

# New Mark First Pool Covenants and Restrictions

November 8<sup>th</sup>, 2020

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## **Declaration of Restrictions, New Mark**

This Declaration of Restrictions is made this 8<sup>th</sup> day of November, 2020, by the New Mark First Pool Association, a corporation, the owner of all property in New Mark, a subdivision of land in Kansas City, Clay County, Missouri, according to the recorded plat thereof.

Witnesseth:

NOW, THEREFORE, for itself and for its successors and assigns and for its and their future grantees, New Mark First Pool Association hereby declares that the lands specifically designed below as shown on the recorded plat of New Mark shall be and hereby are restricted as to their use in the manner hereinafter set forth.

WHEREAS, A new declaration of restrictions was made on November 8<sup>th</sup>, 2020 imposing certain covenants and restrictions (the "Covenants and Restrictions") on real estate situated in Clay County, Missouri; and

WHEREAS, the Executive Board included updates from the previous covenant and restrictions to address changes requested by members of the Association, and

WHEREAS, the language of the covenant and restrictions was revised to improve consistency within the document and with the Bylaws of the Association; and

WHEREAS, the annual dues have been increased to address the rising operating costs associated with the Association amenities; and

WHEREAS, those Covenants and Restrictions have been filed in the records of the Clay County recorder of deeds; and

WHEREAS, the members of the New Mark First Pool Association approved those Covenants and Restrictions at a duly held vote of the members on November 8<sup>th</sup>, 2020, which is attached and incorporated by reference.

IT IS THEREFORE RESOLVED, that these Covenants and Restrictions of the subdivision are hereby adopted by the Association; and

IT IS FURTHER RESOLVED, that in the event of conflict or ambiguity within this document and any prior versions of the Covenants and Restrictions this document shall control.

For the purpose of these restrictions:

The term "Association" shall mean New Mark First Pool Association., its successors and assigns.

The term "Street" shall mean any street, road, or drive which is shown on the plat of New Mark.

The term "Out Building" shall mean an enclosed, covered structure not directly attached to the residence to which it is appurtenant.

The term "Lot" shall mean either (1) any lot as shown on the plat of New Mark or (2) any tract or tracts of land as conveyed, consisting of one or more lots or part or parts of one or more lots as platted, upon which a residence may be erected in accordance with the restriction hereinafter established, or as established in individual deeds from New Mark First Pool Association, or from its successors and assigns.

The term "Corner Lot" shall be deemed to mean any lot as platted or any tract of land as conveyed having more than one street contiguous to it. The street upon which the lot or part thereof fronts, as shown on the plat of New Mark, shall be deemed to be the front street, and any other street contiguous to such corner lot shall be deemed a side street. Houses on corner lots may be set diagonally thereon.

The "Front Building Line" shall be deemed to be that line parallel to the front street as shown on the recorded plat of New Mark.

**Section 1 - Persons Bound by These Restrictions**

All persons or corporations who now own or shall hereafter acquire any interest in the residential lots numbered:

- Lots 1 through and including 27 of Block 1.
- Lots 1 through and including 22 of Block 2.
- Lots 1 through and including 27 of Block 3.
- Lots 1 through and including 22 of Block 4.
- Lots 1 through and including 5 of Block 5.
- Lots 1 through and including 16 of Block 6.

- Lots 1 through and including 31 of Block 7.
- Lots 1 through and including 24 of Block 8.
- Lots 1 through and including 32 of Block 9.
- Lots 1 through and including 40 of Block 10.
- Lots 1 through and including 16 of Block 11.

as shown on the recorded plat of New Mark, a subdivision of land in Kansas City, Clay County, Missouri, shall be taken to hold and agree and covenant with the owner of said lots, and with its successors and assigns, to conform to and observe the following covenants, restrictions and stipulations as to the use thereof and the construction of residences and improvements thereon for a period of time ending on December 31, 2025, provided, however, that each of said restrictions shall be renewable in the manner hereinafter set forth.

**Section 2 - Use of the Land**

None of the lots referred to in Section 1 hereof shall be used or occupied for other than single-family residence purposes. Any residence erected or maintained on any of said lots shall be designed for occupancy by a single family.

