

**FIRST AMENDED AND RESTATED  
DECLARATION OF TRUST OF  
NEW FIRST COMMONWEALTH MORTGAGE TRUST**

The filing entity is a real estate investment trust. The name of the entity is *New First Commonwealth Mortgage Trust*.

This First Amended and Restated Declaration of Trust (the **Declaration**) amends and restates that certain Declaration of Trust of New First Commonwealth Mortgage Trust, dated May 8, 2008, recorded with the County Clerk of Harris County, Texas under the Clerk's File Number 20080234684 (the **Original Declaration**), which is pursuant to a Plan and Agreement of Merger dated May 5, 2008 called for New First Commonwealth Mortgage Trust, the surviving entity, to change its name to First Commonwealth Mortgage Trust. A certificate of merger was recorded with the County Clerk of Harris County, Texas under the file number 20080401982 on August 1, 2008.

**ARTICLE ONE**

The name of the trust (the **Trust**) is **First Commonwealth Mortgage Trust**. An assumed name certificate setting forth such name has been filed in the manner prescribed by law.

**ARTICLE TWO**

The Trust has the following as its purpose:

- (a) To purchase, hold, lease, manage, sell, exchange, develop, subdivide and improve real property and interests in real property, other than severed mineral, oil, or gas royalty interests, and carry on any other business and perform any other action in connection with a purposes described by this paragraph;
- (b) To exercise powers conferred by the laws of this state on a real estate investment trust;
- (c) Perform any action described by Chapter 200 or Title I to the same extent as an individual; and
- (d) Engage in activities mandated or authorized by (i) the provisions of the Internal Revenue Code that are related to or govern real estate investment trusts; and (ii) regulations adopted under the Internal Revenue Code.

**ARTICLE THREE**

The post office address of the Trust's initial principal office and place of business is 5847 San Felipe, Suite 850, Houston, Texas 77057.

**ARTICLE FOUR**

The address of the Trust's registered office is 5847 San Felipe, Suite 850, Houston, Texas 77057, and the name of its registered agent is Robert W. Scharar.

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**ARTICLE FIVE**

The names and mailing addresses of the Trust Managers are as follows:

Name	Business and Mailing Address
George Beatty, Jr.	5847 San Felipe, Suite 850 Houston, Texas 77057
William C. Brooks	5847 San Felipe, Suite 850 Houston, Texas 77057
Josef C. Hermans	5847 San Felipe, Suite 850 Houston, Texas 77057
Kenneth A. McGaw	5847 San Felipe, Suite 850 Houston, Texas 77057
Robert W. Scharar	5847 San Felipe, Suite 850 Houston, Texas 77057

**ARTICLE SIX**

Successor Trust Managers may be elected or removed only if such Trust Managers receives the vote of the holders of a majority of the shares entitled to vote in the election of Trust Managers and represented in person or by proxy at a meeting of shareholders at which a quorum is present.

**ARTICLE SEVEN**

The Trust Managers will use their best efforts to terminate the Trust by December 31, 2025. However, it shall be in the absolute discretion of the Trust Managers to determine in good faith such termination date as will be in the best interest of the Shareholders of the Trust, taking into consideration the investments of the Trust at the time at which termination is considered, but in any event the Trust shall terminate not later than the December 31, 2030. Any determination by the Trust Managers of the date upon which termination shall occur shall be reflected in a vote of or written instrument signed by a majority of all of the Trust Managers then in office, including a majority of the Unaffiliated Trust Managers; provided, however, that any plan for the termination of the Trust which; contemplates the distribution to the Shareholders of securities or other property in kind (other than the right promptly to receive cash) shall require the vote or consent of the holders of two-thirds of the outstanding Shares entitled to vote thereon.

**ARTICLE EIGHT**

The Trust shall have authority to issue 20,000,000 shares of beneficial interest without par value (the **Shares**), on such terms as the Trust Managers may determine. The Trust Managers may classify or reclassify any unissued Shares from time to time by setting or changing the preferences, conversions, or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption of the Shares.

