W. 106.51 feet to a point on the Easterly side of a 10 foot wide alley; thence with the Easterly side of said Alley, N. 2° 39' 00" E. 24.50 feet to a point; thence with the Northerly side of said Alley and continuing with the Northerly line of Lot 64, West Ballston, No. 87° 21' 00" W. 135.00 feet to a point in the Easterly right-of-way line of North Vermont Street; thence with the Easterly right-of-way line of North Vermont Street, N. 2° 39' 00" E. 45.00 feet; thence with a Northerly right-of-way line of North Vermont Street, N. 87° 21' 00" W. 20.00 feet to a point marking the most Southeasterly corner of Lot 75-A, West Ballston; thence departing North Vermont Street and running with

the Easterly line of Lot 75-A, and continuing with the Easterly line of Outlot 73-A, West Ballston, N. 2° 39' 00" E. 120.92 feet to a point in the Southerly right-of-way line of North Washington Boulevard; thence with the Southerly right-of-way line of North Washington Boulevard the following courses and distances: S. 86° 39' 00" E. 21.56 feet, along the arc of a 15.00 foot radius curve (the chord bearing and distance of which is N. 61° 11' 20" E. 15.97 feet) an arc distance of 16.84 feet, S. 86° 39' 00" E. 204.23 feet and along the arc of a 15.00 foot radius curve (the chord bearing and distance of which is S. 43° 10' 00" E. 20.64 feet) an arc distance of 22.77 feet to a point in the aforementioned Westerly right-of-way line of North Utah Street; thence with the Westerly right-of-way line of North Utah Street, S. 0° 19' 00" W. 177.80 feet to the point of beginning, containing 45,671 square feet of land; of which 28,358 square feet of land is contained in Lots and 17,313 square feet of land is contained in the "Common Area";

to be known as "DAHNK'S BALLSTON COMMONS" and hereinafter referred to as "Existing Property".

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment of the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separate from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be sole qualification for membership.

Section 2. Voting Rights. All members shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for such Lot, shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Owners' Easements of Enjoyment: Subject to the provisions of Section 3, every Owner shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

(a) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said properties, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and

(c) The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid; and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(d) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated on Common Properties; and

(e) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of each Class of Membership has been recorded, agreeing to such dedication, transfer, purpose of condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ten (10) days, but not more than fifty (50) days, in advance of any action taken; and

(f) The right of the Association to limit the number of guests of Members.

Section 2. Delegation of Use. Any member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area within aforesaid Subdivision to the Association, free and clear of all encumbrances and liens, but subject to easements and rights of way herein created, dedicated or reserved, prior to the conveyance of the first Lot to be conveyed.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established to be fixed, established and collected from time to time as hereinafter

provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with such interest thereon, costs of collection thereof, including reasonable attorney's fees as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in The Properties 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 Properties and of the homes situated upon The Properties.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment shall be One Hundred Eighty Dollars (\$180.00) – per Lot,, except that during said period the maximum annual assessment may be increased by action of the Board of Directors by an amount not in excess of five percent (5%) of the maximum annual assessment hereinabove established.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the “Revised Consumer Price Index for Urban Wage Earners and Clerical Workers (1967=100), Washington, D.C., Standard Metropolitan Statistical Area”, for the last quarter of the preceding year.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above that established by the aforesaid Consumer Price Index formula by a vote of the members for the next succeeding period of two (2) years, provided that any such change shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 10 days nor more than 50 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation

- (c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment on all Lots applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that, any such assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 10 days, nor more than 50 days, in advance of the meeting setting forth the purpose of the meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. The Board of Directors may, at its discretion, require the annual and/or special assessments to be paid on a monthly basis and may require that such payments be made to a mortgagee under the Deed of Trust on the respective Lots or any other collection agent selected by the Board of Directors.

Section 6. Quorum For Any Action Authorized Under Sections 3 and 4: At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all votes of the Membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, 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, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the

assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Prior to the institution of any action at law or proceedings to foreclose the lien of any delinquent assessments the Association shall furnish thirty (30) days written notice of such delinquencies (which thirty (30) day period may run concurrently with the aforesaid thirty (30) days from date of delinquency) to the first mortgagee shown of record among the Land Records of Arlington County, Virginia.

Section 9. Subordination of the Lien to Mortgages or Deeds of Trust. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or mortgages. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any first mortgage, pursuant to a decree of foreclosure, under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. The personal liability of the lot owner to the Association shall not be relieved by a foreclosure sale. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the common area; and (c) all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Virginia. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the homes upon The Properties and placed on The Properties and placed on the dividing line between the Lots 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.

Section 2. Sharing of 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.

Section 3. 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 restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the owners under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, an owner who by his negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. 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.

Section 6. Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved.

Section 7. Easements. Each lot and the property included in the Common Area shall be subject to an easement for encroachments created by the construction, settling and overhangs of structures designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event that the homes on one or more lots so affected agree that minor encroachments of parts of the adjacent homes due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

ARTICLE VII

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Review by Committee. No building, fence, wall or other structure shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change, alteration or improvement thereof be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural control committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within ninety (90) days after said plans and specifications have been submitted to it, approval will not be required and the Article will be deemed to have been fully complied with.

ARTICLE VIII

EXTERIOR MAINTENANCE

Section 1. In the event an Owner of any Lot in The Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) decision of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements

erected thereof. The cost of such exterior maintenance shall be added to and become part of the annual assessment to which such Lot is subject.

ARTICLE IX

RESIDENTIAL PROPERTY PROTECTIVE COVENANTS AND RESTRICTIONS

1. No portion of The Properties shall be used other than for residential purposes and for purposes incidental or accessory thereto.

2. No fence, wall, tree, hedge or shrub planting shall be maintained in such manner as to obstruct sight lines for vehicular traffic.

3. No noxious or offensive activity shall be carried upon any portion of the residential property, nor shall anything be done thereon which may be or become a nuisance or annoyance to the neighborhood. No exterior lighting shall be directed outside the boundaries of a Lot.

4. No sign of any kind larger than one foot square shall be displayed to the public view on any Lot, except temporary signs not more than five feet square in area advertising the property for sale or rent.

5. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except where indicated on the Subdivision plat of DAHNK'S BALLSTON COMMONS and except that dogs, cats or other household pets may be kept provided they are not raised, bred or kept for any commercial purpose.

6. No material or refuse shall be placed or stored within twenty feet of the property line of any lot or the edge of any water course or body of water, except that clean fill may be placed nearer, provided that the natural water course is not altered or blocked by such fill.

7. No person shall paint the exterior of any building a color different than the original color of said building without the proposed color thereof having been approved by the Board of Directors of the Association, or by an Architectural Control Committee appointed by the Board.

8. Easements for the installation and maintenance of underground utilities, television cables, supply and transmission lines, and drainage facilities are reserved through all areas shown on the recorded Subdivision Plat of Dahnk's Ballston Commons, as Common Areas, on any subsequent plat, and said easements are also reserved through the lots on said plat, except where a building is located for the purpose of connecting the underground utilities, television cables and supply and transmission lines, or drainage facilities shall be promptly repaired or replaced at the expense of the corporation or authority which directed the entry.

9. The Association shall have the right (upon 20 days' notice to the owner of the property involved, setting forth the action intended to be taken, and if at the end of such time such action has not been taken by the Owner) to trim or prune, at the expense of Owner, any hedge or other planting that in the opinion of the Architectural Control Committee, by reason of its location upon the Lot or the height to which or the manner in which it is permitted to grow, is detrimental to the adjoining property or is unattractive in appearance. The Association shall further have the right, upon like notice and conditions, to care for vacant or unimproved Residential Property, and to remove grass, weeds and rubbish therefrom and to do any and all things necessary or desirable in the opinion of the Board of Directors or Architectural Control Committee appointed by the Board to keep such Residential Property in neat and good order, all at the cost and expense of the Owner, such cost and expense to be paid to the Association upon demand and if not paid within ten days thereof, then to become a lien upon the property affected, equal in priority to the lien provided for in Article VI, Paragraph 1 hereof.

10. Except as required by applicable law, no roof top antennas shall be permitted.

11. No storage or parking of boats, trailers, or campers in or on the Common Area shall be permitted without the express written consent of Architectural Control Committee. Said Committee may designate certain areas of the Common Area to be used for this purpose.

12. No clothes lines for drying clothes shall be permitted except on the rear yard of Lots during daylight hours on weekdays.

13. This Declaration of Covenants, Conditions and Restrictions may not be enlarged to include any additional properties, and the membership in the Association shall never be more than 25 members presently comprising members hereinafter. Any references to any additional properties or member is purely coincidental and shall be deemed to refer to the existing property and members.

ARTICLE X

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XI

In the event that the Association fails to maintain the Common Area in accordance with the landscaping plan approved by the Arlington County Manager or should the Association fail to maintain the Common Area in a reasonable condition and state of repair, the determination of such failure to be made by the County Manager, Arlington County may, at its option through its own agents or by independent contractor, enter upon the Common Area for purposes of maintenance thereof, and assess each lot owner a prorate share of the costs thereof, together with

an additional charge of 25% of said costs for management fee, said costs to constitute a lien upon each and every lot in the project.

The lien of this assessment or costs in connection therewith shall be subordinate to the lien of any first mortgage or mortgages. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any first mortgage, pursuant to a decree of foreclosure, under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payment thereof which became due prior to such sale or transfer. The personal liability of the lot owner to Arlington County shall not be relieved by a foreclosure sale.

IN WITNESS WHEREOF, the following signatures and seals on this 16 day of April, 2024.

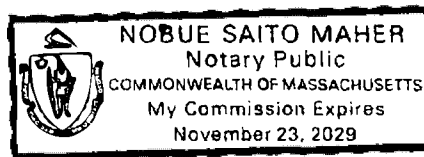
THE FIRST BALLSTON HOMEOWNERS ASSOCIATION, INC.

S. L. Gorfinkel
Simson L. Gorfinkel Board President

Commonwealth of ~~Virginia~~ Massachusetts
County of ~~Arlington~~ Middlesex

SUBSCRIBED, SWORN AND ACKNOWLEDGED before me, a Notary Public in and for the State and County aforesaid by Simson L. Gorfinkel, President of The First Ballston Homeowners Association, Inc. this 16 day of April, 2024.

Rob Maher
Notary Public



RPC NUMBERS

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