ESSEX CROSSING AT MONTSERRAT HOMEOWNERS ASSOCIATION
TRUST

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Brian D. McGrail, Esq.
599 North Avenue Suite 7 Second Floor Wakefield, MA 01880

Declaration of Trust

This Declaration of Trust is made this_____day of December, 2015, by **DUC Residential LLC**, a Massachusetts Limited Liability Company (hereinafter referred to as **the "DEVELOPER")**

WITNESSETH:

ARTICLE I Name of Trust

The Trust hereby created shall be known as "Essex Crossing at Montserrat **Homeowners** Association Trust", and under that name, so far as legal, **covenant and** practicable, shall all business carried on by the Trustees named herein (and their successors) be conducted and all instruments in writing by the said Trustees be executed. The Trust is sometimes referred to as the Home**owners Association or Association.**

ARTICLE II Definitions

The following words and terms, when used in this Declaration shall have the following meanings:

a. Developer shall mean and refer to **DUC Residential LLC**, together with its successors, legal repres**entatives, grant**ees, and assigns. b. Plan shall mean and refer to "OSRD Site & Definitive Subdivision Plan entitled Essex Crossing Beverly Massachusetts", prepared by Hayes Engineering, Inc. recorded as Plan No. 73 in Plan Book 446 at Essex South Registry of Deeds. c. Covenants shall mean and refer to the covenants, restrictions, easements, affirmative obligations, charges, and liens created and imposed by the Declaration. d. Declaration shall mean and refer to **DECLARATION OF COVENANTS, EASEMENTS, AGREEMENTS & MANAGEMENT PLAN RELATING TO OPEN SPACE AND HOMEOWNERS ASSOCIATION AND OTHER AMENITIES FOR ESSEX CROSSING AT MONTSERRAT, BEVERLY, MASSACHUSETTS** recorded herewith together with any supplements or amendments thereto. e. Property or Subdivision shall mean and refer to all of the land and im**provements** included on shown on a certain Definitive Plan entitled, “OSRD Site & Definitive Subdivision Essex Crossing, Beverly, Massachusetts”, prepared by Hayes **Engineerin**g, Inc. recorded as Plan No. 73 in Plan Book 446 at Essex South Registry of Deeds (hereinafter referred to as the “Plan”) or any supplements or **amendments thereto. It shall not include Open Space Parcel A or Open Space Parcel B shown on the Plan, which are being conveyed to the City.**

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f. Lot shall mean and refer to the plots of land numbered 1 through 16, as shown on the Plan as the same may be amended and/or modified by the Beverly Planning **Board.** **Open Space** shall mean and refer to the 5.04 Acres of designated Open Space C as shown on the Plan and required by Conditions 2 & 4 of the Planning Board Approval as the same may be amended and/or modified by the Beverly Planning **Board.** h. Planning Board Approval shall mean the OSRD Site Plan Decision issued by the

Beverly Planning Board dated November 25, 2014 and recorded at Essex South Registry of Deeds at Book 33792, Page 502. It shall also mean any requirements of the City of Beverly Open Space Residential Design Site Plan Ordinance. Trust or

Association shall mean and refer to this Essex Crossing Monse**rrat Homeowners Association Tr**ust whose beneficial ownership shall be equally divided amongst the Owners of Lots and beneficial ownership is both auto**matic and mandatory.** j. Owner or Owners shall mean and refer to the record owner, whether one or more **persons, or** entities, of any Lot within the Subd**ivision.** k. Storm Water Management System shall mean and refer to the detent**ion areas and** drainage infrastructure serving the Property. l. Beneficiary shall mean and refer to owners of beneficial interests, of this Trust or **Association**. m. Regulations shall mean and refer to any rules or regulations respecting the use of the Property that have been adopted by the Association from time to time. n. Trustees shall mean and refer to the Trustees of the Association. 0. By-Laws shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

ARTICLE III The Trust and Its Purpose

Section 1. To take ownership of all assets of the Trust, including $10.00, which has been paid by the Developer to the Trust, Open Space Parcel C as shown on the Plan as the same may be amended or added to and to manage and maintain the same and to assure compliance with all terms and conditions of the Planning Board Approval and **Declaration. Also, to maintain roadways (in**cluding Pond View Lane and the 20' Wide Access & Utility Easement as shown on the Plan), walls and stormwater management systems in the Subdivision. All of the rights and powers in and with respect to the Open Space (hereinafter called the "Common Elements") of the Association, and all property, real and personal, tangible and intangible, conveyed to the Trustees hereunder shall vest in the Trustees as joint tenants, with right of survivorship, as Trustees of this Trust, in **trust to exercise, manage, ad**minister and dispose of the **same and to receive the income** thereof for the benefit of the Owners of record from time to time of Lots within the Subdivision according to the schedule of beneficial **interest set forth in Exhibit A** attached hereto and incorporated herein by reference.

Section 2. It is hereby expressly declared that a trust and not a partnership has **been creat**ed and that the Owners are beneficiaries and not partners or associates or any **other relation whatever am**ong themselves with respect to the trust property, and hold no relation to the trust with only such rights as are conferred upon them as such beneficiaries hereunder.

ARTICLE IV **The Trustees**

Section 1. The initial trustee of this Trust shall be DUC Residential LLC ("Developer"), who shall serve until Developer no longer owns any of the Lots in the Subdivision or until Developer notifies all Owners in writing he no longer desires to serve. Thereafter, the Owners of each Lot shall elect five (5) Trustees by a majority vote. Each Lot in the Subdivision, whether owned by one person or more than one person, shall have one vote in voting for and participating in the activities of the Association, and shall have equal obligations with respect thereto. 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 Lot. There shall be no split vote. Prior to the time of any meeting at which a vote is to be taken, each co-owner shall file the name of the voting co-**owner** with the Association in order to be entitled to vote at such meeting.

The term of elected Trustees shall be for a period of 2 years from the date of their election. New Trustees shall be elected at the annual meeting of the Owners (Article VI, Section 4) preceding the expiration of their term in office.

In the event there is a vacancy in the office of a Trustee, it shall be filled by an instrument in writing setting forth the appointment of a natural person to a Trustee, signed by the 50% Lot Owners. Such appointment shall become effective upon the recording with the Essex South Registry of Deeds of a certificate of such appointment, signed and accepted as aforesaid, and such person shall then be and become such Trustee and shall be vested with the title to the trust property, jointly with the remaining or surviving Trustee, without the necessity of any act of **transfer or** conveyance. If for any reason any vacancy in the office of Trustee shall continue for more than sixty (60) days and shall at the end of that time remain unfilled, a Trustee or Trustees to fill such vacancy or vacancies may be appointed by any court of competent jurisdiction upon the application of any Owner and notice to all Owners and Trustees and to such other parties in interest, if any, to whom the court may direct that notice be given.

The foregoing provisions of this Section to the contrary notwithstanding, despite any vacancy in the office of Trustee, however caused and for whatever duration, the **remaining of survivin**g Trustees, subject to the provisions of the immediately following Section, shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Trustees.

Section 2. In any matters relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Trustees may act by majority vote at any duly called meeting at which a quorum is present as provided in Section 4 of Article VI.

The Trustees may also act without a meeting by instrument signed by all of their number.

Section 3. Any Trustee may resign at any time by instrument in writing, signed and acknowledged in the manner required in Massachusetts for the acknowledgment of deeds, and such resignation shall take effect upon the recording of such instrument with said Registry of Deeds.

Section 4. No Trustee named or appointed as hereinbefore provided, whether as original Trustee or as successor to or as substitute for another, shall be obligated to give any bond or surety or other security for the performance of any of his duties hereunder

Section 5. No Trustee hereinbefore named or appointed as hereinbefore provided shall under any circumstances or in any event be held liable or accountable out of his personal assets or be deprived of compensation by reason of any action taken, suffered or omitted in good faith or be so liable or accountable for more money or other property than he actually receives, or for allowing one or more of the ot have possession of the Trust books or property, or be so liable, accountable or deprived by reason of honest errors of judgment or mistakes of fact or law or by reason of the existence of any personal interest or gain or by reason of anything except his own personal and willful malfeasance and default.

Section 6. No Trustee shall be disqualified by his office from contracting or dealing with the Trustees or with one or more Owners (whether directly or indirectly because of his interest individually or the Trustees' interest or any Owner's interest in any corporation, firm, trust or other organization connected with such contracting or dealing or because of any other reason), as vendor, purchaser or otherwise, nor shall any such dealing, contract or arrangement entered into in respect of this Trust in which any Trustee shall be in any way interested be avoided nor shall any Trustee so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Trustee's holding office or of the fiduciary relationship hereby established, provided the Trustee shall act in good faith and shall disclose to the other Trustees the nature of his interest before the dealing, contract, or arrangement is entered into.

Section 7. The Trustees and each of them shall be entitled to indemnity both out of the trust property and by the Owners against any liability incurred by them or any of them in the execution hereof, including, without limitation, liabilities in contract and in tort and liabilities for damages, penalties and fines. Each Owner shall be personally liable for all sums lawfully assessed for his share of the Associ**ation expenses.**

Section 8. The Trustees may (but are not required to) elect from their number, at the annual meeting of the Trustees, a Chairman, Treasurer, and Secretary, who shall have such duties as are determined by the Trustees.

<u>ARTICLE V</u> Beneficiaries and the Beneficial Interest in the Trust

Section 1. The beneficiaries shall be the Owners of the Subdivision. The beneficial interest in the Trust hereunder shall be divided among the Owners in the percentage of

undivided beneficial interest appertaining to the Lots of the Subdivision, all as set forth in Exhibit A as it may be amended from time to time, incorporated herein by reference with the same force and effect as though fully set forth in the body of this instrument.

Section 2. Each Lot in the Subdivision, whether owned by one person or more than one person, shall have one vote in voting for and participating in the activities of the Association, and shall have equal obligations with respect thereto. 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 Lot. There shall be no split vote. Prior to the time of any meeting at which a vote is to be taken, each co-owner shall file the name of the voting co-owner with the Association in order to be entitled to vote at such meeting...

Section 3. An Owner may vote in person or by a written proxy dated no earlier than six (6) months prior to the date of the meeting at which such vote is taken. A proxy purporting to be executed by or on behalf of an Owner shall be deemed valid unless challenged at or prior to its exercise. A proxy with respect to a Lot held in the names of two or more persons shall be valid if executed by one of them, unless at or prior to the exercise of the proxy, the Trustees receive specific notice to the contrary from any one of said persons. All votes shall be one vote per Lot.

ARTICLE VI By-Laws

The provisions of this Article VI shall constitute the By-Laws of the Essex Crossing At Montserrsat Homeowners Association Trust established hereby, to wit:

Section 1. Powers and Duties of Trustees.

The Board of Trustees shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things except as by law or by this Trust may not be delegated to the Board of Trustees by the owners. Such powers and duties of the Board of Trustees shall include, but shall not be limited to, the following:

(a) - Road Ways and Open Space. The Association, subject to the rights and privileges reserved to Developer, shall be responsible for the exclusive **maintenance, manag**ement and control of the road ways (including Pond View Lane and the 20' Wide Access & Utility Easement as shown on the Plan) and

Open Space and all improvements thereon, and shall keep the same in good, clean, substantial, attractive, and sanitary condition, order and repair as required by the Declaration.

(b) – Storm Water Management System. The Association, subject to the rights and privileges of the Developer, shall be responsible for the exclusive maintenance, management and control of the **storm water management system** and without limitation complying with maintenance and inspection reports per the Stormwater Operation and Maintenance Plan.

(C) – Walls. The Association, subject to the rights and privileges of the Developer, shall be responsible for the exclusive maintenance, management and control of walls located in the Subdivision.

(d)-Use of Open Space and Trails. Preserving the Open Space and Trails as required by the Declaration.

(e) Determination of the common expenses required for the affairs of the Association.

(f) Collection of the common expenses from the Owners.

(g) Employment and dismissal of the personnel necessary or advisable for the maintenance and operation.

(h) Opening of bank accounts on behalf of the Association and designating the signatories required therefore.

(i) Owning, conveying, encumbering, leasing and otherwise dealing with Lots conveyed to it or purchased by it as the result of enforcement of the lien for **assessments, or otherwise.**

() Obtaining of insurance for the Association pursuant to the provisions hereof.

(k) Making of repairs, additions and improvements to, or alterations of, the Open Space, Road Ways (including Pond View Lane and the 20' Wide Access & Utility Easement as shown on the Plan), Walls or Stormwater Management System, and **other repai**rs in accordance with the other provisions of the Association.

(1) The Board of Trustees shall have the power to enforce obligations of Lot Owners; to enforce the rules and regulations of the Association; to allocate income and expenses; and to do anything and everything else necessary and proper for the sound management of the Association.

(m) Grant or relocate easements.

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(n) Enter into contracts for the management and maintenance of the road ways in the subdivision, including Pond View Lane and the Emergency 20' Wide Access & Utility Easement as shown on the Plan, Open Space and Trails, Common Parcels, Walls or Stormwater Management System.

Section 2. Common Expenses, Profits and Funds.

A. Each Owner shall be liable for common expenses and shall be entitled to common profits of the Association according to his respective percentage of undivided beneficial interest in this Trust as the same may be amended from time to time. The Trustees may at any time or times distribute common profits among the Owners in such proportions. The Trustees may, to such extent as they deem advisable, set aside common funds of the Association as reserve or contingent funds and may use the funds so set aside for reduction of indebtedness or other lawful capital purpose, or, subject to the provisions of the following Section 3, for repair, rebuilding or restoration of the trust property, or for improvements thereto or other trust responsibilities, and the funds so set aside shall not be deemed to be common profits available for distribution. The Developer may require the first purchaser of each Lot to pay an initial contribution of $250.00 at closing.

B. At least thirty (30) days prior to the commencement of each fiscal year of this Trust, the Board of Trustees shall estimate the common expenses expected to be incurred during such fiscal year, together with a reasonable provision for contingencies and reserves, and after taking into account any undistributed common profits from prior years, shall determine the assessment to be made for such fiscal year. promptly render statements to the Owners for their respective shares of such assessment, and each Owner thereafter shall pay one-twelfth of his share of the estimated common expenses monthly in advance on the first day of each month. In the event that the Board of Trustees shall determine during any fiscal year that the assessment so made is less than the common expenses actually incurred, or in the reasonable opinion of the Trustees likely to be incurred, the Board of Trustees shall make a supplemental assessment or assessments and render statements therefore in the manner aforesaid, and such statements shall be payable and take effect as aforesaid. The Board of Trustees may in its discretion provide for payments of statements in monthly or other installments. In order to create a reserve fund for future contingencies, the Board of Trustees may assess from time to time, in addition to the foregoing assessments, each Owner for a sum or sums sufficient to provide the Association with sufficient capital to meet emergencies and other contingencies.

C. Until such time as the Developer shall have turned over the Association to the Owners (which shall be defined as Developer no longer serving as sole Trustee), Developer shall be obligated to fund any operating costs of the Association. After turnover of the Association to the Owners, Developer shall, with respect to all Lots (whether developed or undeveloped), which it continues to own, be a full voting and **assessm**ent paying Beneficiary.

D. The Association's rights relating to interest, liens and collection options and procedures are clearly stated in Article VII of the Declaration, which is **incorporated herein by reference.**

Section 3. Insurance.

A. The Trustees may obtain and maintain, to the extent available, master policies of casualty insurance for the benefit and protection of the Trustees and all of the **Owners, naming as t**he insured, and with loss proceeds payable to, the Trustees hereunder, as Insurance Trustees for all of the **Owners and t**heir respective mortgagees, as their interests may appear.

B. The Trustees may also so obtain and maintain, unless the same is not obtainable, master policies of insurance with respect to the Common Elements for the benefit and protection of the Trustees and all of the Owners, for: (a) comprehensive public liability; (b) workmen's compensation and employees liability with respect to any manager, agent, or employee of the Trust; and (c) such other risks as the Trustees in their discretion deem it appropriate to insure. All such insurance shall be in such amounts and **form, a**s the Trustees shall in their discretion deem **appropriate.**

E. The cost of all such insurance obtained and maintained by the Trustees pursuant to the provisions of this Section 3 shall be **a common expense.**

Section 4. Meetings.

A. The Board of Trustees shall meet annually on the date of (and immediately

the annual meeting of the Owners, and at such meeting may elect the Chairman, Treasurer, and Secretary hereinbefore provided for. Other meetings may be called in such other manner as the Trustees may establish, provided, however, that written notice of each meeting, stating the place, day and hour thereof, shall be given at least fourteen (14) days before such meeting to each member of the Board of Trustees. Three of the then serving Trustees shall be necessary to constitute a quorum at all meetings, and such meetings shall be conducted in accordance with such rules as the Board of Trustees may adopt.

B. Commencing with the calendar year 2017 there shall be an annual meeting of the Owners on the first Monday of November in each year, at 7:30 p.m., at a **reason**able place and time as may be designated by the Board of Trustees by written notice given to the Owners at least fourteen (14) days prior to the date so designated. Special meetings of the Owners may be called by The Board of Trustees or by the Owners upon the written request of Owners entitled to more than fifty per cent (50%) of a vote hereunder. Written notice of any such meeting designating the place, day and hour thereof shall be given by the Board of Trustees to the Owners at least fourteen (14) days **pri**or to the date so designated. At the annual meeting of the Owners, the Board of **Trust**ees shall submit reports of the management and finances of the Association. At any meeting of the Owners, a quorum of Owners shall be fifty (50) percent of the Lots being **represented.**

Section 5. Notices to Lot Owners.

Every notice to any Owner required under the provisions hereof, or which may be deemed by the Trustees necessary or desirable in connection with the execution of the trust created hereby or which may be ordered in any judicial proceeding, shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more of the Trustees to such Owner by leaving such notice with him at his Lot or by mailing it, postage prepaid, addressed to such Owner at his address as it appears upon the records of the Trustees, at least fourteen (14) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given, or such longer period of time as may be required by the specific terms of this instrument. **Owners may** waive notice by duly executing an appropriate waiver of notice.

Section 6. Inspection of Books; Reports to Lot Owners.

Books, accounts and records of the Trustees shall be open to inspection to any one or more of the Trustees and the Owners at all reasonable times. The Trustees shall as **soon as rea**sonably possible after the close of each fiscal year, or oftener if convenient to them, submit to the Owners a report of the operations of the Trustees for such year, which shall include financial statements in such summary form and only in such detail as the Trustees shall deem proper. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees, given by registered or certified mail within a period of one (1) month of the date of receipt by him, shall be deemed to have assented thereto.

Section 7. Checks, Notes, Drafts, and Other Instruments.

Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust may be signed by any two (2) Trustees, or by any person or persons (who may be one of the Trustees) to whom such power may at any time or from time to time be designated by not less than a majority of the Trustees.

Section 8. Seal.

The seal of the Trustees shall be circular in form, bearing the inscription: "Essex Crossing at Montserrat Homeowners Association Trust ", but such seal may be altered by the Trustees, and the Trustees may, at any time or from time to time, at their option, adopt a **common or wafer s**eal which shall be valid for all purposes.

Section 9. Fiscal Year.

The fiscal year of the Trust shall be the calendar year.

ARTICLE VII

Rights and Obligations of Third Parties Dealing With the Trustees;
Limitation of Liability

Section 1. No purchaser, mortgagee, lender, or other person dealing with the Trustees as they then appear of record in said Registry of Deed shall be bound to ascertain or inquire further as to the persons who are then Trustees hereunder or be affected with any notice, implied or actual, otherwise than by a certificate thereof, and such record or certificate shall be conclusive evidence of the personnel of said Trustees and of any changes therein. The receipts of the Trustees, or any one or more of them, shall be effectual discharges there from to the persons paying or delivering the same and no person from whom the Trustees, or any one or more of them, shall receive any money, property or other credit, shall be required to see to the application thereof. No purchaser, mortgagee, lender, or other person dealing with the Trustees or with any real or personal property which then is or formerly was the trust property shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed or otherwise as to the purpose or regularity of any of the acts of the Trustees or any one or more of them purporting to be done in pursuance of any of the provisions or powers herein contained, or as to the regularity of the resignation or appointment of any Trustee, and any instrument of appointment of a new Trustee or discharge of a Trustee purporting to be executed by the Trustees, Owners or other persons herein required to execute the same, shall be conclusive evidence in favor of any such purchaser or other person dealing with the Trustees of the matters therein recited relating to such discharge, resignation or appointment or the occasion thereof.

Section 2. No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking obligation, covenant, or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees, or by reason of anything done or omitted to be done by or on behalf of them or any of them against the Trustees individually, or against any such agent or employee, or against any beneficiary, either directly or indirectly, by legal or equitable proceedings, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with, or having any claim against the Trustees, shall look only to the trust property for payment under such contract or claim, or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them from the Trustees, so that neither the Trustees nor the beneficiaries, present or future, shall be personally liable therefore; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of the Owners under the provisions of Section 7 of Article IV.

Section 3. Every note, bond, contract, order, instrument, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or

executed by the Trustees, or by any agent or employee of the Trustees, shall be deemed to have been entered into subject to the terms, conditions, provisions and restrictions hereof, whether or not express reference shall have been made to this instrument.

Section 4. This Declaration of Trust and any amendments thereto and any certificate herein required to be recorded, and any other certificate or paper signed by said Trustees or any of them which it may deemed desirable to record, shall be recorded with said Registry of Deeds and such record shall be deemed conclusive evidence of the contents and effectiveness thereof according to the tenor thereof; and all persons dealing in any manner whatsoever with the Trustees, the trust property, or any beneficiary hereunder, shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be recorded wit Registry of Deeds. Any certificate signed by the Trustees in office at the time, setting forth as facts any matters affecting the Trust, including statements as to who are the beneficiaries, as to what action has been taken by the beneficiaries, and as to matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded with said Registry of Deeds, shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Trustees, acting in reliance thereon. Any certificate executed by any Trustee hereunder, or by a majority of the Trustees hereunder, setting forth the existence of any facts the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Trustee or majority, as the case may be, shall, as to all persons acting in good faith in reliance thereon, be conclusive evidence of the truth of the statements made in such **certificate and of the existence of** the facts therein set forth.

ARTICLE VIII Amendments and Termination

Section 1. In his sole discretion, the Developer while serving as sole Trustee may at any time and from time to time amend, alter, add to, or change this Declaration of Trust in an**y manner. Aft**er the turnover of the Association to the Owners, the Trustees, with the consent in writing of seventy-five (75%) percent of the Owners may at any time and from time to time amend, alter, add to, or change this Declaration of Trust in any manner or to any extent, the Trustees first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided always, however, that no such amendment, alteration, addition or change shall be valid or effective: (a) which is made without the consent of the Developer prior to the date on which the Developer **ceases to own any** of the beneficial interest hereun**der; (b)** according to the purport of which the percentage of the beneficial interest hereunder of **any Owner** would be altered, other than by consent of all of the **Owners. Any** amendment, alteration, addition or change pursuant to the foregoi**ng provisions of this** Section shall become effective upon the recording with said Registry of Deeds of an instrument of amendment, alteration, addition or change, as the case may be, signed, sealed and acknowledged in the **manner required in Mass**achusetts for the acknowledgment of deeds, by the Trustees setting forth in full the **amendment, alteration,**

addition, or change, and reciting the consent of the Owners herein required to consent **thereto. Such instrument, so executed and recorded, shall be conclusive evidence of** the existence of all facts and of compliance with all prerequisites to the validity of such amendment, alteration, addition, or change, whether stated in such instrument or not, upon all questions as to title or affecting the rights of third persons, and for all other purposes.

ARTICLE IX Sale of Lots

Section 1. No Severance of Ownership. No Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his Lot without including therein the Appurtenant Interests (as hereinafter defined); it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any Lot may be sold, transferred, or otherwise disposed of, except as part of a sale, transfer, or other disposition of the Lot to which such interests are appurtenant, or as part of a sale, transfer, or other disposition of such part of the Appurtenant Interests of all Lots.

"Appurtenant Interests", as used herein, shall include: (i) the undivided beneficial interest of a Owner in the Trust; (ii) the interest of such Owner in any Lots or Parcel theretofore acquired by the Trustees, or their designee, on behalf of all Owners, or the Proceeds of the sale or lease thereof, if any; and (iii) the interest of such Owner in any other assets of the Trust.

Section 2. Payment of Assessments. No Owner shall convey, mortgage, pledge, hypothecate, sell, or lease his Lot unless and until he shall have paid in full to the Trustees all unpaid common charges theretofore assessed by the Trustees against his Lot and until he shall have satisfied all unpaid liens against such Lot.

Section 3. Certificate of no Common Expenses Due. The Trustees when requested shall provide a Certificate stating the amount of any outstanding common expenses or assessment due by any Owner or assessed against any particular Lot which, when issued and recorded at Essex South Registry of Deeds may be completely relied upon by any purchaser of said Lot and or lender taking a mortgage on said Lot and binding against the Association.

ARTICLE X Construction and Interpretation

In the construction hereof, whether or not so expressed, words used in the singular or in the plural, respectively, include both the plural and singular; words denoting males include females; and words denoting persons include individuals, firms, associations, companies (joint, stock or otherwise), trusts and corporations, unless a contrary intention is to be inferred from or required by the subject matter or context. The captions of Articles and Sections are inserted only for the convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation, or effect hereof.

All of the trusts, powers, and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts.

The invalidation of any provision or provisions of this Trust by judgment or court order shall not affect or modify any of the other provisions of the Trust, which shall remain in full force and effect.

ARTICLE XI CONDITIONS OF PLANNING BOARD APPROVAL

The subdivision is developed pursuant to the Planning Board Approval.

Any and all conditions of the Planning Board Approval must be adhered to and followed. Furthermore, notwithstanding any contradictory language in this Trust or the Declaration, it may not be amended to avoid any condition of the Planning Board Approval or without the prior written consent of the City.

ARTICLE XII CONSERVATION COMMISSION

The subdivision is developed within and around Wetland areas that are subject to the jurisdiction of the Beverly Conservation Commission pursuant to an Order of Conditions recorded at Essex South Registry of Deeds at Book 33797, Page 168. The dumping of leaves, yard waste, debris or any other material into any Wetland area or into the Open Space or Common Parcels is prohibited. The Owners of any Lot responsible for violating this prohibition shall be responsible financially and criminally for any violation of this prohibition, including all costs (including court costs and attorney fees) associated with the restoration of the disturbed area.

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IN WITNESS WHEREOF, the said Trustees have hereunto set their hands and seals on this_*9:1h* day of *Pecom bier*, 2015.

DUC Residential LLC By: Paul DiBiase, Man**ager**

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS

December *9,* 2015

On this day of December, 2015, before me, the undersigned notary public, personally appeared Paul DiBiase, *M*anager as aforesaid proved to me through satisfactory evidence of identification, which was his Massachusetts Drivers license to be the person whose name is signed on the preceding document and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Kotary Public: Br*ien pirn Coral* My Commission Expires: 3/*1 4/19*

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EXHIBIT A

Initially, each Lot shall have 6.25 percent beneficial interest in the Trust.