

**BRIER CLIFF BY THE BEACH CONDOMINIUM
RESTATED DECLARATION OF TRUST**

This Restated Declaration of Trust is made as of _____, 2021, by **Andrew M. Knott, Trustee**, being 100% of the Trustees of the Brier Cliff by the Beach Condominium Trust (the "Trust") u/d/t dated August 22, 2019, and recorded on October 22, 2019, in Book 37955, Page 51, and **Brier Cliff Realty, LLC**, a Massachusetts Limited Liability Company with a principal place of business located at 115 Glen Avenue, Upton, MA 01568, the successor in interest to the Declarant named in the Master Deed of the Brier Cliff by the Beach Condominium (the "Master Deed") dated August 22, 2019, and recorded on October 22, 2019, in Book 37955, Page 35, the sole owners of certain Premises located in **Gloucester, Essex County, Massachusetts**, known and numbered as **41-45 Cliff Road**.

Articles I through XIII are hereby deleted in their entirety and replaced as follows:

ARTICLE I – Name of the Trust

The Trust hereby created shall be known as the Brier Cliff by the Beach Condominium Trust and, under that name, so far as legal, convenient, and practicable, shall all business called on by the Trustees be conducted and shall all instruments in writing by the Trustees be executed.

ARTICLE II – The Trust and its Purposes

1. Purpose of the Trust: All of the rights and powers in and with respect to the common areas and facilities (hereinafter called the "Common Elements") of the Brier Cliff by the Beach Condominium (hereinafter called the "Condominium"), established by a Master Deed of even date and recorded herewith, which are by virtue of the provisions of M.G.L. c. 183A conferred upon or exercisable by the organization of Unit Owners of the Condominium, 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, administer and dispose of the same and to receive the income thereof for the benefit of the owner of record from time to time of Units of the Condominium (hereinafter call the "Unit Owners"), according to the schedule of beneficial interest set forth in the Master Deed, as provided in Article IV, Section 1, hereof, and in accordance with the provisions of said Chapter 183A, this Trust being the organization of the Unit Owners established pursuant to the provisions of said Chapter 183A for the purposes therein set forth.

2. Trust Not a Partnership: It is hereby expressly declared that a trust and not a partnership has been created and that the Unit Owners are beneficiaries and not partners or associates or any other relation whatever among themselves with respect to the trust property, and hold no relation to the Trustees other than as beneficiaries, with only such rights as are conferred upon them as such beneficiaries hereunder and under and pursuant to the provisions of said Chapter 183A.

ARTICLE III – The Trustees

1. Board of Trustees: Until such time as the Declarant sells all Units or six years from today's date, whichever is sooner, Andrew M. Knott shall serve as sole Trustee, which term and any pronoun referring thereto shall be deemed to include his successors in trust hereunder. Upon the event after which Declarant no longer owns any Units or six years from today's date have passed, the Unit Owners then of record shall each have the right to vote for up to two Trustees. No provision of this Trust shall be interpreted so as to prevent a Unit Owner from voting to appoint himself or herself as Trustee. In the event that any person or entity is the Unit Owner of record of more than one Unit, such person or entity shall be entitled to as many votes for Trustees as Units owned (up to two per Unit). The three individuals receiving the most votes shall be appointed Trustees subject to their acceptance as Trustee as set forth below.

Except as stated above, the Board of Trustees shall consist of not less than three (3) Trustees. If and whenever the number of such Trustees shall become less than three (3), a vacancy or vacancies in said office shall be deemed to exist.

Each vacancy in the office of Trustee shall be promptly filled (a) by an instrument in writing setting forth the appointment of a Trustee signed by a simple majority of the Unit Owners or, if the Unit Owners have not, within thirty days after the occurrence of such vacancy, made such an appointment, by the then-remaining Trustee; and (b) by the acceptance of such appointment signed and acknowledged by the person or entity so appointed.

In the event a Trustee is appointed by Certificate of Appointment as provided herein, such appointment shall be effective upon recording at the Southern Essex District Registry of Deeds. Such person or entity, either so designated or appointed, shall become and be a Trustee and shall be vested with the title of the trust property, jointly with the remaining or surviving Trustees or 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 days and shall, at the end of that time, remain unfilled, a Trustee(s) to fill such vacanc(ies) may be appointed by any court of competent jurisdiction on the application of any Unit Owner and notice to all Unit Owners and Trustees and such other parties, if any, to who the court may direct that notice may be given.

2. Majority Vote: In any matters relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Trustees may act by a vote of 2/3 majority at any duly called meeting at which a quorum is present as provided in Paragraph A of Section 6 of Article V. The Trustees may also act without a meeting by an instrument of consent to such proposed action signed by all of the Trustees. In the event that there is only one (1) Trustee in office at the time of a meeting, such Trustee's vote alone shall constitute a majority.

3. Resignation and Removal of Trustee: Any Trustee may resign at any time by an 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 at the Registry of Deeds. After reasonable notice and opportunity to be heard before the Board of Trustees, a Trustee may be removed from office, with cause, by an instrument in writing signed by all Unit Owners, such instrument to take effect upon the recording thereof at the Registry of Deeds.

4. Fidelity Insurance: The association of owners may have, but shall not be required to have fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the condominium association of owners. Any fidelity bond or insurance shall name the condominium association of owners as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

5. Limits to Personal Liability of Trustees: No Trustee hereinbefore named or appointed shall under any circumstances 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 the other Trustee to 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 act 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.

6. Trustee Dealing with Trust: No Trustee shall be disqualified by his office from contracting or dealing with the Trustees or with one or more Unit Owners (whether directly or indirectly because of this interest individually or the Trustees' interest in any Unit 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.

7. Indemnification of Trustee from Trust Property: The Trustees and each of them shall be entitled to indemnity both out of the Trust property and by the Unit 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 Unit Owner shall be personally liable for all sums lawfully assessed for his proportionate share of the common expenses of the Condominium and for his proportionate share of any claims involving the Trust property in excess thereof.

8. Officers of Trust: The Trustees may, but are under no obligation 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.

9. Compensation: The compensation of the Trustees, if any, shall be determined at each annual meeting of Unit Owners, except for the original Trustee, who shall serve without compensation.

ARTICLE IV – Beneficiaries and the Beneficial Interest in the Trust

1. Beneficial Interest: The beneficiaries shall be the Unit Owners of the Condominium. The beneficial interest in the Trust hereunder shall be divided among the Unit Owners in the percentage of undivided beneficial interest appertaining to the Units of the Condominium, as set forth in the Master Deed,

incorporated herein by reference with the same force and effect as though fully set forth in the body of this instrument.

2. Unity of Voting Interest: The beneficial interest of each Unit of the Condominium shall be held and exercised as a Unit and shall not be divided among several owners of any such Unit. To that end, whenever any one of said Units is owned of record by more than one person, the several owners of such Unit shall: (a) determine and designate which one of such owners shall be authorized and entitled to cast votes, execute instruments, and otherwise exercise the rights appertaining to such Unit hereunder; and (b) notify the Trustees of such designation by a notice in writing signed by all of the record owners of such Unit. Any such designation shall take effect upon receipt by the Trustees of such notice, and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the remaining member of the Board of Trustees may designate any one of such owners for such purposes.

3. Proxy: A Unit Owner may vote in person or by a written proxy dated no earlier than five days prior to the date of the meeting at which such vote is taken. A proxy purporting to be executed by or on behalf of a Unit Owner shall be deemed valid unless challenged at or prior to its exercise. A proxy with respect to a Unit 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.

ARTICLE V – By-Laws

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 Condominium and may do all such acts and things except such acts and things as by law or by the Master Deed or by this Trust may not be delegated to the Board of Trustees by the Unit Owners. Such powers and duties of the Board of Trustees shall include, but shall not be limited to, the following:

- a. Leasing, managing and otherwise dealing with such community facilities as may be provided for in the Master Deed as being common areas and facilities ("Common Elements").
- b. Determination of the common expenses required for the affairs of the Condominium, including, without limitation, the operation and maintenance of the Condominium.
- c. Collection of the common charges from the Unit Owners.
- d. Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Condominium.
- e. Adoption and amendment of the rules and regulations covering the details of the operation and use of the Condominium.
- f. Operation, care, upkeep, and maintenance of the Common Elements.
- g. Owning, conveying, encumbering, leasing, and otherwise dealing with Units conveyed to it or purchased by it as the result of enforcement of the lien for common expenses, or otherwise.
- h. Obtaining insurance for the Condominium, including the Units, pursuant to the provisions hereof.

- i. Making repairs, additions and improvements to, or alterations of the Condominium, and repairs to and restoration of the Condominium in accordance with the other provisions of this Trust.
- j. The Board of Trustees shall have the power to enforce obligations of the Unit Owners; to enforce the rules and regulations of the Condominium; to allocate income and expenses; and to do anything and everything else necessary and proper for the sound management of the Condominium. In case of persistent violation of the rules and regulations by a Unit Owner, the Board of Trustees shall have the power to require such Unit Owner to post a bond to secure adherence to the rules and regulations.
- k. Enter into contracts for the administration, management and operation of the Condominium.
- l. Grant or relocate permits, easements and licenses on, over and under the Common Elements.
- m. To impose charges or to charge interest for the late payment of common expense assessments or other charges, and to levy reasonable fines for violations of the master deed, trust, by-laws, restrictions, and rules or regulations of the organization of Unit Owners.
- n. To require or cause the installation of energy saving devices in common areas in the condominium.

The expenses incurred in and proceeds accruing from the exercise of the aforesaid rights and powers shall be common expenses and common profits.

2. Common Expenses, Profits, and Funds:

- a. **Liability and Entitlement of Common Expenses and Profits:** Each Unit Owner shall be liable for common expenses and shall be entitled to common profits of the Condominium according to his respective percentage of undivided interest in the Common Elements as set forth in the Master Deed which is incorporated herein by reference with the same force and effect as though fully set forth in the body of this instrument. The Trustees may at any time or times distribute common profits among the Unit Owners in such proportions. The Trustees may, to such extent as they deem advisable, set aside common funds of the Condominium as a 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, and the funds so set aside shall not be deemed to be common profits available for distribution. Condominium dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those Common Elements that must be replaced on a periodic basis and shall be payable in regular installments rather than by special assessments.
- b. **Annual Determination of Common Charges – Payments:** 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. The Trustees shall promptly render statements to the Unit Owners for their respective shares of such assessment, and each Unit Owner thereafter shall pay one-twelfth of his share of the estimated common expenses monthly in advance on the first day of each month unless the Trustees determine an alternative method for establishing and funding common expenses. 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 Unit Owner for a sum or sums sufficient to provide the Condominium Trust with sufficient capital to meet emergencies and other contingencies. The amounts due hereunder, together with interest thereon, if not paid when due, at a rate equal to three percent (3%) above the prime rate of the leading banks then in effect, as established in the Wall Street Journal, but in no event higher than the highest interest rate allowable by law in the Commonwealth of Massachusetts and attorney fees and costs incurred in collection, shall constitute a lien on the Unit of the Unit Owner assessed, pursuant to the provisions of Section 6 of said Chapter 183A.

c. Compliance with M.G.L. c. 183A: The Board of Trustees shall expend common funds for common expenses and lawful purposes permitted hereby and by the provisions of Chapter 183A.

2A. Special Allocations: To the extent permitted by law, the Board of Trustees may charge common expenses to Unit Owners in proportions other than according to their respective percentages of undivided interest in the Common Elements in order to achieve an equitable allocation of expenses based on use by respective Unit Owners.

3. Insurance:

a. The Trustees shall obtain and maintain, to the extent available, master policies of casualty and physical damage insurance for the benefit and protection of the Trustees and all of the Unit Owners, naming as the insured, and with loss proceeds payable to, the Trustees hereunder, as Insurance Trustees for all of the Unit Owners and their respective mortgagees, as their interests may appear, such insurance shall cover the Units, all other portions of the buildings (if any), and all other insurable improvements forming part of the Common Elements; but not including: (a) the furniture, furnishings or other personal property of the Unit Owners, whether within the Units, or elsewhere; or (b) improvements within a Unit made by the Owners thereof subsequent to the first sale of such Unit by the Seller, and not reported per Section F below. Such insurance shall, unless the same is not obtainable, be maintained in an amount equal to not less than the replacement value, as determined by the Trustees, of the insured property, and shall insure against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; and (b) such other hazards or risks as the Trustees from time to time in their discretion shall determine to be appropriate, including, but not limited to, vandalism, malicious mischief, windstorm and water damage, earthquake, and boiler and machinery explosion or damage.

b. All policies of casualty or physical damage insurance shall, unless the same is not obtainable, provide: (a) that such policies may not be cancelled, terminated or substantially modified without at least twenty (20) days' written notice to the insureds; (b) that, notwithstanding any provisions thereof which give the insurer the right to elect to restore damage in lieu of making a cash settlement, such election may not be exercisable without the approval of the Trustees and may not be exercisable if in conflict with the terms of the Trust or these By-Laws; (c) for waiver of subrogation as to any claims against the Trust, the Trustees, the manager, agents, employees, the Unit Owners and their respective employees, agents, and guests; (d) for waivers of any defense based upon the conduct of any insured and (e) in substance and effect that the insurer shall not be entitled to contribution as against any casualty insurance for which may be purchased separately by Unit Owners.

c. The Trustee or Trustees hereunder designated as Insurance Trustee or Trustees as aforesaid shall collect and receive all casualty loss insurance proceeds and shall hold, use, apply and disburse the same in accordance with the terms of this Trust. With respect to losses which affect portions or elements covered by such insurance of more than one Unit to different extents, the proceeds relating thereto shall be used, applied and disbursed by the Trustees in their judgement, in a fair and equitable manner.

d. The Trustees shall 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 Unit 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 as the Trustees shall in their discretion deem appropriate, but in no case less than \$1,000,000.00 for public liability, and shall, insofar as practicable, contain provisions as above set forth with respect to non-cancellation, waiver of subrogation, waiver of defense based on conduct of any insured, and non-contribution. Such insurance shall not cover the liability of any Unit Owner as to claims arising out of incidents occurring within his own Unit but shall be the responsibility of each Unit Owner to maintain public liability insurance therefor. The Trustees may elect to include the managing agent of the Condominium as a party insured under policies of insurance described in this Paragraph.

e. The cost of all such insurance obtained and maintained by the Trustees pursuant to the provisions hereof shall be a common expense.

f. Each Unit Owner shall have the duty to promptly report to the Trustees any improvements made by the Unit Owner to his Unit so that the Trustees may obtain necessary additional insurance coverage as required by the By-Laws, and the Unit Owner shall pay the cost of the additional insurance, if any, resulting from said improvements. If, in the event of a casualty loss, the cost of repair and restoration of the Condominium exceeds the available insurance proceeds and such excess is the result of a lack of insurance coverage caused by the failure of a Unit Owner to notify the Trustees of improvements made by him to his Unit, as provided in the preceding sentence, the excess cost resulting from such failure shall be borne solely by the Unit Owner so failing to report the same. The extent to which the cost in excess of insurance proceeds is attributable to a Unit Owner failing to report improvements as aforesaid shall be determined by the Trustees.

4. Rebuilding and Restoration; Improvements:

a. In the event of any casualty loss to the Trust property, the Trustees shall determine in their reasonable discretion whether or not such loss exceeds fifty five percent (55%) of the value of the Condominium immediately prior to the casualty and shall notify all Unit Owners of such determination. If such loss as so determined does not exceed fifty five percent (55%) of such value, the Trustees shall proceed, without notice to the Unit Owners, with the necessary repairs, rebuilding, or restoration. If said casualty loss exceeds fifty five percent (55%) of the value of the Condominium prior to the casualty, then, in event of a casualty, if the Trustees do not agree within one hundred twenty (120) days of the date of casualty to proceed with repairs or restoration of the condominium, including all Units, the condominium shall be subject to a partition suit being brought by any Unit Owner. Such suit shall be subject to dismissal at any time prior to entry of an order to sell if an appropriate agreement to rebuild is filed. The net proceeds of a partition sale, together with any common funds including the proceeds of any insurance, shall be divided in proportion to the Unit Owner's respective undivided ownership in the Common

Elements. Upon such sale, the Condominium shall be deemed removed from the provisions of Chapter 183A of the Massachusetts General Laws.

b. If the Trustees do not agree to an improvement to the Common Elements, the cost of such improvements shall be borne solely by the Unit Owner desiring such improvement. If the improvement to the Common Element is needed for the proper maintenance or safety of the Condominium and one of the Trustees does not agree with such improvement, then the Trustee seeking to have the improvement may seek to have this issue arbitrated pursuant to Article XI of this Trust and the decision of the arbitrators shall be binding on all Unit Owners.

5. Meetings:

a. The Board of Trustees shall meet annually on the date of (and immediately following) the annual meeting of the Unit Owners, and at such meeting may elect the Chairman, Treasurer and Secretary hereinbefore provided for. Other meetings may be called by the Chairman and 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 four (4) days before such meeting to each member of the Board of Trustees. One hundred percent (100%) of the number of Trustees shall 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 2022, there shall be an annual meeting of the Unit Owners on the second Thursday of May in each year, at 7:00 p.m., at the Condominium premises or at such other reasonable place and time as may be designated by the Board of Trustees by written notice given to the Unit Owners at least fourteen (14) days prior to the date so designated. Special meetings of the Unit Owners may be called by either Unit Owner by written notice to the other Unit Owner designating the place, day and hour thereof at least fourteen (14) days prior to the date so designated. At the annual meeting of the Unit Owners, the Board of Trustees shall submit reports of the management and finances of the Condominium. Whenever at any meeting of the Board of Trustees proposes to submit to the Unit Owners any matter with respect to which approval of or action by the Unit Owners is necessary or appropriate, the notice of such meeting shall so state and reasonably specify such matter. A quorum of Unit Owners shall consist of 2/3 of the Unit Owners.

6. Notices to Unit Owners: Every notice to any Unit 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 Unit Owner by leaving such notice with him at his Unit in the Condominium or by mailing it, postage prepaid, addressed to such Unit Owner at his address as it appears upon the records of the Trustees, at least five 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. Unit Owners may waive notice by duly executing an appropriate waiver of notice.

7. Inspection of Books; Reports to Unit Owners: Books, accounts and records of the Trustees shall be open to inspection to either of the Trustees and the Unit Owners at all reasonable times.

8. 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 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 the Trustees.

9. Seal: The seal of the Trustees shall be circular in form, bearing the inscription: "Brier Cliff by the Beach Condominium" 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 seal which shall be valid for all purposes. The Trustees may sign any instrument under seal without being required to affix a formal, common or wafer seal.

10. Fiscal Year: The fiscal year of the Trust shall be the calendar year.

11. Maintenance and Repair of Units: The Unit Owners shall be individually responsible for the proper maintenance and repair of their respective Units and Exclusive Use Areas, whether structural or non-structural, ordinary or extraordinary, except as otherwise specifically provided herein or in the Master Deed, including, without limitation, the entirety of the portions of the Condominium Building(s) of which their Unit is comprised, the entirety of the Exclusive Use Areas belonging to their Unit, ventilating, and air conditioning equipment serving such Unit; plumbing and sanitary waste fixtures and fixtures for water and other utilities; electrical fixtures and outlets; and all wires, pipes, drains and conduits for water, sewerage, electric power, and light, telephone, and any other utility services that are contained in or otherwise exclusively serve each Unit. If the Trustees shall, at any time in their reasonable judgment, determine that any portion of a Unit or Exclusive Use Area are in such need of maintenance or repair that the market value of the other Units is being adversely affected or that the condition of a Unit or fixtures, furnishings, facilities, or equipment therein is hazardous to the other Unit or the occupants thereof, the Trustees shall, in writing, request the Unit Owner to perform the needed maintenance, repair or replacement or to correct the hazardous condition, and in case such work shall not have been commenced within fifteen (15) days (or such reasonable shorter period in case of emergency as the Trustees shall determine) of such request and thereafter diligently brought to completion, the Trustees shall be entitled to have the work performed for the account of such Unit Owner and to enter upon and have access to such Unit or Exclusive Use Area for that purpose. The cost of such work shall constitute a lien upon such Unit and the Unit Owner shall be personally liable therefor and such lien shall have the same priority as a lien under Section 2 of Article V hereof.

12. Maintenance, Repair, and Replacement of Common Elements: The Trustees shall be responsible for the proper maintenance, repair, and replacement of the common areas and facilities of the Condominium not subject to an Exclusive Use Area, except as otherwise provided in the Master Deed.

The cost of such maintenance, repair, and replacement, except as provided in the Master Deed, shall be assessed to the Unit Owners as common expenses of the Condominium at such times and in such amounts as provided in Article V, Section 2, hereof, except to the extent that the same are necessitated by the negligence, misuse, abuse, or neglect of a Unit Owner, his or her agents, or invitees, in which event such expense shall be charged to such Unit Owner individually and the Unit Owner shall be personally liable therefor.

The aforesaid work of maintenance, repair, and replacement of the common areas and facilities may be done through a Managing Agent appointed by the two Trustees and the Managing Agent may be so designated by the Trustees to approve payment vouchers for such work.

13. Maintenance, Repair, and Replacement of Exclusive Use Areas: Individual Unit Owners shall be responsible for the proper maintenance, repair, and replacement of the Exclusive Use Areas at their sole cost and expense.

ARTICLE VI – Operation and Record Keeping

1. Management of Records: The Trustees may appoint a manager or managing agent, or be self-managed by the Trustees. The Trustees shall keep a complete copy of the following items, except when they shall appoint a manager or managing agent who has the responsibility for the collection of assessments, payment of common expenses, or the accounting or custody of common funds, in which case the manager or managing agent shall be responsible, without limitation, for keeping the records in item (d) below:

- a. A true and accurate copy of the Master Deed as recorded and amended;
- b. The by-laws, including amendments thereto, as recorded;
- c. The minute book, as maintained by the Trustees, to the extent such minutes are kept; and
- d. Financial records, including the following:
 - i. Records of all receipts and expenditures, invoices and vouchers authorizing payments, receivables, and bank statements relating thereto;
 - ii. Records regarding the replacement reserve fund or any other funds of the organization of Unit Owners and bank statements relating thereto;
 - iii. Audits, reviews, accounting statements, and financial reports relating to the finances of the organization of Unit Owners.
 - iv. Contracts for work to be performed for or services to be provided to the organization of Unit Owners; and
 - v. All current insurance policies of the organization of Unit Owners, or policies which name the organization as insured or obligee.

Such records shall be kept in an up-to-date manner within the commonwealth and shall be available for reasonable inspection by either Unit Owner or by any mortgagee holding a recorded first mortgage on a Unit during regular business hours and at such other times as may be provided in the agreement between the manager or managing agent and the Trustees. Access to said records shall include the right to photocopy said records at the expense of the person or entity making the request.

Such records, and all other records to be maintained by the manager or managing agent in accordance with any agreement between the Trustees and said manager or managing agent, shall be the property of the Trustees. The Trustee shall be entitled, during regular business hours, to receive and review such records, upon request, at any time during the term of the agreement. The manager or managing agent shall give to the Trustees all books, records, funds and accounts in the possession of the manager or managing agent upon termination of the agreement. All records shall be retained for a period of at least seven years.

2. Financial Reports: The party responsible for keeping the records in this Article shall be responsible for preparing, or having prepared, a financial report to be completed within one hundred and twenty days of the end of the fiscal year, including without limitation a balance sheet, income and expense statement of funds available in the various funds of the organization. A copy of such financial report shall be made available upon request to any mortgagee holding a recorded mortgage on a Unit in the condominium.

An independent certified public accountant shall conduct, according to the standards of the American Institute of Certified Public Accountants, a review of the financial report, if so voted by the Trustees, and the cost of said review shall be paid as a common expense of the organization.

A Unit Owner or mortgagee holding a recorded mortgage on a Unit in the condominium shall be allowed to have a review or audit prepared at its own expense, such expense to include, but not be limited to, reasonable expenses incurred by the manager directly related to the preparation of the review or audit. The Trustees and the manager or managing agent shall fully cooperate in providing the information needed to perform the review or audit.

3. Termination of Manager: In any contract between a manager or managing agent and the Trustees, the Trustees shall have a right to terminate the contract for cause with ten days' notice, during which time the manager or managing agent shall have an opportunity to cure. The Trustees shall in no case be required to provide more than ninety days' notice if the contract is terminated without cause.

4. Rendering Accounts: If the Trustees appoint a manager or managing agent who has responsibility for the collection of assessments, payment of common expenses, or the accounting or custody of common funds, then the manager or managing agent shall be responsible for keeping the records listed in this Article, and shall:

a. Render at least monthly, or less frequently in accordance with this Article, but in no case less frequently than annually, a written report to the Trustees detailing all receipts and expenditures on behalf of the organization, including beginning and ending balances and copies of all relevant bank statements and reconciliations for the replacement reserve fund and any other funds of the organization for which the manager or managing agent has responsibility; and

b. Maintain a separate and distinct account or accounts for each of the following: the replacement reserve fund and any other fund of the organization for which the manager or managing agent has responsibility. These funds shall not be commingled with the assets of the manager or managing agent or with the assets of any other person or any other entity. These funds shall not be subject to the claims of any creditor of the manager or managing agent or its successor in interest, including a secured creditor or trustee in bankruptcy, and shall not be subject to the claims of any creditor of any other person or any other entity.

8. Reserves: Any reserve account of the Trustees shall require all checks to be signed by three Trustees, in addition to the managing agent, if one exists, unless there is a written agreement to the contrary between the Trustees and the managing agent. This requirement may be modified by the Trustees.

An adequate replacement reserve fund, collected as part of the common expenses and deposited in an account or accounts separate and segregated from operating funds shall be maintained. This requirement may be modified by the Trustees.

The declarant shall not use any funds of the organization to fund expenses relating to the initial construction, development, and marketing of the project, to pay the declarant's share of common expenses, or to pay for any costs that are not directly related to the operation of the condominium.

6. Overseer of Common Elements: The Trustees may designate a person or entity who shall oversee the maintenance and repair of the common elements.

In cases where a Unit Owner rents a Unit to a tenant, the owner of said Unit shall designate a person or entity who shall oversee the maintenance and repair of said Unit. At the commencement of any tenancy, the Unit Owner shall notify the tenant and the Trustees in writing of the name and phone number of said person or entity and shall notify the tenant in writing of the name and phone number of the person or entity designated to oversee maintenance and repair of the common areas. The Unit Owner shall notify the tenant and the Trustees in writing whenever there is a change in the person or entity designated to oversee maintenance and repair of the Unit and shall notify the tenant in writing whenever the Unit Owner is notified of a change in the person or entity designated to oversee maintenance and repair of the common areas.

7. Modification of Accounting Records: After control of the condominium has been transferred from the declarant to the Unit Owners/Trustees, by vote of both Trustees, any or all of the following provisions may be altered: the frequency with which written reports must be prepared by the manager or management agent; any signature requirements; and the reserve fund requirement.

ARTICLE VII – Rights and Obligations of Third Parties dealing with the Trust; Limitation of Liability

1. Reliance on Trustee Certificate: No purchaser, mortgagee, lender, or other person dealing with the Trustees as they then appear of record in the Southern Essex District Registry of Deeds 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 therefrom 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. Any instrument of appointment of a new Trustee or discharge of a Trustee purporting to be executed by the Trustees, Unit 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.

2. Recourse Only to Trust Property: 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 therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of the Unit Owners under the provisions of Article III hereof or under the provisions of said Chapter 183A.

3. Third Party Subject to Provisions of this Trust: Every 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, 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.

4. Recording of Trust Documents at Southern Essex District Registry of Deeds: 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 be deemed desirable to record, shall be recorded with said Southern Essex District 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 the Declaration of Trust, or change of Trustee or Trustees, when the same shall be recorded with said Southern Essex District 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 Southern Essex District 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 – Miscellaneous

The Trustees will upon written request of a first mortgagee of any Unit notify in writing such first mortgagee of any default in the performance by the Unit Owner of any obligations under the Condominium Documents which is not cured within sixty (60) days.

All taxes, assessments and charges which may become liens prior to a first mortgage on any Unit under local law shall relate only to the individual Condominium Units and not to the Condominium as a whole.

Any agreement for professional management of the Condominium or any other contract providing for services of the declarant may not exceed three (3) years and must provide for termination by either party without cause and without payment of a termination fee on no more than ninety (90) days written notice.

Unless the first mortgagees of each affected condominium Unit or owners of the individual affected Condominium Units have given their prior written approval, except as to the Declarant exercising its rights to construct additional phases referred to in the Master Deed, the Trustees shall not be entitled to:

- a. By act or omission, seek to abandon or terminate the Condominium;
- b. Change the pro rata interest or obligations of any individual Condominium Unit for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium Unit in the Common Elements;
- c. Partition or subdivide any Condominium Unit;
- d. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements: (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium shall not be deemed a transfer within the meaning of the clause); or
- e. Use hazard insurance proceeds for losses to any Condominium property (whether to Units or to Common Elements) for other than repair, replacement or reconstruction of such Condominium property, except as provided by statute in case of substantial loss to the Units and/or Common Elements of the Condominium.

ARTICLE IX – Amendments and Termination

1. Amendment by Trustees: The Trustees, 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, unless pursuant to the phasing rights reserved in the Master Deed: (a) which would purport to alter the beneficial interest hereunder of any Unit Owner, other than by consent of all of the affected Unit Owners, or in any manner or to any extent whatsoever modified or affected so as to be different than the percentage of the individual interest of such Unit Owner in the Common Elements as set forth in the Master Deed; or (b) which would render this Trust contrary or inconsistent with any requirements or provisions of said Chapter 183A. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this Section shall become effective upon the recording with said Southern Essex District 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 Massachusetts for the acknowledgment of deeds, by one-hundred (100%) of the Trustees, setting forth in full the amendment, alteration, addition, or change and reciting the consent of the Unit 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 title or affecting the rights of third persons, and for all other purposes.

2. Manner of Termination of Trust: The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of Chapter 183A in accordance with the procedure therefor set forth in Section 19 of said Chapter.

3. Procedures Upon Termination: Upon the termination of this Trust, the Trustees may, subject to and in accordance with the provisions of said Chapter 183A, sell and convert into money the whole of the Trust property, or any part or parts thereof, and, after paying or retiring all known liabilities and obligations of the Trustees and providing for indemnity against any other outstanding liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind, at valuations made by them which shall be conclusive, all other property than held by them in trust hereunder to the Unit Owners according to their respective percentages of beneficial interest, as shown in the Master Deed. In making any sale under the provisions of this Section 3, the Trustees shall have the power to sell or vary any contract of sale and to resell without being answerable for loss, and, for said purposes, to do all things, including the execution and delivery of instruments, as may by their performance thereof be shown to be in their judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their hands or ownership, even though all times herein fixed for distribution of Trust property may have passed.

ARTICLE X – Sale of Units

1. No Severance of Ownership: No Unit Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his Unit 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 Unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer, or other disposition of such part of the Appurtenant Interests of all Units.

"Appurtenant Interests", as used herein, shall include: (a) the undivided interest of a Unit Owner in the Common Elements or the Exclusive Use Areas; and (b) the interest of such Unit Owner in any other assets of the Trust.

2. Payment of Assessments: No Unit Owner shall convey, mortgage, pledge, hypothecate, sell or lease his Unit unless and until he shall have satisfied all unpaid common charges, assessments, interest and other charges assessed against such Units by the Condominium Association.

ARTICLE XI – Arbitration of Disputes

Any Unit Owner or Trustee aggrieved by a decision, action or inaction of the Trust in the administration of the Condominium may, after thirty (30) days of the decision, action or inaction of the Trust, appoint an arbitrator who shall be a member of the American Arbitration Association with not less than five (5) years' experience as an arbitrator. Within ten (10) days after notice of such appointment, the Trustees shall appoint another such arbitrator, and the two (2) so chosen shall within ten (10) days thereafter choose a third such arbitrator. Each arbitrator shall be a member of the American Arbitrator's Association with not less than five (5) years' experience. In the alternative, the Unit Owner or the Trustees may agree that one arbitrator may be appointed. A majority of such arbitrators, or the sole arbitrator, shall be entitled to decide any such matter and such decision shall be rendered within thirty (30) days of the appointment of the third arbitrator, or the one sole arbitrator. Such decision, subject to Chapter 251

of the General Laws of Massachusetts, as from time to time amended, shall be final and conclusive on all persons.

In the event the Trustees or the Unit Owner (or trustee) do not respond within any of the time limits set forth herein, then the aggrieved Unit Owner or trustee may seek to have the given issue resolved by arbitration as described herein. In the event the trustees or other Unit Owner (or trustee) fail to comply with any of the procedural requirements of arbitration, such as properly appointing an arbitrator of his or her own choosing within the appropriate time period, then the arbitrator appointed by the aggrieved Unit Owner or trustee shall be entitled to decide such matter alone and such decision rendered by the sole arbitrator shall be binding on all parties, even though such decision was made by the arbitrator appointed by the aggrieved Unit Owner or trustee.

Nothing herein shall prevent an aggrieved Unit Owner or aggrieved Trustee and the Trustees from agreeing to engage in an alternate path toward resolution should the anticipated expense of the above procedure be unreasonable in light of the underlying dispute.

ARTICLE XII - Invalidity

The invalidity of any provision of this Trust shall not be deemed to impair or affect the validity of the remainder of this Trust, and in such event, all other provisions of this Trust shall continue in full force and effect as if such invalid provision had never been included herein.

ARTICLE XIII – 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.

[signature page follows]

In witness whereof, Brier Cliff Realty, LLC, as caused its authorized signatories to sign in its name and on its behalf on _____, 2021:

Andrew M. Knott, Manager

Jayne Fifield Knott, Manager

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

On _____, 2021, personally appeared Andrew M. Knott and Jayne Fifield Knott, proved to me through satisfactory evidence of identification, namely, personal knowledge, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as duly authorized managers of Brier Cliff Realty, LLC, and did thereby cause said company to execute this document.

Joel Favazza, Notary Public
My commission expires March 4, 2022

Executed as a sealed instrument on _____, 2021, by:

Andrew M. Knott, Trustee