**Section 3 - Frontage of Residents on Streets**

Any residence erected wholly or partially on a lot which is not a corner lot shall front on the front building line. Any residence erected on a corner lot shall front on the front building line and shall present a good appearance on the side building line as shown on said plat; provided, however, that any residence erected on a corner lot may be set diagonally thereon.

**Section 4 - Ground Frontage Required**

No dwelling may be erected upon any lot herein described except upon a lot or lots or part or parts thereof with a street frontage of not less than the number of feet as shown on the recorded plat; proved that the Association shall have and does hereby reserve the right in the sale and conveyance of any of the lots bound by these restrictions to reduce the required frontage to be used with any residence on any lot, and the Association may, at any time thereafter, with the consent in writing of the then record owner of the fee simple title to any such lot, change any required frontage herein specified or established by the conveyance of said lot; however, no change may be made at any time that will reduce the required frontage of land to be used and maintained with any residence erected thereon [sic] more than a ten (10) feet below the minimum number of feet required for such residence as set forth above.

**Section 5 - Setback of Residences from Streets and Side Lines**

No part of any residence, except fireplace chimneys, porches, driveways and walk, may be erected or maintained on any of said lots nearer to the front street of the side street than the front building line or the side building line, respectively, as shown on the plat of New Mark. No part of any residence, except as provided in Section 10 dealing with fences, may be erected closer to the side lines of any lot than is allowed by the zoning ordinances of the City of Kansas City, Missouri. Provided, however, that the Association may at any time hereafter with the consent in writing of the then record owner of the fee simple title to any such lot, change any building line that is shown on said plat. Provided further that no change shall be made at any time which will permit the erection or maintenance of any residence on any lot more than five (5) feet nearer to the front street or five (5) feet nearer to a side street than is the front building line or the side building line as shown on said plat.

**Section 6 - Height of Residences**

No residence erected on any of lots hereby restricted may exceed two and one-half (2 1/2) stories, nor be less than one full story in height without the written permission of the Association.

**Section 7 - Required Size of Residences**

Any single-family residence erected on any of the lots hereby restricted shall contain not less than one thousand (1000) square feet of total floor area, exclusive of porches, breezeways, basements, attics, or attached garages; provided, however, that the Association shall have and does hereby reserve the right in the sale or conveyance of any said lots to change the required size of the residence to be erected on said lots.

**Section 8 - Approval of Design and Location**

No construction shall be commenced upon any building, nor shall any building be moved upon any lot, until the exterior design and materials to be used are first approved in writing by the Executive Board. The Association does hereby reserve the right to determine the location of all buildings on the respective lot or lots, as well as the relation of the top of the foundation to the street level. All such approvals shall be in writing.

## **Section 9 - Exterior Appearance**

No building shall be permitted to stand with its exterior in an unfinished condition for longer than nine (9) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of no building shall be permitted to remain in a damaged condition for longer than three (3) months. Any improvements or renovations to the exterior of a property of one hundred (100) square feet or more in area, including painting, shall be approved in writing by the Executive Board. The request shall state the name and address of the owner of the lot on which the proposed improvements or renovations are to be completed and a description of the improvements or renovations. The Executive Board shall, within thirty (30) days after the date on which such request is received, give to the owner of the property its written approval or disapproval of the request. In the event that the Executive Board shall fail to give such written approval or disapproval with such thirty-day period, then permission to proceed with the improvements or renovations described in the notice shall be deemed to have been granted.

## **Section 9.1 - Exterior Antennas**

No exterior television or radio antenna of any sort shall be erected or maintained on any lot. In the event a home does not have, in the judgment of the Executive Board, adequate room for placement in the attic or concealed area, this rule can be waived in writing by the Executive Board.

## **Section 10 - Fences**

No fence of any kind or description shall be erected on any lot unless and until the location, height and material to be used have been approved in writing by the Executive Board. Any person desiring to construct a fence on any lot shall submit to the Executive Board a written request for permission to construct a fence. The request shall state the name and address of the owner of the lot on which the proposed fence is to be constructed and the location, height, and materials to be used in constructing the fence. The Executive Board shall, within thirty (30) days after the date on which such request is received, give to the owner of the property its written approval or disapproval of the request. In the event the Executive Board shall fail to give such written approval or disapproval with such thirty-day period, then permission to construct the fence described in the notice shall be deemed to have been granted. It is expressly provided, however, that no fence to be constructed along the boundary line of any lot shall exceed six (6) feet in height for wood, metal, composite or vinyl fences nor shall exceed four (4) feet in height for chain link fences.

## **Section 11 - Location of Utilities - Connections**

The Association shall have and does hereby reserve the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of, drains, sanitary and storm sewers, gas and water mains and lines, telephone and electric lines, and other utilities, and to give or grant right-of-way, or easements therefore over and upon any part of said land reserved for utility easements on the recorded plat. No connection of any kind shall be made to any sewer line without prior inspection and approval by the Association, and all storm and sanitary sewer construction and connections shall conform to the then current rules and regulations of the Sewer district within which the subdivision lies.

## **Section 12 - Sheds and Outbuildings**

No temporary or incomplete building may be erected on any of said lots without the written consent of the Executive Board. Permanent sheds or outbuildings are permitted to be erected provided they are approved in writing by the Executive Board and meet the stated minimum requirements. No shed or outbuilding of any kind or description shall be erected on any lot unless and until the location, width, length, height, and material to be used have been approved in writing by the Executive Board. Any person planning to construct a shed or outbuilding on any lot shall submit to the Executive Board a written request for permission to construct a shed or outbuilding. The request shall state the name and address of the owner of the lot on which the proposed shed or outbuilding is to be constructed and the location, width, length, height, and materials to be used in constructing the shed or outbuilding. The Executive Board shall, within thirty (30) days after the date on which such request is received, give to the owner of the property its written approval or disapproval of the request. In the event that the Executive Board shall fail to give such written approval or disapproval with such thirty-day period, then permission to construct the shed or outbuilding described in the notice shall be deemed to have been granted.

Any shed or outbuilding must meet all City of Kansas City, MO ordinances and permitting requirements. Only one (1) shed or outbuilding per lot will be approved. Sheds or outbuildings shall not, under any circumstances, be used as a living space. Sheds or outbuildings must be installed in the backyard of the lot. The maximum footprint (length by width) shall be 150 square feet and the maximum height at the peak of the roof shall be 12 feet, unless an exception is approved by the Executive Board.

Exterior cladding and roofing material shall compliment the primary residence in both style and color. Exterior cladding shall be wood, vinyl, composite, or plastic material. No fiberglass or all metal sheds will be approved. No items may be stored outside of or attached to the outside of the shed or outbuilding.

Property owners are responsible for the maintenance of the shed or outbuilding on their property. Failure of a property owner to maintain the shed or outbuilding will be considered a violation and may result in the required removal of the structure at the discretion of the Executive Board.

Children's play sets are permitted in addition to a shed or other outbuilding. Children's play sets do not require approval by the Executive Board; however, the property owner shall be responsible for maintaining them in a safe and working condition. The Executive Board reserves the right to require a play set to be removed if it is determined to be in an unsafe condition.

## **Section 13 - Livestock and Poultry Prohibited**

No livestock or poultry may be kept or maintained on any of said lots without the consent in writing of the Executive Board provided, however, that there may be maintained upon any one lot at any one time no more than two (2) dogs and two (2) cats over twelve (12) weeks of age, and no more than six (6) rabbits.

**Section 14 - Signs and Billboards Prohibited**

No signs, advertisements, billboards or advertising structures of any kind may be erected or maintained on any of said lots without the consent in writing of the Association; provided, however, that not more than one advertising sign may be erected and maintained on each lot or tract sold and conveyed. Such advertising sign shall not be more than five (5) square feet in size and it may be used for the sole and exclusive purpose of advertising for sale or lease the lot or tract upon which it is erected.

**Section 15 - Storage Tanks Prohibited**

No tanks for the storage of fuel may be maintained above the surface of the ground on any of the lots hereby restricted.