**ARTICLE NINE**

The Trust Managers shall manage all money and property received from the issuance of Shares for the benefit of the shareholders of the Trust.

**ARTICLE TEN**

(a) The Trust shall indemnify, to the extent provided in the Trust's Bylaws, every person who is or was a Trust Manager or officer of the Trust and any person who is or was serving at the request of the Trust as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise with respect to all costs and expenses incurred by such person as a result of such person being made or threatened to be made a defendant or respondent in a proceeding by reason of his holding or having held a position named above in this paragraph.

(b) If the indemnification provided in paragraph (a) is either (i) insufficient to cover all

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costs and expenses incurred by any person named in such paragraph as a result of such person being made or threatened to be made a defendant or respondent in a proceeding by reason of his holding or having held a position named in such paragraph or (ii) not permitted by Texas law, the Trust shall indemnify, to the fullest extent that indemnification is permitted by Texas law, every person who is or was a Trust Manager or officer of the Trust and any person who is or was serving at the request of the Trust as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise with respect to all costs and expenses incurred by such person as a result of such person being made or threatened to be made a defendant or respondent in a proceeding by reason of his holding or having held a position named in this paragraph.

(c) The indemnification provided by this Article shall be subject to all valid and applicable laws, including, without limitation, the Texas Business Organizations Code, and, in the event this Article or any of the provisions hereof or the indemnification contemplated hereby are found to be inconsistent with or contrary to any such valid laws, such laws shall be deemed to control and this Article shall be regarded as modified accordingly, and, as so modified, to continue in full force and effect.

**ARTICLE ELEVEN**

(a) Subject to the provisions of Section (c) of this Article Eleven, no person or persons acting as a group, may at any time, directly or indirectly, acquire ownership in the aggregate of more than 9.8% of the outstanding Shares of the Trust (the *Limit*). Shares owned by a person or group of persons in excess of the Limit at any time shall be deemed Excess Shares. For the purposes of this Article Eleven, the term *ownership* shall be defined in accordance with or by reference to the qualification requirements of the REIT Provisions of the Internal Revenue Code and shall also mean ownership as defined under Rule 13d-3 promulgated under the Securities Exchange Act of 1934 (the *1934 Act*), and the term group shall have the same meaning as that term has for purposes of Section 13(d) (3) of the 1934 Act. All Shares which any person has the right to acquire upon exercise of outstanding rights, options and warrants, and upon conversion of any securities convertible into Shares, if any, shall be considered outstanding for purposes of the Limit if such inclusion will cause such person to own more than the Limit.

(b) The Trust Managers, by notice to the holder thereof, may redeem any or all Shares that are Excess Shares (including Shares that remain or become Excess Shares because of the decrease in outstanding Shares resulting from such redemption); and from and after the date of giving of such notice of redemption (the *redemption date*) the Shares called for redemption shall cease to be outstanding and the holder thereof shall cease to be entitled to dividends, voting rights and other benefits with respect to such Shares excepting only the right to payment by the Trust of the redemption price determined and payable as set forth in the following two sentences. Subject to the limitation on payment set forth in the following sentence, the redemption price of each Excess Share called for redemption shall be the average daily per Share closing sales price if the Shares of the Trust are listed on a national securities exchange, and, if the Shares are not so listed, shall be the mean between the average per Share closing bid prices and the average per Share closing asked prices, in each case during the 30-day period ending on the business day prior to the redemption date, or, if there have been no sales on a national securities exchange and no published bid quotations and published asked quotations with respect to Shares of the Trust during such 30-day period, the redemption price shall be the price determined by the Trust Managers in good faith. Unless the Trust Managers determine that it is in the interest of the Trust to make earlier payment of all of the amount determined as the redemption price per Share in accordance with the preceding sentence, the redemption price shall be payable only upon the liquidation of the Trust and shall not exceed an amount which is the sum of the per Share distributions designated as liquidating distributions and return of capital distributions declared with respect to unredeemed shares of the Trust of record subsequent to the redemption date; and no interest shall accrue with respect to the period subsequent to the redemption date to the date of such payment.

