

**DECLARATION OF COVENANTS, EASEMENTS, AGREEMENTS &
MANAGEMENT PLAN RELATING TO OPEN SPACE AND HOMEOWNERS
ASSOCIATION AND OTHER AMENITIES FOR, ESSEX
CROSSING AT MONTSERRAT, BEVERLY, MASSACHUSETTS**

WHEREAS, DUC Residential LLC, a Massachusetts Limited Liability Company, (hereinafter referred to as the "**DEVELOPER**"), owns certain land in Beverly, Essex County, Massachusetts, shown on a certain OSRD Site and 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 (hereinafter referred to as the "Plan").

WHEREAS, Developer is presently developing said property to be known as **Essex Crossing at Montserrat, Beverly Massachusetts** in compliance with the terms and conditions of a Planning **Board Approval** (as hereinafter defined), and thus the Developer intends and desires to place **certain covenants, easements, affirmative obligations, charges and liens** (hereinafter sometimes referred to as "the Covenants") upon the use of all of the land and **improvements shown** on the Plan, with the exception of Open Space Parcel A and Open Space Parcel B, which are being conveyed to the City of Beverly (hereinafter the "City") and desires that the Covenants shall run with the title to the land hereby restricted.

NOW, THEREFORE, for and in consideration of the premises, as required by the terms and conditions of the Planning Board Approval and for other good and valuable considerations, Developer, for itself and its successors, grantees and assigns, does hereby restrict the use, as hereinafter provided, of all of the land and improvements shown on the Plan (sometimes referred to as "Property") and does hereby place upon the Property the following Covenants to run with the title to the Property, and the grantees of and under any deed conveying any lot or lots, parcels or tracts shown on the Plan, or any parts or portions thereof, shall be deemed, by the acceptance of such deed, to have agreed to all the Covenants and to have covenanted and agreed to observe, comply with, and be bound by the Covenants hereinafter set forth.

ARTICLE I -- DEFINITIONS Section 1.01. 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 a Massachusetts Limited Liability Company**, together with its successors, legal representatives, grantees, and assigns.

b. Plan shall mean and refer to a certain **OSRD Site and Definitive Subdivision Plan** entitled "Essex Crossing Beverly Massachusetts", prepared by Hayes Engineering, Inc. recorded as Plan No. 73 in Plan Book 446.

c. Covenants shall mean and refer to the covenants, restrictions, easements, affirmative obligations, charges, and liens created and imposed by this declaration.

Brian D. McGrail, Esq.

599 North Avenue Suite 7 Second Floor **Wakefield**, MA 01880

d. Declaration shall mean and refer to this declaration together with any supplements or **amendments thereto**.

e.

Property or Subdivision shall mean and refer to all of the land and improvements included on 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.**

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**.

g.

Open Space shall mean and refer to Open Space Parcel 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.

i. Trust or Association shall mean and refer to the Essex Crossing at Monterrat

Homeowners Association Trust. Its purpose is to hold title to the Open Space and to **govern** the subdivision community in accordance with the terms of this document, the Planning Board Approval and the Association Bylaws. Ownership of a beneficial interest in the Trust' is both **automatic and mandatory for any Owner**.

j. Owner shall mean and refer to the record owner, whether one or more persons, or entities, of any Lot within the Subdivision.

k. Storm Water Management System shall mean and refer to the detention areas and

drainage infrastructure serving the Property. 1. Trail System shall refer to the trails existing or to be created in the Open Space. m.

Beneficiary shall mean and refer to all owners of beneficial interests, of the Association. n. 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.

o. Trustees shall mean and refer to the Trustees of the Association.

p. By-Laws shall mean and refer to the Bylaws of the Association, as the same may be **amended from time to time**.

ARTICLE II – CONDITIONS, RESTRICTIONS AND OBLIGATIONS As required and conditioned by the Planning Board Approval, the following shall be **restrictions**, requirements and/or responsibilities of the Association.

Section 2.01 - Road Ways and Open Space. The Association, subject to the

rights and privileges **reserved** to Developer in this Declaration, shall be responsible for the **exclusive maintenance**,

...
management and control of the road ways in the subdivision, including Pond View Lane and the Emergency 20' Wide Access & Utility **Easement as shown** on the Plan and the Open Space and **all improvements thereon**, and shall **keep the same in good, clean, substantial, attractive, and sanitary** condition, order and repair. The Emergency 20' Wide Access & Utility Easement **extending** from Pond View Lane all the way to Ice House Lane, as shown on the Plan, shall be kept free and clear of any and all obstructions including, but not limited to vehicles, snow, and **overgrown brush**.

Section 2.02 – Storm Water Management System. The Association, subject to the rights and privileges of the Developer in this Declaration, 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. Section 2.03 – Walls. The Association, subject to the rights and privileges of the Developer in this Declaration, shall be responsible for the exclusive maintenance, management and control of walls located in the Subdivision.

Section 2.04 - Open Space and Trails. The Association, subject to the rights and privileges of the Developer in this Declaration, shall be responsible for the exclusive **maintenance, management** and control of the Open Space and trails within the Subdivision.

Section 2.05- Restriction on Use of Open Space and Trails. The Open Space shall be perpetually preserved in an open or natural state for the benefit of the Lot Owners within the Subdivision, and shall be maintained in a manner which will ensure its suitability for such intended purpose and as contemplated in Section 2.06 below. The primary purpose of the Open Space shall be for wildlife

Section 2.06-Open Space Maintenance. The Open Space shall be disturbed to the minimum **extent** possible during any maintenance or repair and any area affected shall be restored to its original condition. There shall be no excavation, loam, soil, or rock disturbance. The Open Space shall be kept free of trash, refuse, waste, rubbish, debris, vehicles, junk or unsightly or offensive material or other substance. No trees, grasses or other vegetation shall be cut, removed, or otherwise destroyed, except as may be reasonably necessary to maintain the wooded areas of the Open Space in accordance with good woodland **management practices**. In accordance with generally accepted forest management practices, removing of brush, selective de minimis pruning and cutting to prevent, control, or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Open Space is allowed and shall be **performed when necessary and at a minimum on an annual** basis. The removal of non-native or **invasive** species, the inter-planting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and to **preserve water** quality is also

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allowed and shall be performed when necessary **and at a minimum on an annual basis.** The **removal of dead trees is also allowed and shall be performed when necessary and at a minimum on an annual basis.**

Section 2.07-Compliance with Law. The performance of any work or **maintenance contemplated** herein shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state, and local laws, ordinances, rules, and regulations.

ARTICLE III-ENFORCEMENT RIGHTS BY THE CITY

OF BEVERLY AND EASEMENT

RIGHTS TO THE CITY OF BEVERLY

Section 3.01-Enforcement. The conditions, restrictions and obligations stated herein and as required by the conditions of the Planning Board Approval shall continue in perpetuity. In the event that the Association fails to comply with said conditions, **restrictions** or obligations the City through its Planning Board may enforce the same. The Developer is posting a cash bond in the amount of \$3,000.00, to insure and/or secure compliance with this Declaration, to be held by the City in a segregated fund.

If at any time the Association fails to comply with the terms of Article II above, following fourteen (14) days written notice from the City, then the City or its designees shall have the right to enter upon property and do such work as it may deem appropriate and to charge said Association or Lot Owners the full cost thereof, including the actual cost and the imputed value of any Department of Public Works labor involved, for which amount the **said Association and** all lot owners shall be jointly and severally liable. The cost thereof may be paid, at the City's sole discretion, from the cash bond and any interest accrued thereon. The City may assess the **Association** for (i) amounts so used by the City from the cash bond, and (ii) any excess above the cash bond paid or incurred by the City. Any amounts not paid in a timely manner by the Association shall constitute a lien on each

Section 3.02-Easements. Specifically, Developer hereby grants a permanent **easement to the** City to provide access to the Property for the purposes of compliance and maintenance as stated in Article II above.

Section 4.01-Association Ownership. The Open Space, when the Developer deems appropriate **and in compliance with the Planning Board Approval** shall be **transferred to and owned** by the **Association**, in fee simple, free and clear of all liens and encumbrances, except for the **easement** identified in Section 3.02 herein and for any lien or encumbrance placed on the Property by the City.

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ARTICLE V-DEVELOPER RESERVATION OF RIGHTS

Section 5.01- Dedication. Developer shall have the sole and absolute right at any time, to dedicate to the City of Beverly all or any part of the **access ways or road ways** Subdivision.

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Section 5.02 - Developer's Rights. Developer reserves and shall have the sole and exclusive right:

- a. After obtaining written approval from the City, to amend this document, but all such **amendments** shall be reasonable in nature and shall conform to the general purposes, intent, and standards of the document;
- b. After obtaining written approval from the City, to amend this document for the purpose of curing any error or ambiguity in or **any inconsistency between the provisions contained herein and/or** to comply with any requirements of the Planning Board Approval;
- C. After obtaining written approval from the City, to amend the Planning Board Approval
with the approval of the Beverly Planning Board, which may include redefining, re arranging, changing and/or altering or adding to unsold Lots and/or the Open Space. Any Owner, by acceptance of the deed to a Lot, and future holders of mortgages relating to any Lot, by recording their mortgage, assent to said modification. This assent shall be deemed to be sufficient to comply with the consent requirements of M.G.L. Chapter 41, Section 81W.
- d. To install, construct, place, and maintain any and all infrastructure and utilities serving
the Sub-division in the Open Space as shown on the Plan.
- e. Any easements referred to herein, including those shown on the Plan as the same may be
amended by the Beverly Planning Board. f. Developer shall have and does hereby reserve the right and easement
to enter upon and pass through, on and over such Property, including Open Space and Lots for the purpose of maintaining, developing and improving the Open Space and/or

ARTICLE VI -- OWNERS AND VOTING RIGHTS

Section 6.02-Voting Rights. 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

Year	Number of Publications
1980	0
1981	0
1982	0
1983	0
1984	0
1985	0
1986	0
1987	0
1988	0
1989	0
1990	0
1991	0
1992	0
1993	0
1994	0
1995	0
1996	0
1997	0
1998	0
1999	0
2000	0
2001	0
2002	0
2003	0
2004	0
2005	0
2006	0
2007	0
2008	0
2009	950
2010	0

Section 6.03 - Notice of Meetings & Quorum. Written notice of any meeting called for

the purpose of taking any action of the Owners shall be sent to all Owners not less than at least

en (14) days prior to the date so designated in advance of the meeting. A quorum of **Owners** shall be fifty (50) percent of the Lots being represented.

Section 6.04 - Amplification. The provisions of this Declaration **are amplified** by the Association documents; provided, however, no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth herein. In the event of any conflict between this Declaration and the Association documents, this Declaration shall control. Section 6.05-Retention of Control of Association By Developer. The Association documents shall provide that until such time as the Developer shall have turned over the Association to the Owners, 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 assessment paying Member.

ARTICLE VII -- COVENANT FOR ASSESSMENTS

Section 7.01 Assessment and Lien of Association.

(a) General. Assessments against the Owners for the common expenses of the Association, including liability insurance for the protection of the Owners arising out of the Association **ownership in the Open Space**, shall be **made in the manner provided herein, and in the manner** provided by the Association documents. Included in said assessments shall be costs imposed upon the Association by virtue of certain restrictions and obligations contained herein including those in Article II and requirements of the Planning Board Approval. The Association will determine the amount of the assessments and when they will be due.

(b) Division of Common Expenses. The proportionate shares of the Owners of the expenses of the operation of the Association are based upon the proportion of the total of the number of Lots in the Subdivision. Each Lot shall bear the same cost as every other Lot. No Owner shall be exempt from liability for contribution to the expenses of the Association by waiver of the use or **enjoyment of any of the Property.**

(c) Lien of Association and Legal Action. The Association shall have a lien upon the estate or **interest in any Lot and improvements thereon of an Owner** for the payment of that portion of the **expenses** of operating the Association chargeable

against such Lot, which remain unpaid for **fifteen (15) days** after the same have become due and payable. The Association may file a notice of lien at Essex South Registry of Deeds, and notification thereof shall be sent to the Owner and to his or her or **its mortgagee as shown** on the books of the Association. Such notice shall contain a description of the Lot, the **name or names** of the record Owner or Owners thereof and the amount of such unpaid **portion of the expenses of operating** the Association. Such lien shall

remain valid for a period of five years from the time of filing thereof, unless sooner released or satisfied in the **same manner provided by** law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of the Court having jurisdiction thereof in an action brought to discharge such lien as hereinafter provided. Furthermore, the Association shall have a cause of action against any Owner for collection of unpaid **assessments** and shall be entitled to collect interest of 12% per annum on assessments which remain unpaid for fifteen (15) days after the same have become due and payable. The Association shall also be entitled to reasonable costs and/or attorney's fees from the Owner incurred in the collection process. Co-Owners shall be jointly and severally liable and the Association may pursue any or all of the Co-Owners.

(d) Dispute as to Common Expenses. Any Owner who believes that the portion of the **expenses** of operating the Association chargeable to his, her or its Lot for which a notice of lien has been filed by the Association, has been improperly charged

may bring an action in a Court of proper jurisdiction, for the discharge of such lien.

(e) Non-Liability of Foreclosure Sale Purchaser. Where the mortgagee of a first mortgage of record or other purchaser of a Lot and Dwelling thereon acquires title to, as a result of foreclosure of the first mortgage, or in the event a first mortgagee should accept a deed in lieu of foreclosure, such party and his, her or its heirs, successors and assigns, shall not be liable for the share of the common expenses or other assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such party. Such unpaid share of **common expenses** or assessments shall be deemed to be common expenses collectible from all of the Lot Owners, including that of such acquiring party.

(f) Liability for Assessments upon Voluntary Conveyance. In a voluntary conveyance of a Lot, the grantee of such Lot shall be jointly and severally liable with the grantor of such Lot for all unpaid assessments of the Association against the grantor and such Lot for such share of common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of all unpaid assessments against such grantor due the Association, and such grantee shall not be liable for nor shall the Lot be conveyed subject to a lien for any unpaid assessments made by the Association against such grantor in excess of the amount set forth in such a statement for the period reflected in such statement. As used in this paragraph "grantor" shall include a decedent and "grantee" shall include a legatee or intestate heir of said decedent.

ARTICLE VIII – MISCELLANEOUS

Section 9.01-Duration and Compliance with the Planning Board Approval. It is intended for this DECLARATION OF COVENANTS, EASEMENTS, AGREEMENTS & MANAGEMENT PLAN to continue in perpetuity in compliance with the requirements of the Planning Board Approval and the conditions contained therein. The grantees of and under any deed conveying any lot or lots, parcels or tracts shown on the Plan, or any parts or portions thereof, shall be deemed, by the acceptance and/or recording of such deed, to have agreed to all the **DECLARATION OF COVENANTS, EASEMENTS, AGREEMENTS & MANAGEMENT**

PLAN and to have agreed to observe, comply with, and be bound by the contents and obligations of this document and the Association as amended in perpetuity.

Section 9.02-Severability. The invalidation of any provision or provisions of this Declaration by judgment or court order shall not **affect or modify** any of the other provisions of the Declaration, which shall remain in full force and effect.

IN WITNESS WHEREOF, the said **PAUL DIBIASE**,
MANAGER DUC RESIDENTIAL LLC, have hereto
affixed their hands and seals this 17 day of
December

2015.

2015. *Hul Mbuie*

PAUL DIBIASE, Manager

COMMONWEALTH OF MASSACHUSETTS County of
Middlesex

On this the 9th day of December , 2015, before me, Brian

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, the undersigned Notary Public, personally appeared, *peul*
PiB_iese manager , **proved** to me through satisfactory evidence
of identity, which was

MA License

, to be the person(s) whose name(s) was signed on the preceding or
attached document in my presence, and who swore or affirmed to me that
the contents of the document are truthful and accurate to the best of
his knowledge and belief.

Notary Public: Brian D. McGrail

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My Commission Expires:

MARCH

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2019

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Middlesex, SS

December 9, 2015

On this *9th* day of December, 2015, before me, the undersigned notary public, personally appeared Paul DiBiase, Manager 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.

Notary Public: *13 rei o memell* My Commission

Expires: 3114119

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