**Section 16 - Automobile Repair and Storage of Automobiles, Trailers, etc. Prohibited**

There shall be no automobile repair conducted on any of the lots bound by these restrictions. No automobiles, trailers, campers or boats shall be stored or kept outside of any residence constructed on the lots subject to these restrictions without prior written approval of the Association.

**Section 17 - Nuisances**

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done on any lot which is or may become an annoyance or nuisance to the neighborhood.

**Section 18 - Duration of Restrictions**

The restrictions herein set forth shall continue to be binding upon the Association and upon its successors and assigns until December 31, 2025, and shall automatically be continued thereafter for successive periods of five (5) years each, provided, however, that the owners of the fee simple title to more than sixty percent (60%) of the lots bound by these restrictions may release all or any part of the restrictions herein set forth, on December 31, 2025, or at the end of any successive five-year period thereafter, by executing and acknowledging an appropriate agreement or agreements in writing for each purpose and filing same for record in the office of the Recorder of Deeds of Clay County, Missouri, prior to December 31, 2025.



### **Section 19 - Right to Enforce**

The restrictions herein set forth shall run with the land and bind the present owner and its successors and assigns, and all parties claiming by, through or under it shall be taken to hold, agree and covenant with the owner of the lots hereby restricted, and with its successors and assigns, to conform to and observe said restrictions as to the use of said lots and the construction of improvements thereon, but no restriction herein set forth shall be personally binding on any corporations, person or persons, except in respect to breaches committed during its, his or their seisin of, or title to said land; and the Association and the owner or owners from time to time of any of the lots hereby restricted, shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or enforce the observance of the restrictions above set forth, in addition to ordinary legal actions for damages; and the failure of the Association or any owner or owners from time to time of any lot or lots in this subdivision, to enforce any of the restrictions herein set forth at the time of its violation shall in no event be deemed to be a waiver of the right to do so thereafter.

### **Section 20 - Effect or Invalidity of a Portion of this Declaration**

Invalidation of any one or more of the foregoing restrictions or covenants by judgment or court order shall in no manner affect any of the other provisions herein, and all such other provisions shall remain in full force and effect.

### **Section 21 – Rental Property Registration**

Any property for which the owner is renting the property to tenants shall register the property as a rental with the Executive Board within thirty (30) days of the start of any lease agreement. The registration shall include the address of the property and the contact address and phone number of the property owner. Once a property is registered and is no longer being used as a rental property the Executive Board shall be notified within thirty (30) days of the termination of any lease agreement. This registration is to allow the Executive Board to maintain an accurate contact list for all property owners. Failure to register a rental property with the Executive Board shall result in the loss of member privileges until the property is properly registered.

### **Section 22 - Homes Association Declaration**

To insure the continuous availability of certain services and convenience for New Mark property owners, and to provide the means for the creation and maintenance of a residential neighborhood possessing features of more than ordinary value, all lots in the New Mark development subject to these restrictions are also subject to a Homes Association Declaration which is duly filed of record.

IN WITNESS WHEREOF, New Mark First Pool Association., by authority of its Executive Board, has caused these presents to be executed by its President and its corporate seal to be hereto affixed this 8<sup>th</sup> of November, 2020.

# **Additional Restrictions of New Mark First Pool Association**

## **Article I: Definitions**

**1.1 Association.** "Association" shall mean the New Mark First Pool Association, a Missouri Not for Profit corporation, its successors and assigns.

**1.2 Not used.**

**1.3 Plan.** "Plan" shall mean the Community Unit Project Plan approved by the City Council of Kansas City, Missouri, by Ordinance No. 35548, which Ordinance was passed the 6th day of September 1968.

**1.4 Lot.** "Lot" shall mean those single-family residential Lots, including any part or parts thereof, which are from time to time made subject to the terms of this Declaration.

**1.5 Improved Lot.** "Improved Lot" shall mean any Lot, or part or parts thereof, on which a residence not in violation of the restrictions then of record thereon is erected or in the process of erection. All other Lots covered by this Declaration shall be deemed to be "vacant" and "unimproved."

**1.6 Owners.** "Owners" shall mean those persons, firms or corporations other than the Association, who or which may from time to time hold record title to a Lot or Lots subject to the terms of this Declaration, provided, however, that where, pursuant to a financing arrangement, record title to a Lot is in a mortgagee, the term "Owners" shall mean the mortgagor, and where, pursuant to a financing arrangement, record title to property is in a trustee, the term "Owners" shall mean the settlor or grantor who executed the deed of trust.

**1.7 Public Places.** "Public Places" shall mean all parking areas located in public street rights-of-way, all parks situated at street intersections and elsewhere, all cu-de-sac and other roadway islands; and all similar places the use of which is dedicated to or set aside for the use of the general public.

**1.8 Association Property.** "Association Property" shall mean all real property owned by the Association. By the execution hereof, the Association Covenants and agrees that it shall hold, maintain and improve said property for the common use and benefit of the members of the Association and occupiers of land owned by members of the Association.

**1.9 A Living Unit.** "Living Unit" Means a single-family residence which is designed for occupancy by a single family.

**1.10 Members.** "Members" shall mean Members of the Association. Members of the Association shall include the Owners of single-family residential Lots subject to the terms of this Declaration.

In order that the Association shall have funds with which to carry out the powers and duties provided for by this Declaration the Association shall have the power to levy Assessments against the Lots owned by each Member of the Association, which Assessment shall be levied on the basis of the number of Lots owned by such Member. In the event that an Assessment is not paid by a Member, the Association shall have a lien on the Lot of the non-paying Member.

## **Article II: Membership and Voting Rights**

**2.1 Members.** Every owner of a Lot which is subject to Assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

**2.11 Limitation of Membership.** Membership in the Association shall be limited to the Owners of Lots in the New Mark First Pool Association.

**2.2 Voting Rights of Members.** Owners shall be entitled to cast one vote for each Lot, which they own subject to the terms of this Declaration, but in no event shall more than one vote be cast for each Lot.

**2.3 Easement of Enjoyment.** Every owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(A) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area;

(B) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(C) The right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) majority of the total number of Members in good standing, as defined in Article II and the by-laws, voting in person, by proxy, or by absentee at either the annual or a special meeting of the Members of the Association. Special meetings shall be called pursuant to the provisions of the Article X hereof.

## **Article III: Additional Lands, How They May Be Added**

**3.1 Addition of Land by Vote of Members.** Additional lands may be added to the Association from time to time and the Association may also unite or combine with other homes Associations, provided that the addition of such lands or the uniting or combining with other homes Associations, as the case may be, is first approved by a two-thirds (2/3) majority of the total number of Members in good standing, as defined in Article II and the by-laws, voting in person, by proxy, or by absentee ballot at either the annual or a special meeting of the Members of the Association. Special meetings shall be called pursuant to the provisions of the Article X hereof.

## **Article IV: Management of The Association**

**4.1 Management.** The Association shall be managed by a Board of Directors elected in accordance with the Article of Incorporation and by-laws of the Association. The day-to-day operations and affairs of the Association shall be carried out by the Executive Body elected in accordance with the by-laws of the Association.

## **Article V: Powers, Rights, and Duties of the Association**

**5.1 Discretionary Powers and Duties.** The Association shall have the following powers and rights which can be exercised and assumed at its discretion:

**5.11 Enforcement of Building Restrictions.** The Association can enforce any or all building restrictions which have been imposed or which may hereafter be imposed upon any of the land subject to this Declaration. Said building restrictions may be enforced either in the form in which they were originally placed on such property or as modified subsequent thereto. However, nothing contained herein shall be deemed to prevent the owner of any such property from enforcing any building restrictions in his own name; the right of enforcement shall not serve to prevent such changes, releases, or modifications of the restrictions or reservations placed upon such property by any party having the right to make such changes, releases or modifications in the deeds, contracts, or plats in which such restrictions and reservations are set forth; and the right of enforcement shall not have the effect of preventing the assignment of those rights by the proper parties wherever and whenever such right of assignments exists. The expense and costs of any enforcement proceedings initiated by the Association shall be paid out of the general fund of the Association as hereafter provided for. These costs shall be charged to the owner involved and constitute a lien on the Lot or Lots involved.

**5.12 Exercise Easements.** The Association can exercise the rights and control over such easements as it may acquire from time to time.

**5.13 Rules and regulations with respect to the use of facilities on Association Property.** The Association can adopt and enforce rules and regulations relating to the use of structures or facilities which may exist or be erected from time to time on Association Property and establish charges for the use of such facilities and structures.

**5.14 Suspend voting rights and rights of Members to use facilities.** The Association can suspend the voting rights of Members and their rights to use facilities located on Association Property for any period during which Assessments levied and due from such member and against his Lot remain unpaid and suspend for a maximum of 30 days such member's rights to use recreational facilities located on Association Property for an infraction of published rules and regulations of the Association.

**5.15 Defend and Bring Lawsuits.** The Association can employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable and defend suits brought against the Association.

**5.16 Make Contracts and Employ Agents.** The Association can employ from time to time such agents, servants, and laborers as the Association may deem necessary to exercise the powers, rights and privileges granted to it and make contracts.

**5.2 Mandatory Powers and Duties.** The Association shall exercise the following powers, rights and duties:

**5.21 Maintenance of Public Places.** The Association shall mow, resow grass, care for and maintain Public Places including but not limited to all cul-de-sac and other roadway islands. The Association shall remove weeds and grass from Public Places; pick up and remove therefrom loose material, rubbish, filth and accumulations of debris, and do any other thing necessary or desirable in the judgment of the Association to keep such Public Places in neat appearance and in good order.

**5.22 Maintenance of Association Property.** The Association shall mow and resow the lawns and care for, spray, trim, protect, plant and replant trees and shrubs growing on all property which may, from time to time, belong to the Association; pick up and remove from such property all loose material, rubbish, filth and accumulations of debris; and do any other thing necessary or desirable in the judgment of the Association to keep all such property in neat appearance and in good order.

**5.23 Maintenance of Vacant Lots and Unattended Homes.** It shall be the responsibility of the respective Owners to mow, care for, and carry away from all vacant, unimproved lots and unattended homes all weeds and unsightly grasses or other growth, rubbish, filth and accumulations of debris, and other things tending to create unsightliness or untidiness should it become necessary for the Association to pay for any of the above care or maintenance for an owner such cost or expense be charged to owner involved and shall constitute a lien on the Lot or Lots involved.

**5.3 Special Rights and Powers.** The Association shall have the power and right to build or construct new facilities on land to which the Association holds title facilities for the benefit of the Owners and occupiers of the land subject to the terms of this Declaration; Provided, that the building or construction of such facilities if first approved by a two-thirds (2/3) majority of the total number of Members in good standing, as defined in Article II and the Bylaws, voting in person or by proxy at either the annual or a special meeting of the Members of the Association. Special meetings shall be called pursuant to the provisions of the Article X hereof.

## **Article VI: Assessments**

**6.1 Imposition of Regular Assessments.** For the purpose of providing a general fund to enable the Association to perform and exercise the rights, powers and duties set out in Article V hereof, all Lots subject to this Declaration shall be subject to an annual Assessment based upon the anticipated total annual cost of the Association in carrying out the powers and duties provided for in Article V above divided by the number of Lots subject to this Declaration. Assessments on all Lots shall commence on the first day of the month following conveyance of the common area to the New Mark First Pool Association. The amount of the Annual Assessment shall be an amount of money sufficient to enable the Association to carry out the powers and duties provided for in Article V. The amount of the annual Assessment against each Lot owned by a member of the Association shall be three hundred fifty dollars (\$350.00).

The amount of the Annual Assessment may be increased for each lot provided that such increase is first approved by a fifty-one percent (51%) majority of the total number of Members in good standing, as defined in Article II, Article VII and the by-laws; voting in person, by proxy, or by absentee ballot at either the annual or a special meeting of the Members of the Association. Special meetings shall be called pursuant to the provisions of the Article X hereof.

**6.2 Notice.** Notice of the amount of Assessments against the Lot held by a particular owner shall be deemed sufficient if a written or printed notice of the amount of said Assessment is deposited in the United States Post Office, with postage prepaid, and addressed to the respective Lot Owners at their last known address.

**6.3 When Assessments Levied and Due.** The annual Assessments shall be fixed and levied for each fiscal year. Assessments for each fiscal year shall be fixed and levied at least forty-five (45) days prior to January 1 of the fiscal year to which they apply. Assessments shall be due and payable on the first day of January for the fiscal year to which they are applicable and shall be delinquent thirty (30) days thereafter. On or before December 1 of each year, The Association shall notify each member owning a Lot subject to Assessment at such member's last known address, this notice shall state the number of Lots with respect to which an Assessment has been levied, the amount of Assessment per Lot, the total amount of the Assessment owed by each member, and the fact that the Assessment is due on January 1 of the approaching calendar year.

It is provided, however, that the failure of the Association to make an Assessment prior to December 1 of any year for the approaching fiscal year shall not invalidate any such Assessment subsequently made for that fiscal year; nor shall the failure to make an Assessment for any one year affect the right of the Association to do so for any subsequent year. In the event that an Assessment is made later than thirty-one (31) days prior to the beginning of the fiscal year to which it applied, then the Assessment shall be due and payable not later than thirty (30) days from the date that the notice of the Assessment is mailed to the member. Said Assessment shall be delinquent thirty (30) days after such Assessment is due and payable.

**6.4 Lien on Real Estate.** All assessments shall be the personal obligations of the Association Member, and the assessment shall become delinquent and constitute a lien on the lot for which the assessment is owed thirty (30) days after the date on which the assessment is due and payable as set forth in Section 6.3. In the event that any property owner fails to pay the assessment on or before the date it becomes delinquent, then such assessment shall bear a late fee of \$15.00 per month, assessed the 1<sup>st</sup> day of each month past the date when such assessment first become delinquent.

Assessments not paid within thirty (30) days from the date the Assessment is due and payable shall be delinquent and payment of both principal and interest may be enforced as a lien on the owner's Lot in proceedings in any court in Clay County, Missouri, having jurisdiction of suits for the enforcement of such liens. Lien amounts shall include attorney's fees, court costs, and any other related costs incurred. If the property subject to the lien is sold before the Assessment is paid, the buyer shall be liable for the Assessment. Any unsatisfied liens shall "Run With The Land." It shall be the duty of the Association to bring suit to enforce such liens as soon as they become delinquent. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

**6.5 Termination of Liens.** Assessment liens shall terminate upon filing of a lien release or ten (10) years from the date of the initial filing. Assessment liens shall be continuing in nature and shall include any additional assessments that may come due after that initial filing.

**6.6 Limitation on the amount of expenditures.** The Association shall at no time spend or contract to spend within any one year an amount which exceeds the total amount of Assessment for that particular year and any surplus which the Association may still hold from previous Assessments.

**6.7 Special Assessment to pay the cost of construction of facilities or improvements to Association Property.** The Association shall have the power to levy Assessment against the Lots subject to this Declaration for the purpose of constructing improvements or facilities on Association Property; provided that the construction of such facility or improvement must be first approved by fifty-one percent (51%) majority of the total number of Members in good standing, as defined in Article II, Article VII, and the by-laws; voting in person or by proxy at either the annual or a special meeting of the Members of the Association. Special meetings shall be called pursuant to the provisions of the Article X hereof.

Special Assessments levied by the Association under this section shall become due and payable thirty (30) days after written notice to each member at such member's last known address stating the amount of the Assessment against each Lot, the total number of Lots for which the member is being assessed, the total amount of the Assessment due from such member, and that the Assessment is due and payable thirty (30) days after the date of the notice.

Special Assessments levied under this section shall be the personal obligation of the Association Member, and the Assessment shall become delinquent and shall be a lien on the Lot of each member against whom the Assessment has been levied thirty (30) days after the date upon which the Assessment is due and payable. In the event an owner fails to pay a special Assessment before the date on which the Assessment becomes delinquent, then the Assessment shall bear a late fee of \$15.00 per month, assessed the 1<sup>st</sup> day of each month past the date when such special assessment first became delinquent. After a special Assessment is delinquent, payment of both the special assessment and late fees may be enforced as a lien on the Lot of such member in any court in Clay County, Missouri, having jurisdiction for the enforcement of such liens. Lien amounts shall include attorney's fees, court costs, and any other related costs incurred. If the property subject to the lien is sold before the Assessment is paid, the buyer shall be liable for the Assessment. Any unsatisfied liens shall "Run with the Land."

## **Article VII: Additional Powers Given to the Association**

**7.1 Additional Powers.** The Association may be given such additional powers as may be desired by the Members and any portion of this instrument may be amended by the affirmative vote of fifty-one percent (51%) majority of the total number of Members in good standing or of proxies for Members in good standing entitled to cast a fifty-one percent (51%) majority of all the votes of the Members in good standing shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the 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, as defined in Article II and the by-laws; voting in person, by proxy, or by absentee ballot at either the annual or a special meeting of the Members of the Association. Special meetings shall be called pursuant to the provisions of the Article X hereof. Such amendment shall be evidenced by a written instrument executed, acknowledged, and recorded in the Office of the Recorder of Deeds of Clay County, Missouri.

### **Article VIII: To Observe All Laws**

**8.1 Observing Laws.** The Association shall always observe all State, County, and other laws. If at any time any of the provisions of this agreement shall be found in conflict with the laws of the State, County, or any other duly constituted authority, then such provisions shall become null and void. However, other provisions of this agreement, not in conflict with the laws of any duly constituted authority, shall not be affected.

### **Article IX: Covenants Running with the Land**

**9.1 Run with the Land.** All the provisions of this Declaration shall be deemed to be Covenants running with the land and shall be binding upon the parties hereto and upon their heirs, successors, and assigns.

### **Article X: Special Meetings**

**10.1 Special Meetings.** Special meetings of the Members of the Association may be called by the president of the Executive Board of the Association, by a fifty-one percent (51%) majority vote of the Executive Body, by a fifty-one percent (51%) majority vote of the Board of Directors, or by that proportion of the Members in good standing, as defined in Article II and the Bylaws, entitled to cast one-twentieth (1/20) of the votes which can be voted at such meeting. If a special meeting is to be held, written or printed notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered to each member of the Association, either by US mail to such Members address of record or by e-mail to each Member's e-mail address of record not less than fifteen (15) nor more than forty five (45) days before the date of the meeting.

### **Article XI: Termination**

**11.1 Termination.** This Declaration may be terminated, and all of the land now or hereafter affected may be released from all of the terms and provisions of this Declaration by an affirmative vote of Members constituting two-thirds (2/3) majority of the total number of Members in good standing, as defined in Article II and the by-laws; voting in person, by proxy, or by absentee ballot at either the annual or a special meeting of the Members of the Association. Special meetings shall be called pursuant to the provisions of the Article X hereof. This Declaration shall be terminated if the two-thirds (2/3) majority of the total number of Members in good standing, as defined in Article II and the by-laws, execute and acknowledge an appropriate agreement or agreements for that purpose and file the same in the Office of the Recorder of Deeds of Clay County, Missouri.



Signed under the powers and authorities granted to the officers and executive board members by law and the Associations' Bylaws on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Board Member Signature

\_\_\_\_\_  
Board Member Printed Name

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Board Member Printed Name

**CERTIFICATION**



I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of the New Mark First Pool Association, a Missouri nonprofit corporation; and

That the Covenants and Restrictions herein, as duly adopted at an annual meeting of the Executive Body thereof, held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto subscribed by name this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Secretary Signature

\_\_\_\_\_  
Secretary Printed Name

**ACKNOWLEDGEMENT**

STATE OF MISSOURI            )  
  )        SS.  
COUNTY OF CLAY            )

BE IT REMEMBERED that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared Mike Thomas, to me personally known who being by me duly sworn did say that is he is the President of the New Mark First Pool Association, a Missouri not-for-profit corporation, and that said instrument was signed on behalf of said Association by authority of it Executive Body and Board of Directors, and that said Mike Thomas acknowledge said instrument to be free act and deed of said Association.

IN WITNESS WHEREOF I have hereunto set my had and affixed by official seal on the day and hear last above written.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Notary Public Printed Name



\_\_\_\_\_  
Notary Public Seal