(c) The Limit set forth in paragraph (a) of this Article Eleven does not apply to acquisitions of Shares pursuant to a cash tender offer made for all outstanding Shares of the Trust

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(including securities convertible into Shares) in conformity with applicable federal and state securities laws where a majority of the outstanding Shares (not including Shares or securities convertible into Shares held by the tender offer or: and/or any affiliates or associates thereof within the meaning of the 1934 Act) are duly tendered and accepted pursuant to the cash tender offer; nor shall the limit apply to the acquisition of Shares by an underwriter in a public offering of Shares, or in any transaction involving the issuance of Shares by the Trust, in which a majority of the Trust Managers determine that the underwriter or other person or party initially acquiring such Shares will make a timely distribution of such Shares to or among other holders such that, following such distribution, none of such Shares will be Excess Shares. Notwithstanding anything contained herein to the contrary, the Trust Managers in their discretion may exempt from the Limit the issuance by the Trust for any valid Trust purpose, and the ownership of certain designated Shares while owned by a person who has provided the Trust Managers with evidence and assurances acceptable to the Trust Managers that the qualification of the Trust as a REIT would not be jeopardized thereby, or the Trust Managers are otherwise assured that such issuance and/or ownership would not jeopardize such REIT status.

(d) Notwithstanding any other provision of this Declaration of Trust to the contrary, any purported acquisition of Shares of the Trust which would result in the disqualification of the Trust as a REIT shall be null and void.

(e) Nothing contained in this Article Eleven or in any other provision of this Declaration of Trust limits the authority of the Trust Managers to take such other action as they deem necessary or advisable to protect the Trust and the interests of the shareholders of the Trust by preservation of the Trust's qualification and tax benefits as a REIT under the REIT Provisions of the Internal Revenue Code.

(f) If any provision of this Article Eleven or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issues, the validity of the remaining provisions are not affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court. To the extent this Article Eleven may be inconsistent with any other provision of this Declaration of Trust, this Article Eleven is controlling.

**ARTICLE TWELVE**

The Unaffiliated Trust Managers determine at least annually that the total fees and expenses of the Trust are reasonable and in accordance with the provisions of the Trust's Bylaws pertaining to such fees and expenses.

**ARTICLE THIRTEEN**

As required by Section 3.059(d) of the Texas Business Organizations Code (the **TBOC**):

(a) Each amendment to the Original Declaration set forth in this Declaration has been made in accordance with the TBOC;

(b) The following identifies by reference to this Declaration and the Original Declaration the provisions which have been added, altered, or deleted:

Article One of the Original Declaration which read: "The name of the trust (the **Trust**) is *New First Commonwealth Mortgage Trust* " has been amended. The Amended provision reads: "The name of the trust (the **Trust**) is *First Commonwealth Mortgage Trust*."

(c) Each amendment has been approved in the manner required by the TBOC and governing documents of the Trust.

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(d) This Declaration (i) accurately states the text of the Original Declaration and each amendment, if any, to such Original Declaration, except for the information omitted under Subsection (b) of Section 3.059 of the TBOC; (ii) does not contain any other change in the Original Declaration as further amended by this Declaration, and (iii) does not include any other information required by the title of the TBOC applicable to a real estate investment trust.

**IN WITNESS WHEREOF**, this First Amended and Restated Declaration of Trust has been executed to become effective upon filing with the County Clerk of Harris County, Texas.

***SIGNATURE PAGES ARE ATTACHED***

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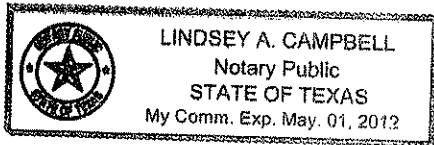
  
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GEORGE BEATTY, JR., Trust Manager


STATE OF TEXAS                    '

COUNTY OF HARRIS                '

This instrument was acknowledged before me on this 6 day of October 2008, by  
**GEORGE BEATTY, JR.**

Notary's Official Seal:



  
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NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS