

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

FOR REGISTRATION REGISTER OF DEEDS
JENNIFER LEGGETT WHITEHURST
BEAUFORT COUNTY, NC
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This DECLARATION made this 29th day of August, 2003, by Charleston Associates, LLC., a Maryland limited liability company, doing business in North Carolina as Eagle Trace Properties, L.L.C. under the assumed name of Eagle Trace Properties, hereinafter referred to as "Declarant";

WITNESSETH

WHEREAS, Declarant is the owner of real property described in Article I of this Declaration, and desires to subject said real property to protective covenants hereinafter set forth, each and all of which is and are for the benefit of such property and of each owner of a lot therein, and shall enure to the benefit of and pass and run with said property, and each and every lot or parcel thereof, and shall apply to and bind the successors in interest of any owner thereof; and,

WHEREAS, a Declaration of Covenants, Conditions and Restrictions was filed on April 5, 2002 for Lots numbered 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, and 20, of that property more specifically described in a plat by The East Group, dated October 25, 2001, entitled "Survey of Whitehurst Shores" and recorded in Plat Cabinet F, Slide 92-1 of the Beaufort County Registry for a more complete reference; and

WHEREAS, on May 8, 2003 Declarant obtained fee simple title to the above referenced property by general warranty deed recorded in Book 1264, Page 133 of the Beaufort County Registry; and

WHEREAS, on May 6, 2003, Declarant obtained fee simple title to property set forth in a deed recorded in Book 1323, Page 873 of the Beaufort County Registry and now wishes to subject all of said property to the same set of restrictions, covenants, and conditions as set forth herein; and

WHEREAS, on June 26, 2003, Declarant obtained fee simple title to property set forth in a deed recorded in Book 1335, Page 555 of the Beaufort County Registry and now wishes to subject all of said property to the same set of restrictions, covenants, and conditions as set forth herein; and

WHEREAS, said Covenants were withdrawn by Revocation of Declaration of Covenants, Conditions and Restrictions recorded on August 25, 2003, in Book 1349, Page 632 of the Beaufort County Registry; and

WHEREAS, Declarant has changed the name of the property to "Eagle Trace" and is now doing business in the State of North Carolina as "Eagle Trace Properties, L.L.C." and under the assumed name of Eagle Trace Properties as recorded on August 25, 2003 in Book 1349, Page 630 of the Beaufort County Registry; and

WHEREAS, it is in the best interest of Declarant and to the benefit, interest, and advantage of every party hereafter acquiring any of the described property that certain covenants, conditions, easements, assessments, liens, and restrictions governing and regulating the use and occupancy of the property be established; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of said property; and

WHEREAS, Declarant intends by this instrument to create certain restrictions upon said property which shall henceforth be binding upon it, its successors and assigns, and upon future owners of lots lying within the area hereby designated as "Eagle Trace" and covered by these restrictive covenants.

NOW THEREFORE, the Declarant hereby declares that the lots conveyed out of the real property described in and referred to in Article I herein are and shall be held transferred, sold and conveyed subject to the Protective Covenants herein set forth, and that all of the property referenced above shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments, and liens relating to the use and occupancy thereof, which shall be construed as

covenants running with the land and which shall be binding on all parties acquiring any right, title or interest in any of the property and which shall inure to the benefit of each owner thereof.

ARTICLE I

PROPERTY SUBJECT TO COVENANTS

The property which shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Richland Township, and more particularly described on the attached Exhibits A and B. As concerns Exhibit B, the final lot surveys for lots 43-76, the Recreation Area and the Boat Storage Area have not been completed and the lot line locations of the final lot surveys and Frontage lines may differ from those shown on the attached Exhibit B. The final lot surveys for lots 1-42, and lots 77-83 are found in two plats by The East Group, dated June 24, 2003, entitled "Eagle Trace Phase 1, Section 1", Sheets 1 and 2, and recorded in Plat Cabinet G, Slide 21-6 and 21-7, Beaufort County Registry, and all of that property described in a plat by The East Group dated July 2, 2003, entitled "Eagle Trace Phase 2, Section 1" recorded in Plat Cabinet G, Slide 21-8 of the Beaufort County Registry.

Declarant reserves the right to subject additional properties to the terms and provisions of these Protective Covenants by recordation of an amendment hereto specifically describing such property. All or any part of such additional property may be subjected hereto; such property may be subjected hereto in one or more sections. However, to the extent that any portion of such property has not been subjected to the terms and provisions of these Protective Covenants by recordation of an amendment to these Protective Covenants in the office of the Register of Deeds of Beaufort County, which amendment specifically exercises such right, on or before December 31, 2015, this right shall terminate.

No portion of Eagle Trace may be sold or conveyed by Declarant without being made subject to the these Protective Covenants, and the amendment subjecting additional properties to the terms and provisions of these Protective Covenants shall not change the following restrictions contained herein. Amendments subjecting additional properties to the provisions of these Protective Covenants may change and alter the terms, conditions and restrictions for those additional properties, however,

the following may not be changed or altered, and all additional properties shall be subjected thereto without exception:

1. All additional properties are limited to residential utilization (except for Amenities located on properties not designated for construction thereon of Living Units).
2. The owner of each Lot and Living Unit shall be a mandatory member of the Association.
3. The owner of each Lot and Living Unit must pay dues and assessments to the Association as specified within these Protective Covenants.
4. All Living Units must comply with the architectural standards and approval processes established by these Protective Covenants.
5. The only permitted uses shall be Living Units, Amenities, utilities and appurtenant structures reasonably necessary to allow proper use and enjoyment of the Living Units and the Amenities. Amenities may include commercial uses reasonably appurtenant thereto, and shall include any recreational structures or administrative structures constructed by Declarant or the Association.
6. Amendments for additional properties shall include the required completion date of any Amenity constructed thereon.
7. There shall be no alteration of any buffer, set-back or restriction imposed herein by the Permit or by the State of North Carolina in accordance with its storm water regulations.

ARTICLE II

DEFINITIONS

“Community” - a group of Lots and/or Living Units sharing one or more common characteristic, which Community shall be identified by reference in these Protective Covenants and amendments hereto. Unless otherwise specified by an amendment to the Protective Covenants, all single family Lots shall be deemed a part of a single family residential Community.

“Frontage” - the line of demarcation for all wetlands as designated on the plats referred to herein, as well as the map that is attached hereto and incorporated by reference as Exhibit B.

“Living Units(s)” - a structure or part of a structure designed and constructed for utilization by a single family, whether detached or attached to another Living Unit, whether located on a Lot or located on a tract of land undivided into separate Lots. Where rights are granted to or obligations imposed upon the owner of a “lot and/or Living Unit” the intent is to include the owner of each Lot, whether or not a Living Unit is constructed thereon, as well as the owner of each Living Unit.

“Lot(s)” - any Lot designated for construction thereon of a residential Living Unit within Eagle Trace, as shown on a recorded subdivision map of record in the Office of the Register of Deeds of Beaufort County, and any subsequently recorded maps for that property shown on Exhibit B for which the final maps have not been recorded at the time of the filing of these Restrictive Covenants.

“Waterfront Lots.” - all residential building sites that front on the Pamlico River.

ARTICLE III RESTRICTIONS

LIVING UNITS

Lots may be improved only by the construction of one single family residential dwelling (the “Living Unit”). No Living Unit may be leased or rented to a non-owner thereof for a rental term less than one (1) month. Renters as well as owners must comply with all terms of these Covenants.

All Living Units must be “stick built” and constructed in accordance with standards for single family homes in the North Carolina Uniform Residential Building Code, and county building codes for waterfront property, notwithstanding whether or not such homes are constructed in whole or in part on site. No home may be moved onto any Lot if such home has previously been occupied and used as a Living Unit elsewhere. No modular homes shall be located on any Lot. No mobile homes (home built in accordance with manufactured home standards imposed by the Federal Construction and Safety Standards Act) or other structure designed for transportation on attached axles and wheels shall be located on any Lot. No self-contained sewage system is allowed for any Lot or Living Unit.

For non-waterfront lots, the minimum square footage of heated, enclosed living space for each approved Living Unit constructed thereon shall be 1,875 square feet for single-level homes; and 2200 square feet for two-level homes, a minimum of 1,200 square feet of such space being located on the first living floor of the Living Unit.

For waterfront lots, the minimum square footage of heated, enclosed living space for each approved Living Unit constructed thereon shall be 1,875 square feet for single-level homes; and 2400 square feet for two-level homes, a minimum of 1,300 square feet of such space being located on the first living floor of the Living Unit.

Carports, garages, attics, porches, patios, decks and basements shall not be considered heated, enclosed living space.

No detached garage, storage shed, or carport shall be permitted unless architecturally compatible with the primary Living Unit to which it is appurtenant. No such structure shall be constructed prior to the construction of the primary Living Unit on the Lot. No structure of a temporary character, trailer, single wide mobile home, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

All Living Units must be connected to the County water system. All connection, tap-on or other charges associated with such connection shall be paid by the owner of the Living Unit or Lot.

SIGNS

No sign shall be allowed on any Lot, except the following signs, which shall be allowed:

- A. One (1) sign per Lot, no greater than six square feet in size, specifying the general contractor actually constructing a Living Unit on such Lot. Such sign must be removed upon issuance of a certificate of occupancy for the Living Unit;
- B. One (1) sign per Lot or Living Unit identifying the property upon which such sign is placed only by the name of the owner and a street number. Such sign must be constructed at a size, and to specifications and styles, established by the Architectural Control Committee, and must be located in a place specified by the Architectural Control Committee;
- C. One (1) sign per Lot or Living Unit no greater than four (4) square feet in size which includes only the words "For Sale," the name of the selling agent and the telephone number of said agent. Said sign must be located a minimum of twenty (20) feet from each street right-of-way. No such sign may be installed or erected (unless stating "For Sale by Owner") until such time as the Lot or Living Unit has been listed by written agreement for sale with the agent named thereon. Such sign must be removed

within two (2) business days following closing of the sale of the Lot or Living Unit listed by said agent;

- D. Street or directional signs erected by Declarant or by the Association;
- E. Any sign constructed by any governmental agency; and
- F. Identification and informational signs constructed by Declarant, the purpose of which is to assist Declarant in identifying the project and the location of Lots, Living Units, sales offices, sales models, Amenities or other uses with Eagle Trace.

All permitted signs, except A, C and E shall be constructed of materials, style, colors and location established and approved by the Architectural Committee which is established herein.

SETBACK AND SIDELINES; LOCATION OF IMPROVEMENTS

The Architectural Committee shall have complete authority to determine the appropriate location of all improvements on each and every lot, except that no approval shall be required for the location of any structure upon any Lot upon which a Living Unit or other structure is constructed by Declarant. Suggested guidelines for sidelines and setbacks are 40 feet from any street right-of-way or from any waterway; 30 feet from the rear lot line; and 10 feet from any side Lot line, however, the Architectural Control Committee in its discretion, may vary from these suggested sidelines and setbacks. The foregoing notwithstanding, minimum sideline and setback restrictions are shown on the plats referred to herein, and shall be adhered to. All setback and building restriction areas, and allowable building areas, as shown on any recorded subdivision plat of any Community, shall be incorporated herein by reference.

PATIOS, DECKS, BULKHEADS AND PIERS

Patios, decks, overlooks and the utilization of other riparian rights by construction of improvements or structures (including bulkheads) shall only be allowed after approval by the Architectural Committee and all applicable governmental agencies, and no such structures will be allowed unless said structures are compatible with similar or proposed improvements on other Lots, and after a finding that the construction of such structures will not unduly interfere with the riparian rights or reasonable property expectations of the owners of other Lots or Living Units within any

Community. The type of construction utilized for bulkheads may be controlled by the Architectural Committee based on appearance, function and environmental engineering criteria.

No Single Family piers are allowed. Boat Dockage is only allowed in the marina.

HEIGHT OF STRUCTURES

The heights of structures shall be subject to approval of the Committee.

FENCES, SHRUBBERY AND SATELLITES

As used herein, "fence" shall include walls, barricades, shrubbery or other impediments to reasonable mobility and visibility. Fences are subject to the complete jurisdiction of the Committee including location, style, materials and height. Absent an extraordinary showing of need by the owner of a Lot or Living Unit and a finding of same by the Committee, no fence shall be allowed along any property line. The Committee may consider whether the construction of a fence upon a determination that the fence is aesthetically pleasing, does not detract from the reasonable value of any Lot or property, for the safety of the owners or occupants thereof, and does not unreasonably impede the view of any water course or other attractive feature from any other property.

There will be a scenic easement on all waterfront lots to protect the river view. Therefore, the Committee shall not approve any fence or shrubbery over three (3) feet tall in any location on the side of houses located on any waterfront lots, and the same is prohibited by these Covenants.

No satellite receiving dish, radio antennae or other similar device over two feet in diameter shall be allowed on any Lot.

BOATS, TRAILERS AND TRUCKS

No boat, boat trailer, other trailer, camper, recreational vehicle, utility vehicle or truck (to the extent that a truck is rated as a one and one quarter (1-1/4) ton truck or larger) shall be allowed to remain on any street, right-of-way, or on any Lot, or on any common property controlled by the Association overnight unless it is enclosed within a garage that has been constructed in accordance with the provisions of these Protective Covenants, or is parked in an area owned by Declarant or the Association designated specifically for such purpose, i.e., trailer parking facility.

ASSOCIATION MAY ADOPT ADDITIONAL RESTRICTIONS

The Association may adopt rules and regulations restricting the location of temporary or permanent clotheslines, the number of vehicles that may be parked on any Lot, the number, type and location of trash receptacles and trash receptacle enclosures, and the type and location of mailboxes.

OTHER ACTIVITIES OR RESTRICTIONS

No activity, whether active or passive, that is reasonably considered a nuisance by the Association shall be allowed within the Community. This prohibition includes any activities within any structure, on any Lot or on any street or common area. The Association is specifically authorized by the foregoing paragraph of these Protective Covenants to adopt rules regarding conduct and use of such properties; however, the Association may find any conduct or use of a Lot to be a nuisance notwithstanding the fact that such conduct is not specifically prohibited by these Protective Covenants or by an adopted rule. If any conduct is deemed by the Association to be a nuisance, and to the extent that such conduct is not specifically prohibited by the provisions of these Protective Covenants or by an adopted rule, the Association shall give written notice to the offending owner specifying the nature of the nuisance, and requesting that such nuisance be terminated. If any nuisance is not terminated within a reasonable time thereafter, the Association may pursue any legal or equitable remedy, and may collect in any such action all attorney's fees and costs incurred.

No trade, commerce, business, or industrial undertaking or enterprise shall be carried on upon any lots. No trade materials or inventories may be stored upon any lot and no tractor trailer type trucks, house trailer (other than camping trailers) or mobile homes may be stored or regularly parked on any lot.

Each lot shall be conveyed subject to drainage easements, utility easements, setbacks, street right of ways, wetland and flood zone delineations, and all other matters depicted on the recorded maps.

CAMA PERMIT RESTRICTIONS AND RIPARIAN RESTRICTIONS

Development of Eagle Trace is governed in part by the provisions of the North Carolina Coastal Management Act (the "Act"). In accordance with the Act, a major development permit has been issued authorizing the development. As used herein, this permit, Major CAMA Development Permit 1C-03 (as amended from time to time) shall be referred to as the Permit. Nothing contained herein shall prohibit or restrict in any way Declarant's right or ability, subject to approval by the State

of North Carolina, to amend, modify or extend the Permit. No such amendment, modification or extension shall, however, authorize any development or activity specifically prohibited by the provisions of the Protective Covenants.

In accordance with the provisions of the permit, no land disturbing activity of any kind is or shall be allowed, except as specifically authorized by the permit, below the ten (10) year flood plain elevation of seven (7) feet. The permit authorizes no structure to be constructed within said flood plain on any lot.

There is hereby created a conservation zone five feet in width along all Frontage measured landward from frontage line as shown on Exhibit B and all recorded maps. Each property owner will own the wetland area as shown on the aforesaid plats, Attachment B, and all subsequently recorded final maps for lots 43-76. The foregoing notwithstanding, there is created and reserved to the State of North Carolina, a perpetual easement in and for said wetlands area. Additionally, under no condition may said wetlands area or conservation zone be disturbed or used for any purpose other than as set forth herein. No structure may be constructed by any person or entity within such zone except that a bulkhead may be constructed at the outermost edge of said zone, upon the issuance of all required regulatory permits and upon approval by the Association. Complete plans and specifications for construction or repair of any such bulkhead shall be submitted to the Association by the person or entity desiring to construct such bulkhead a minimum of thirty (30) days prior to commencement of construction. Said conservation zone shall also constitute an easement to the Association for the purposes of ingress and egress to the Frontage to be utilized only in the event of any emergency condition threatening life or property, and shall in no way be construed as permission to the Association or its membership to utilize this easement for non-emergency access to the Frontage. With the exception of access in times of emergency and the restrictions imposed upon the utilization of such area contained herein, the owner of each Lot subjected to the conservation zone and easement contained herein, unless otherwise limited by a provision of these Protective Covenants, shall have complete ownership and control of such area.

GENERAL APPEARANCE

Each unimproved Lot shall be maintained in a slightly condition, comparable to the condition of unimproved Lots offered for sale by Declarant. In order to ensure compliance with this

requirement, the Declarant and/or the Association shall have the option to mow any unimproved lot and to remove trash and debris located thereon. In the event that the Declarant or Association has to mow or clean any unimproved lot, the owner of each unimproved Lot shall be charged, and shall pay to the Declarant or Association, as a special category of dues, collectable in the nature of dues or an assessment as allowed in accordance with these Protective Covenants, the sum of ONE HUNDRED Dollars (\$100.00) per year for those years in which such mowing has actually occurred. This fee shall also constitute a lien on the property enforceable according to the terms set forth herein. The Association may increase this amount sufficient to compensate the Association for the actual increase in the per Lot cost of having this annual service performed on behalf of the owner.

PETS

No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any Living Unit, except that cats, dogs or small indoor pets will be allowed at Eagle Trace upon application to and approval by the Board of Directors of the Association which shall have the final decision on any allowable pet or quantity of pets. The decision of the Board of Directors of the Association will be final and not subject to review by any court, the Association, or general membership.

No allowed animal may be kept or maintained for commercial purposes, may not disturb or annoy residents and may not be allowed to run free. If dogs or cats are walked on or allowed to go onto common areas, the owner must scoop animal waste and dispose of same in a trash container.

STREETS

The Board of Directors of the Association has the authority to set rules regarding non-licensed vehicle operation in reference to age of operator and type of allowable vehicles.

PEDESTRIAN EASEMENTS.

There is designated on the attached Exhibit B those easements that are included as Nature Trails as further defined herein. Declarant reserves the right to identify, in subsequently recorded final maps for Lots 43-76, further Nature Trails, but the Declarant's right to exercise such right shall expire within eighteen (18) months from the date of the recording of these Restrictive Covenants. Such easements are for the benefit of the Association and its members. To the extent that any such easement crosses the boundaries of any Lot, the owner of the Lot shall take ownership of said Lot

subject to said easement, and the owner of such Lot shall construct no structure nor conduct any activity that reasonably impedes the free use of the Pedestrian Access System by those entitled to its use. The Association shall adopt rules and regulations governing use of such nature Trails, and shall maintain such in usable, clean and sanitary condition.

TREE REMOVAL

The Committee must give prior approval to the removal of any tree six inches or more in diameter, measured one foot above normal ground elevation at the location of said tree, from any Lot for the construction of any improvement or structure on any property subjected hereto in accordance with the procedures described herein, except that no approval shall be required for tree removal from any Lot upon which a Living Unit or other structure is constructed by Declarant.

ARTICLE IV

HOMEOWNER'S ASSOCIATION

In order to enforce the provisions of these Protective Covenants, including but not limited to the architectural control standards established herein, in order to maintain Eagle Trace in a clean and attractive condition, in order to own, manage and maintain certain of the Amenities as more fully described hereinafter, and to further provide an organization for the benefit of the owner of each Living Unit and Lot within Eagle Trace, Declarant has chartered a North Carolina non-profit corporation named Eagle Trace Master Homeowners Association, Inc., (the Association). Every person or entity who owns a Lot or Living Unit within Eagle Trace as described above, shall be a member of the Association, provided, however that any such person or entity who holds such ownership or interest merely as a security for the performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any lot or residence which is subject to assessment. Except as specified herein, the owner of each such lot or Living Unit shall be obligated to pay dues and assessments to the Association for the benefit of the Association and every owner within Eagle Trace. The organization and operation of the Association is described in these Protective Covenants and in the By-Laws of the Association.

GENERAL PROVISIONS REGARDING ALL ASSESSMENTS

Assessments, whether annual and special, shall be for the purpose of promoting the recreation, health, safety and welfare of the property owners, and in particular for the improvement of and the

maintenance of the facilities, amenities, and common areas. Further, the assessments shall be used for the purpose of providing those services important to the development and preservation of an attractive community appearance and for the privacy and general safety of all home sites including, but not limited to the payment of taxes and insurance on the common areas, landscaping, road maintenance, facilities maintenance and improvements and security.

Each property owner, by acceptance of a conveyance of property within Eagle Trace, whether or not it shall be expressed in any such deed or conveyance, covenants and agrees to pay:

1. Annual Assessments as set forth herein;
2. Special assessments for capital improvements or other purposes as set forth herein, such assessments to be fixed, established and collected from time-to-time as hereinafter provided.

The Association shall prepare and maintain a roster of all members and assessments applicable thereto which shall be accessible to all members of the Association at all times by appointment.

If the assessments, either annual or special, are not paid when due, then such assessments shall become delinquent, and shall, together with such interest thereon and costs of collection thereof, as hereinafter provided, become a continuing lien on the property. The Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property according to the provisions of the North Carolina General Statutes.

The lien of the assessments provided for in this section shall be prior to and superior to all other liens except only:

1. Ad valorem taxes.
2. All sums unpaid on a first mortgage or deed of trust to secure debt of record. The sale or transfer of any lot shall not affect the assessment lien; provided, however, that the sale or transfer of any lot pursuant to the foreclosure of a first mortgage thereon shall extinguish the lien of such assessments as to the payments thereof which become due prior to such sale or transfer. No sale or transfer shall relieve such lot owner from liability for any assessment thereafter becoming due or from the lien thereof.

ANNUAL ASSESSMENTS

The initial annual assessment for all Lots or Living Units shall be Five Hundred Dollars (\$500.00) per year, and may be increased as set forth further herein.

The fiscal year of the Association shall be the calendar year. The annual assessments for each Lot or Living Unit shall be paid by January 1 of each calendar year.

The annual assessments provided for herein shall commence at the time each lot is conveyed by Declarant to a property owner. Annual assessments shall be payable in advance and shall be adjusted where ownership is acquired during the year according to the number of days remaining in the calendar year. Dues shall be payable to the Association by a Purchaser at closing. Developer/Declarant will not be required to pay assessments on any lots owned by Charleston Associates, LLC.

If Declarant conveys un-subdivided property or multiple Lots to any builder/developer for the purpose of constructing thereon homes or Living Units for resale to a Buyer, dues for each respective lot are not payable by such builder/developer for a period of eighteen (18) months, after which said dues and assessments shall become payable by the Builder for each lot owned by the Builder at the expiration of 18 months from the date of conveyance of the Lot to the Builder, as set forth herein, and at which time the Builder will become a member of the Association, with voting rights of one (1) vote per lot in the possession of Builder at the end of any respective eighteen month period. Once the Lot or Living Unit is sold by the Builder/developer to a Buyer, whether the Living Unit thereon is completed or not, all dues shall then be payable by said Buyer as set forth herein.

The Association may change the amount of the annual assessments for any year, provided that any such change shall have the approval of not less than fifty percent (50%) of the voting members of the Association voting whether in person or by proxy at a meeting duly called for this purpose, and written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

SPECIAL ASSESSMENTS

In addition to the annual assessments authorized herein, the Association may levy in any year a special assessment applicable to that year only, for the purpose of defraying in whole or in part the costs of any construction or reconstruction, unexpected repair or replacement of a capital

improvement upon the common properties, provided that any such change shall have the approval of not less than fifty percent (50%) of the voting members of the Association voting whether in person or by proxy at a meeting duly called for this purpose, and written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting. A special assessment may be made for any purpose for which expenditures are allowed in accordance with this Declaration. The resolution approving a special assessment shall specify the date payable.

BOARD OF DIRECTORS

The Association shall be governed by a Board of Directors, selected in accordance with the By-Laws of the Association, and the Association shall operate and do business in accordance with the terms of its By-Laws. The Board of Directors of the Association shall select in accordance with the By-Laws an Architectural Committee that shall have the duties set forth herein.

MEMBERSHIP

The owner or owners of every Lot or Living Unit shall be a voting member of the Association, and shall be entitled to one (1) vote for each Lot or Living Unit owned. When more than one person holds any ownership interest in any Lot or Living Unit, all such persons shall be members of the Association, and the vote for such Lot or Living Unit shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any lot or residence. Even though Declarant, is exempted from the payment of all assessments as set forth herein, Declarant shall be a member of the Association and shall have one vote per lot owned by it.

RESPONSIBILITIES AND DUTIES OF ASSOCIATION

The Association shall at all times maintain in good, working condition all street lights or area lights constructed within any Community and constructed for common benefit, to the extent such street lights or area lights are not owned and/or maintained by a public utility. The Association shall further have the responsibility of maintaining a sightly appearance along all street rights-of-way, utility easements adjacent thereto and pedestrian access ways.

The Association shall have the responsibility of maintaining in good condition all Amenities when and if conveyed to the Association in accordance with the provisions of these Protective Covenants, and thereafter shall be responsible for adopting rules and regulations governing utilization of such Amenities (subject to the limitations contained herein). To the extent deeded to the

Association, the Association shall be obligated to accept ownership of all Amenity areas designated on any recorded subdivision plat of any portion of Eagle Trace made subject to the terms and provisions of these Protective Covenants. As more fully described hereinafter, Declarant may convey to the Association the Marina, the Trailer Parking Facility and the Pedestrian Access System or any other amenity constructed by it on common property.

To the extent necessary, the Association may employ personnel necessary to perform its obligations, or needed to benefit the owners of Lots and Living Units within Eagle Trace. The Association shall have the obligation to provide for itself and for the benefit of each owner all necessary professional services to promote the proper maintenance of all Amenities and to provide the smooth, proper and legal administration of the Association. These services may include services of an engineer, lawyer, accountant or other professional. The Association is specifically authorized to provide such other incidental services for the benefit of Eagle Trace and in the management of the Association as deemed reasonably necessary by the Board of Directors of the Association. The Association shall maintain common properties as warranted by Declarant in any amendment to these Protective Covenants.

The Association shall have the optional authority to provide any service it believes desirable, including, but not limited to cable television, waste collection or utility service. Such services may be provided by the Association directly, by a subsidiary owned by the Association or by contract with a third party. Assessments may be collected to pay for the provision of such services. Such services must be for the benefit of owners of Lots or Living Units.

The Association need not maintain a capital reserve fund for street replacement if the State of North Carolina assumes maintenance responsibilities for all streets at or soon after the time of relinquishment of such maintenance by Declarant. Reserve funds for Amenities need not be maintained until such time as an Amenity is constructed and conveyed to the Association. Following such construction and conveyance, the Association shall maintain reasonable reserves for replacement of depreciable tangible assets, including but not limited to buildings, structures and parking areas. Reserves shall be maintained based on an estimation of the life of an asset, and may, at the discretion of the Board of Directors, be based on estimated replacement cost utilizing current values as of the date of the then budget year. The Board of Directors of the Association shall not be liable to any

owner or to any third party for failure to maintain adequate reserves to the extent that said Board of Directors in good faith attempts to comply with the reserve obligations contained within these Protective covenants, notwithstanding the fact that a significant expenditure is required in a greater amount or at an earlier date than had been reasonably anticipated. Declarant, at time of conveyance of Amenities to the Association, shall convey the Amenities in good and usable condition; however, such Amenities need not be "like new."

ARTICLE V

AMENITIES

It is the plan and intent of Declarant to construct certain recreational amenities for the primary benefit of owners within Eagle Trace. As more fully described within these Protective Covenants, these amenities are referenced herein as follows and are shown on the attached Exhibit B:

- A. MARINA: All piling and decking water ward of the high water mark or water ward edge of any bulkhead, to the extent constructed to create or provide access to boat slips and further including the boat slips themselves, and all other public trust area within the perimeter of the outermost decking. The definition of "Marina" does not include the boat slips themselves.
- B. NATURE TRAILS: Unpaved but designated pathways for general pedestrian utilization, including Boardwalk.
- C. BOAT STORAGE AREA: A common area designated for use by owners in parking boats, recreational trailers, and others trailers not allowed to be parked on a Lot or at a Living Unit.
- D. RECREATION AREA AND COMMUNITY SHELTER: As shown on attached Exhibit B and all recorded maps and plats.

AMENITY UTILIZATION

The common property referred to above shall be for the use and benefit of all the property owners in Eagle Trace. However the Declarant, its successors and assigns, shall have a permanent and perpetual easement upon the common areas as set forth herein until all properties owned by the

Declarants, its successors and assigns, have been sold and/or transferred or until the common areas have been conveyed to the Association.

Owners shall have the right, as long as such owner is current on the payment of dues and assessments due and payable to the Association, to utilize the Nature Trails, the Boat Storage Area, the Marina, and every other park or common area as shown on the recorded plat of any Community or Exhibit B. The owner of each Lot or Living Unit shall have no direct ownership in any of such amenities; actual ownership of all of those designated amenities remains with the Declarant, and shall be conveyed by Declarant to the Association following completion of construction of such amenities, as specified hereinafter.

Furthermore, the Association has no vested right or easement, prescriptive or otherwise, or any ownership interest in the amenities until such time as it is conveyed to the Association in whole or in part. Utilization of the amenities will be offered by Declarant or its successor in ownership, in accordance with such terms and conditions as established from time to time in the sole discretion of the Declarant or its successors in ownership.

Nothing contained herein shall prohibit or restrict the utilization of some or all of the amenities by users not owning property within Eagle Trace. Such right of utilization of Amenities by non-property owners within Eagle Trace shall be governed by the provisions of these Protective Covenants, and by rules and regulations adopted by Declarant and/or the owner of such Amenities from time to time. To the extent that the Marina is ultimately conveyed to the Association, the Association shall be entitled to all rights reserved to Declarant or its successors and assigns herein, and the Association shall specifically have the right to require the payment of dues, fees or rentals for use of the Marina

BOAT SLIPS

Ownership of the Boat Slips within the Marina remains with the Declarant and individual boat slips will be made available for lease or sale, to owners of Lots or Living Units with in the Community on terms made available by the Declarant. The owner of each Lot and Living Unit acknowledges that, by purchasing or paying for a Lot or Living Unit, or by acquiring membership in the Association, said owner does not acquire any vested right or easement, prescriptive or otherwise, or entitlement, to use, purchase, or lease of the boat slips.

ARTICLE VI
ARCHITECTURAL COMMITTEE

There shall be established as a committee of the Association an Architectural Control Committee ("Committee"). The Committee has adopted building guidelines for utilization and evaluation of proposed landscaping or construction plans. In addition, the following restrictions shall apply:

SUBMITTAL OF PLANS

At least thirty (30) days prior to the anticipated commencement of any landscaping or construction of any structure or improvement on any Lot, the owner of such Lot (or his duly appointed agent) shall submit to the Chairman of the Committee a survey of the Lot, which survey shall show each Lot corner. There shall further be shown on said survey the proposed location of all proposed and existing structures or improvements, including driveways, bulkheads, patios, decks and walkways, and further including a specific delineation of the proposed location of all improvements that will result in the creation of impervious surfaces as defined by the Division of Environmental Management of the State of North Carolina in accordance with the North Carolina Coastal Stormwater Regulations. There shall further be provided to the Committee sufficient building elevations and landscape plans, including a statement of exterior building materials and proposed exterior colors, to allow the Committee to appropriately and accurately evaluate what is proposed for construction on the Lot. The location of any proposed well shall also be identified. Specifications for toilets and showerheads shall be included with the submission of any plans which contemplate installation of improvements utilizing such fixtures. The survey, building elevations and landscape plans shall be of professional quality. There shall be submitted two copies of all information required to be submitted.

DISCLOSURE OF CONTRACTOR

The owner of each Lot shall notify the Committee of the identity of the contractor proposed for construction of any improvement with a reasonable construction cost of Ten Thousand Dollars (\$10,000.00) or more. The owner of each Lot shall include with the name of the contractor a statement as to the classification of contractor's license held by such contractor and the address and telephone number of the contractor. This information shall be submitted to the Committee at time

of submission of plans, if such information is available at that time; if the information is not available at that time, the information shall be submitted to the Committee at least thirty (30) days prior to commencement of construction. No Living Unit may be constructed by the owner of a lot unless said owner holds a valid contractor's license applicable to such structure.

STANDARDS FOR APPROVAL

Within thirty (30) days after receipt of all required information, the Committee shall notify in writing the owner of the Lot whether or not the Contractor and/or improvements are approved. The Committee may approve, deny, modify, approve with conditions, or request additional information. A request for additional information shall be deemed a determination that the information submitted was insufficient for the Committee to make a determination thereof, and the thirty (30) day time for response shall not begin until receipt of all requested additional information. If approval with conditions is granted and construction then begins, the owner shall be deemed to have approved all conditions imposed, and waives the right to request that the conditions not be imposed. Unless a response is given by the Committee within thirty (30) days, the Contractor and/or improvements shall be deemed approved.

Once all required information is submitted, the Committee shall make the following findings:

1. That the improvements sought to be constructed will not have negative economic impact on any other property within Eagle Trace;
2. That all required specific building standards and other conditions contained with the Protective Covenants and other applicable legal documents have been met;
3. That the improvements are architecturally compatible with proposed or constructed improvements on other properties within the applicable Community;
4. That the natural features of the Lot have been retained to the maximum extent feasible;
5. That the improvements have been situated on the Lot within the required setbacks;
and
6. That the impervious surface limitation coverage proposed on each Lot is consistent with the requirements of the Division of Environmental Management Coastal Storm Water Regulations.

The foregoing notwithstanding, approval of any plans or selected contractor shall not be deemed to be a certification or warranty in any manner of either the plans or the contractors by the Association.

RIGHT OF APPEAL

Any owner disagreeing with the finding of the Committee may appeal the decision to the Board of Directors of the Association by giving written notice of appeal to the President of the Association with fifteen (15) days following receipt of notice of denial, modification, or imposition of conditions. The Board of Directors of the Association shall then review the plans, giving the Chairman of the Committee the opportunity to present to the Board of Directors of the Association specific reasons why the plans were denied, modified or conditions imposed thereon, in the presence of the owner or his agent, and the owner or his agent may present information challenging the findings of the Committee. The decision of the Committee shall only be overridden by 2/3 vote of the Board of Directors of the Association.

NOTICES

All notices required to be given herein shall be given in writing, hand-delivered or mailed postage prepaid, return receipt requested, and the Committee shall be obligated to specify the particular grounds upon which denial of any application is founded. One set of plans, denoted as approved (or approved with specified conditions) shall be retained by the Architectural Control Committee and the other shall be returned to the applicant.

DECLARANT'S RESERVATION OF RIGHTS

Notwithstanding any provision to the contrary contained within these Protective Covenants, Declarant reserves unto itself all rights and obligations assigned by these Protective Covenants to the Committee until the earlier of the following:

1. Assignment of such responsibilities to the Association by written instrument, which instrument shall be recorded in the Office of the Register of Deeds of Beaufort; or
2. The Association membership meeting at which the majority of the Board of Directors of the Association are selected by vote of members of the Association.

ARTICLE VII

STREETS

Declarant shall construct all streets within each Community to standards specified by the State of North Carolina for residential streets. The State of North Carolina, in accordance with policies in effect at the time of the recordation of these Protective Covenants, accepts for maintenance purposes streets so constructed upon achievement of a State specified density of construction along said street. Declarant shall maintain such streets to standards imposed by the State of North Carolina until the earlier of the following:

1. Completion of its development obligations in Phase I as to streets in Phase I and in Phase II as to streets in Phase II, which shall mean complete construction of all proposed streets and roads within each Phase, and completion of all Amenities required by these Protective Covenants to be constructed within such Phase; or
2. Acceptance by the State of North Carolina of maintenance responsibilities for such street.

The Association shall be obligated to accept conveyance of such streets upon tender of a deed therefore by Declarant, if said deed is tendered at a time allowed by these Protective Covenants, and if such tender is accompanied by a statement from an authorized representative of the Department of Transportation of the State of North Carolina which affirmatively indicates that the condition of the street and its right-of-way meet standards established by the State of North Carolina, assuming proper density of home construction, for the State to accept maintenance of such street and right-of-way.

ARTICLE VIII

ENFORCEMENT

These Protective Covenants, including any amendment hereto, may be enforced by any individual Lot or Living Unit owner; by the Association, upon approval by its Board of Directors; or by Declarant, as long as Declarant owns any property within Eagle Trace. Appropriate remedies shall include, but are not limited to, specific performance. The owner of any Lot or Living Unit, in any action to enforce these Protective Covenants, including any action to collect assessments, either regular or special, or to foreclose upon any real property for non-payment of such assessment, shall

also be responsible for all costs associated with said collection, including court costs and reasonable attorney's fees, which shall be collectable as an additional continuing assessment. In addition, interest at the rate of eighteen percent (18%) per annum shall be collected from the due date of any assessment, until the assessment is paid in full or a judgment obtained thereon.

ARTICLE IX AMENDMENTS

These Protective Covenants shall continue in full force and effect until 12:00 noon on January 1, 2015 at which time they shall automatically extend for additional successive periods of ten (10) years, unless a document terminating or modifying these Protective Covenants is recorded prior to any renewal date in the office of the Register of Deeds of Beaufort County, which amendment shall require a vote of approval of sixty-seven percent (67%) of the Lots and Living Units subjected to these Protective Covenants (including any amendments hereto). No amendment shall alter the rights or obligations of Declarant without Declarant's written consent. No amendment shall become effective until recorded in the Office of the Register of Deeds of Beaufort County.

ARTICLE X BINDING EFFECT

All covenants, restrictions, reservations, easements and privileges contained herein shall run with the land and the grantee, by accepting any deed to any portion of such land subjected hereto, accepts the same subject to these Protective Covenants and its terms and conditions and agrees for himself, his heirs, successors and assigns, to be fully bound by each and all of the terms and conditions of these Protective Covenants, jointly, separately, and severally.

ARTICLE XI RESERVATIONS OF RIGHTS.

Declarant hereby reserves the right to utilize all streets and roads within each Community for purposes of ingress and egress to properties within Eagle Trace owned by it, or for purposes of providing access to other contiguous properties owned by it. This right shall be assignable by Declarant to successors in interest to it of properties described on Exhibits A and B. Any utility easements reserved as shown on any recorded plat (and all roadways shall be deemed for this purpose a utility easement) shall be available for utilization by Declarant, authorized utility companies or by

the owner of any Lot or Living Unit within Eagle Trace, for purposes of providing utility services or necessary drainage, but as to Lot or Living Unit owners, only upon approval of the Association given by its Board of Directors.

ARTICLE XII

SUBDIVISION OF EXITING LOTS

After Declarants or their successors or assigns have conveyed individual lots out of the real property described in Article I, no such lots shall be thereafter subdivided except to enlarge an adjoining lot, but any lot so enlarged cannot be improved with more than one single-family dwelling.

ARTICLE XIII

UTILITY EASEMENTS.

Declarant reserved a utility, drainage and maintenance easement running parallel to each street a width of 10 feet. Declarant may convey this easement and the rights thereunder to the Association.

ARTICLE XIV

MINOR AMENDMENT.

Declarant, or its successors or assigns, shall be allowed to amend these Protective Covenants, notwithstanding any other provision contained herein, and without joinder of any other party, for the purpose of correcting any discovered error contained herein, clarifying any ambiguity contained herein, or adding or deleting any incidental provisions deemed in the sole discretion of Declarant to be in the best interest of Eagle Trace, and the owners therein. This right may be exercised, and shall be effective, only upon the recordation of a "Corrected Declaration" in the office of the Register of Deeds of Beaufort County, which Corrected Declaration shall specifically reference this document, and the provision impacted.

ARTICLE XV

ENFORCEMENT

If the parties hereto, or any of them or their heirs, successors, or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning lots to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, and either to prevent it, her, him, or them from so doing,

and/or to recover damages of other dues for such violation, except the Declarants are specifically excluded from liability for monetary damages.

ARTICLE XVI
INVALIDATION

Invalidation of any one of these covenants or any part thereof by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect, and the failure of any person or persons to take action to restrain the violation of any of these covenants and restrictions shall not prevent the enforcement of such covenant or covenants in the future.

(Rest of page intentionally left blank.)

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed, this 29 day of August, 2003

DECLARANT:

CHARLESTON ASSOCIATES, L.L.C.
d/b/a EAGLE TRACE PROPERTIES, L.L.C.
under the assumed name of Eagle Trace Properties

Charles E. Smith, member
BY: CHARLES E. SMITH, MEMBER/MANAGER

NORTH CAROLINA
BEAUFORT COUNTY

I, Ranee Singleton, Notary Public, certify that CHARLES E. SMITH personally came before me this day and acknowledged that he is a member and manager of CHARLESTON ASSOCIATES, L.L.C., a Maryland limited liability company, doing business in North Carolina as Eagle Trace Properties, L.L.C. and acknowledged the due execution of the foregoing document by authority duly given on behalf of the company.

Witness my hand and official seal, this the 29th day of August, 2003.

Ranee Singleton
NOTARY PUBLIC

My commission expires _____



EXHIBIT A

Being all of Lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 22, and WH-3, together with that road designated as "Whitehurst Shores Road - 60' private right-of-way", and the proposed access road between lots 9 and 10 as set forth on a survey by The East Group dated September 14, 2001, a copy of which is recorded in Plat Cabinet F, Slide 92-1, Beaufort County Registry for a more complete reference.

And also being the same property more specifically described in two plats by The East Group, dated June 24, 2003, entitled "Eagle Trace Phase 1, Section 1", Sheets 1 and 2, and recorded in Plat Cabinet G, Slide 21-6 and 21-7, Beaufort County Registry, and all of that property described in a plat by The East Group dated July 2, 2003, entitled "Eagle Trace Phase 2, Section 1" recorded in Plat Cabinet G, Slide 21-8 of the Beaufort County Registry for a more complete reference; and,

Also being that property conveyed to Charleston Associates L.L.C. by deed recorded in Book 1264, Page 133, Beaufort County Registry dated May 8, 2002, and deed recorded in Book 1323, Page 873, Beaufort County Registry, dated May 6, 2003.

This property also includes the following tract of land more specifically described as follows:

BEGINNING at a point on the western right-of-way of NCSR 1100 (Core Point Road), said point lying S 04-13-40 W 2717.80 feet from N.C.G.S. vertical control monument "BEA 61 1987"; thence N 45-10-08 W 5.72 feet to an existing iron stake; thence N 45-15-46 W 536.78 feet to an existing iron stake; thence S 61-48-52 W 233.12 feet to an existing iron pipe; thence N 29-38-12 E 241.98 feet to a point; thence S 72-36-59 E 227.60 feet to a point; thence along a curve to the right having a chord bearing and distance of S 45-12-40 E 312.99 feet and a radius of 340.00 feet to a point; thence along a curve to the left having a chord bearing and distance of S 34-20-35 E 159.39 feet and a radius of 280.00 feet to a point; thence S 45-15-00 E 145.35 feet to a point; thence S 44-36-44 W 85.10 feet to the point and place of beginning containing 2.25 acres more or less.

And also being the same property conveyed to Charleston Associates, L.L.C. by deed recorded in Book 1335, Page 555, Beaufort County Registry, dated June 26, 2003.



JENNIFER LEGGETT WHITEHURST
 BEAUFORT COUNTY REGISTER OF DEEDS
 COURTHOUSE BUILDING
 112 W. 2ND STREET
 WASHINGTON, NC 27889

 Filed For Registration: 08/29/2003 03:00:02 PM

Book: RE 1351 Page: 379-407

Document No.: 2003008523

RESTR COV 29 PGS \$95.00

Recorder: BARBARA TAYLOR

 State of North Carolina, County of Beaufort

The foregoing certificate of RANEE SINGLETON Notary is certified to be correct. This 29TH of August 2003

JENNIFER LEGGETT WHITEHURST , REGISTER OF DEEDS

By: Barbara Taylor
 Deputy/Assistant Register of Deeds

Ranee Singleton

2003008523

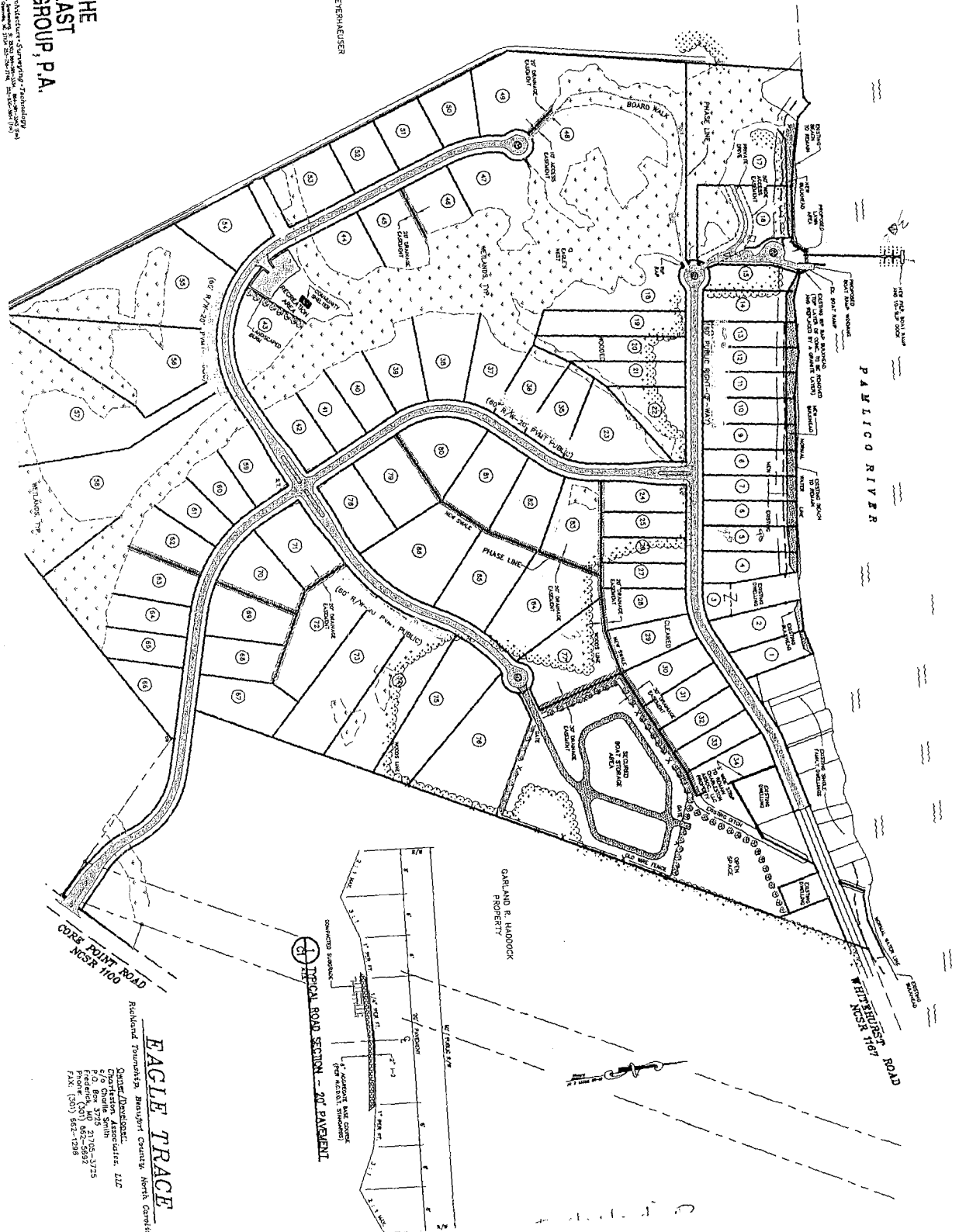
2003008523



**THE
EAST
GROUP, P.A.**

Engineering • Architecture • Surveying • Technology
 2000 1st Street N., Birmingham, AL 35203-3203 (USA)
 Tel: 205/333-1100 • Fax: 205/333-7114 • Telex: 660100 (EAG)
 Web: 205/333-1100

WEYERHAEUSER



FOR REGISTRATION REGISTER OF DEEDS
JENNIFER LEGGETT WHITEHURST
BEAUFORT COUNTY NC
2003 OCT 31 11 01 59 AM
BK 1362 PG 503-506 FEE \$20.00
INSTRUMENT # 2003010450

STATE OF NORTH CAROLINA

COUNTY OF BEAUFORT

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

This AMENDMENT made this 31 day of October, 2003, by Charleston Associates, LLC, a Maryland limited liability company, doing business in North Carolina as Eagle Trace Properties, L L C under the assumed name of Eagle Trace Properties, hereinafter referred to as "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of real property described in Article I of this Declaration, and desires to subject said real property to protective covenants hereinafter set forth, each and all of which is and are for the benefit of such property and of each owner of a lot therein, and shall endure to the benefit of and pass and run with said property, and each and every lot or parcel thereof, and shall apply to and bind the successors in interest of any owner thereof, and,

WHEREAS, a Declaration of Covenants, Conditions and Restrictions was filed on April 5, 2002 for Lots numbered 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, and 20, of that property more specifically described in a plat by The East Group, dated October 25, 2001, entitled "Survey of Whitehurst Shores" and recorded in Plat Cabinet F, Slide 92-1 of the Beaufort County Registry for a more complete reference, and

WHEREAS, on May 8, 2003 Declarant obtained fee simple title to the above referenced property by general warranty deed recorded in Book 1264, Page 133 of the Beaufort County Registry, and

WHEREAS, on May 6, 2003, Declarant obtained fee simple title to property set forth in a deed recorded in Book 1323, Page 873 of the Beaufort County Registry and now wishes to subject all of said property to the same set of restrictions, covenants, and conditions as set forth herein, and

WHEREAS, on June 26, 2003, Declarant obtained fee simple title to property set forth in a deed recorded in Book 1335, Page 555 of the Beaufort County Registry and now wishes to subject all of said property to the same set of restrictions, covenants, and conditions as set forth herein, and

WHEREAS, said Covenants were withdrawn by Revocation of Declaration of Covenants, Conditions and Restrictions recorded on August 25, 2003, in Book 1349, Page 632 of the Beaufort County Registry, and

WHEREAS, Declarant has changed the name of the property to "Eagle Trace" and is now doing business in the State of North Carolina as "Eagle Trace Properties, L L C" and under the assumed name of Eagle Trace Properties as recorded on August 25, 2003 in Book 1349, Page 630 of the Beaufort County Registry, and

WHEREAS, on August 29, 2003, new covenants were filed with the Beaufort County Register of Deeds Office in Book 1351, Page 379 (hereafter the "New Covenants"), and

WHEREAS, Declarant intends to make a minor revision to said Covenants prior to the conveyance by it of any lots

NOW THEREFORE, the Declarant hereby amends the said Covenants as follows

ARTICLE I

PROPERTY DESCRIBED

This First Amendment applies to that portion of the sixty-foot right of way along Whitehurst Shores Road, and begins at the line where the NCDOT State Maintenance ends, as shown on a plat recorded in Plat Cabinet F, Slide 92-1, and continues in a westward direction along Whitehurst Shores Road to the lines where the dedicated Right of Way ends at the south west corner of the lot owned by John K Westra and wife, Ann B Westra and conveyed to them by deed recorded in Deed Book 1009, Page 491, Beaufort County Registry, all as shown on the plat referred to above

ARTICLE II

The provisions of Article VII of the New Covenants relating to streets shall not apply to the property referred to in Article I above.

The property described in Article I shall not be conveyed to the Homeowner's Association, but shall remain the property of Declarant, in fee simple, and will not be a part of Eagle Trace Subdivision

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed, this 31 day of October, 2003

DECLARANT:

CHARLESTON ASSOCIATES, L.L.C.
d/b/a EAGLE TRACE PROPERTIES, L.L.C.
under the assumed name of Eagle Trace Properties

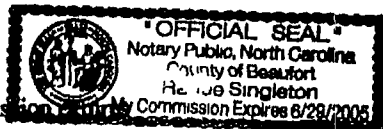
Charles E. Smith (SEAL)

BY: CHARLES E. SMITH, MEMBER/MANAGER

NORTH CAROLINA
BEAUFORT COUNTY

I, Raue Singleton, Notary Public, certify that CHARLES E. SMITH personally came before me this day and acknowledged that he is a member and manager of CHARLESTON ASSOCIATES, L.L.C., a Maryland limited liability company, doing business in North Carolina as Eagle Trace Properties, L.L.C. and acknowledged the due execution of the foregoing document by authority duly given on behalf of the company.

Witness my hand and official seal, this the 31 day of October, 2003.



My commission expires 8/29/2005

Raue Singleton
NOTARY PUBLIC



JENNIFER LEGGETT WHITEHURST
BEAUFORT COUNTY REGISTER OF DEEDS
COURTHOUSE BUILDING
112 W 2ND STREET
WASHINGTON, NC 27889

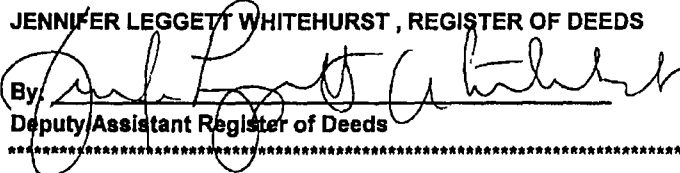
Filed For Registration: 10/31/2003 11:01:59 AM
Book: RE 1362 Page: 503-506
Document No.: 2003010450
COV 4 PGS \$20 00

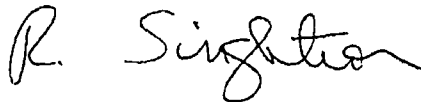
Recorder: JENNIFER L WHITEHURST

State of North Carolina, County of Beaufort

The foregoing certificate of RANEE SINGLETON Notary is certified to be correct. This 31 ST of October 2003

JENNIFER LEGGETT WHITEHURST, REGISTER OF DEEDS

By: 
Deputy Assistant Register of Deeds



2003010450

2003010450

BK 1430 PG 666

STATE OF NORTH CAROLINA

COUNTY OF BEAUFORT

FOR REGISTRATION REGISTER OF DEEDS
JENNIFER LEGGETT WHITEHURST
BEAUFORT COUNTY, NC
2004 DEC 23 01:39:14 PM
BK:1430 PG:666-682 FEE:\$59.00
INSTRUMENT # 2004010060

**SECOND AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

This AMENDMENT made this 23 day of December, 2004, by Charleston Associates, LLC., a Maryland limited liability company, doing business in North Carolina as Eagle Trace Properties, L.L.C. under the assumed name of Eagle Trace Properties, hereinafter referred to as "Declarant";

WITNESSETH

WHEREAS, Declarant is the owner of real property described in Article I of this Declaration, and desires to subject said real property to protective covenants hereinafter set forth, each and all of which is and are for the benefit of such property and of each owner of a lot therein, and shall enure to the benefit of and pass and run with said property, and each and every lot or parcel thereof, and shall apply to and bind the successors in interest of any owner thereof; and,

WHEREAS, a Declaration of Covenants, Conditions and Restrictions was filed on April 5, 2002 for Lots numbered 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, and 20, of that property more specifically described in a plat by The East Group, dated October 25, 2001, entitled "Survey of Whitehurst Shores" and recorded in Plat Cabinet F, Slide 92-1 of the Beaufort County Registry for a more complete reference; and

WHEREAS, on May 8, 2003 Declarant obtained fee simple title to the above referenced property by general warranty deed recorded in Book 1264, Page 133 of the Beaufort County Registry; and

WHEREAS, on May 6, 2003, Declarant obtained fee simple title to property set forth in a deed recorded in Book 1323, Page 873 of the Beaufort County Registry and now wishes to subject all of said property to the same set of restrictions, covenants, and conditions as set forth herein; and

WHEREAS, on June 26, 2003, Declarant obtained fee simple title to property set forth in a deed recorded in Book 1335, Page 555 of the Beaufort County Registry and now wishes to subject all of said property to the same set of restrictions, covenants, and conditions as set forth herein; and

WHEREAS, said Covenants were withdrawn by Revocation of Declaration of Covenants, Conditions and Restrictions recorded on August 25, 2003, in Book 1349, Page 632 of the Beaufort County Registry; and

WHEREAS, Declarant has changed the name of the property to "Eagle Trace" and is now doing business in the State of North Carolina as "Eagle Trace Properties, L.L.C." and under the assumed name of Eagle Trace Properties as recorded on August 25, 2003 in Book 1349, Page 630 of the Beaufort County Registry; and

WHEREAS, on August 29, 2003, new covenants were filed with the Beaufort County Register of Deeds Office in Book 1351, Page 379 (hereafter the "New Covenants"); and

WHEREAS, on October 31, 2003, a First Amendment to the Restrictive Covenants was filed with the Beaufort County Register of Deeds Office in Book 1362, Page 503 (hereafter the "First Amendment to the New Covenants"); and

WHEREAS, on August 17, 2004, Declarant obtained a submerged lands easement from the State of North Carolina which was filed with the Beaufort County Register of Deeds Office in Book 1410, Page 969; and

WHEREAS, Declarant is the owner of more than sixty-seven (67%) percent of the Lots subjected to the New Covenants, and the First Amendment to the New Covenants; and

WHEREAS, Declarant intends to make revisions to said Covenants in accordance therewith, and this revision shall hereafter be called the "Second Amendment to the New Covenants."

NOW THEREFORE, the Declarant hereby amends the said Covenants as follows:

ARTICLE 1

ARTICLE V, Subparagraph A of the New Covenants filed with the Beaufort County Register of Deeds Office in Book 1351, Page 379 is amended to read as follows:

- A. MARINA: All piling and decking water ward of the high water mark or water ward edge of any bulkhead, to the extent constructed to create or provide access to boat

slips, and all other public trust area within the perimeter of the outermost decking.

The definition of "Marina" does not include the boat slips themselves.

The Marina is further described by an Easement from the State of North Carolina to Declarant recorded in Book 1410, Page 969 Beaufort County Registry.

ARTICLE 2

In order to enforce the provisions of these Protective Covenants and the Declaration of Condominium filed simultaneously herewith, in order to maintain the said condominium in a clean and attractive condition, in order to own, manage and maintain certain of the Limited Common Areas as more fully described hereinafter, and to further provide an organization for the benefit of the owner of each Boat Slip within the said Condominium, Declarant has chartered a North Carolina non-profit corporation named Eagle Trace Boat Owner's Association, Inc., (the ETBOA). Every person or entity who owns a Boat Slip shall be a member of the ETBOA, provided, however that any such person or entity who holds such ownership or interest merely as a security for the performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any such Boat Slip which is subject to assessment. Except as specified herein, the owner of each such Boat Slip shall be obligated to pay dues and assessments to the ETBOA for the ETBOA and every Boat Slip owner within the Condominium. The organization and operation of the ETBOA is described herein and in the By-Laws of the ETBOA and in the declaration of condominium filed of even date herewith.

ARTICLE 3

DEFINITIONS AND CONDITIONS

3.1 **ETBOA.** EAGLE TRACE BOAT OWNER'S ASSOCIATION, INC., its successors and assigns.

3.2 **ETBOA-BOD.** Those persons elected or appointed to act collectively as the Directors of the ETBOA.

3.3 **ETMHOA.** EAGLE TRACE MASTER HOME OWNER'S ASSOCIATION, INC., its successors and assigns.

3.4 **The Board.** Those persons elected or appointed to act collectively as the Directors of the ETMHOA.

3.5 **Boataminium.** The EAGLE TRACE BOATAMINIUM, a Condominium, the condominium created by the declaration of condominium filed contemporaneously herewith, which

includes the entire development consisting of all of the property and all improvements and structures thereon, all easements, rights and appurtenances belonging thereto and all articles of personal property intended for common use in connection therewith, which are intended to be submitted to the provisions of the Act by the Declaration, and the supplements and amendments hereto as provided for herein.

3.6 Bylaws of ETBOA. The bylaws of the ETBOA, which are hereby incorporated herein and made a part hereof by this reference, as the same may be amended, restated or modified from time to time.

3.7 Bylaws of ETMHOA. The bylaws of the ETMHOA, which are hereby incorporated herein and made a part hereof by this reference, as the same may be amended, restated or modified from time to time.

3.8 Common Elements. All piling and decking water ward of the high water mark or water ward edge of any bulkhead, to the extent constructed to create or provide access to boat slips are all included in the common area owned by the Eagle Trace Master Homeowner's Association. Common Elements also includes those common areas previously designated as such on any plats, maps, or covenants of record.

3.9 Limited Common Elements. The Dock House as shown on the Plat recorded in UO# 1, Page 16 Beaufort County Registry, along with the improvements or personal property located on the Marina and finger piers, which are intended only for the use or benefit of specific Boat Slips that adjoin such piers and finger piers as shown on the plat and plans. Declarant reserves all necessary easements across all Common Elements and Limited Common for water, sewer, electrical and other utility easements to service the Limited Common Elements.

3.10 Limited Common Expenses. Expenditures made by or financial liabilities incurred by or on behalf of the ETBOA, together with any allocations to reserves, including without limitation:

- (i) all sums lawfully assessed against the Boat Slip Owners by the ETBOA;
- (ii) expenses of administration, maintenance, repair, or replacement of the Boat Slips and Limited Common Elements;
- (iii) expenses agreed upon as Limited Common Expenses by the ETBOA;
- (iv) expenses declared to be Limited Common Expenses of the Eagle Trace Boat Owner's Association by the provisions of the Act, by this Declaration or by the Bylaws of the ETBOA;

- (v) premiums for hazard and such other insurance as this declaration or the Bylaws may require the ETBOA to purchase;
- (vi) utility expenses, including sewer, water and electricity, for utilities provided to or for the benefit of the Boat Slips, the Limited Common Areas, or which are provided by the ETBOA to all Boat Slip Owners;
- (vii) contributions of sums to the Declarant and/or EAGLE TRACE BOAT OWNER'S ASSOCIATION, INC., or their successors or assigns in exchange for the provisions of services to the BOATAMINIUM; and
- (viii) ad valorem taxes, public assessment liens, and governmental liens which are levied against the Common Elements of the Eagle Trace Boat Owner's Association.

3.11 Declarant. CHARLESTON ASSOCIATES, L.L.C., a Maryland limited liability company, doing business in North Carolina as EAGLE TRACE PROPERTIES, L.L.C., its successors and assigns.

3.12 Member. Those persons entitled to membership in the ETBOA on as provided in the articles of incorporation of the ETBOA, the Bylaws and this Second Amendment to Restrictive Covenants.

ARTICLE 4

ASSESSMENTS AND FINES

The annual assessment for all Boat Slips shall be no more than Two Hundred Fifty Dollars (\$250.00) per year and shall be set annually by the ETBOA-BOD. The annual assessment shall be due and payable at the time each Boat Slip is conveyed by Declarant to the Owner.

4.1 Assessment Date. Assessments shall be due and payable as determined by the Board from time to time. As required by § 47C-3-115 of the Act, Declarant shall pay all accrued expenses of the BOATAMINIUM until assessments are levied against the Boat Slips. An Assessment shall be deemed levied against a Boat Slip upon the giving of notice by the ETBOA-BOD to a Member of the ETBOA who is a Boat Slip Owner. Boat Slip Owners shall have no obligation to pay periodic Assessments until an Assessment is levied. Boat Slip Owners shall not be invoiced for Assessments, but will be notified of periodic increases in Assessments.

4.2 Assessment Liens and Remedies for Non-Payment of Assessments. Any assessment which is not paid when due shall be delinquent. If an Assessment is not paid within thirty (30) days

after its due date (i) the Assessment shall bear interest from the date of delinquency at a rate equal to eighteen percent (18%) per annum; (ii) the ETBOA may levy a late charge not to exceed the greater of five percent (5%) of the delinquent Assessment or \$20.00; and (iii) the ETBOA may file of record in the office of the Clerk of Superior Court of Beaufort County a notice of lien in the manner provided therefor by the Act. The Board may, in its sole discretion, waive the imposition of interest and late charges as to any delinquent Assessment. The ETBOA may then bring an action at law against the Owner personally obligated to pay any delinquent Assessment or foreclosure of deeds of trust, including the right to foreclose under a power of sale, in which case the ETBOA shall have the right in its sole discretion to appoint a person or entity to serve in the role of a trustee. Costs, late charges, interest and reasonable attorney's fees of any such action shall be added to the amount of such Assessment and shall be a part of the lien assessed against such Boat Slip. No Owner may waive or otherwise escape liability for the Assessments provided for herein by the non-use of the Common Elements or abandonment of its Boat Slip nor shall damage to or destruction of any improvements on any Boat Slip by fire or other casualty result in abatement of the Assessment provided for herein.

4.3 Priority of the Assessment Lien. Upon the lien of the Assessments being duly filed as provided for in section 4.2 above, such lien shall be prior to all liens except the following: (i) special Assessments, liens and charges for real estate taxes due and unpaid on the Boat Slip made by a lawful governmental authority; (ii) any sums unpaid on the first deed of trust, first mortgage and any other encumbrances duly of record against the Boat Slip prior to the docketing of the aforesaid lien; and (iii) other liens granted priority by statutory authority.

4.4 Omission of Assessments. The omission by the ETBOA-BOD, before the expiration of any year, to fix the annual Assessments hereunder for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay the Assessments, or any installment thereof for that or any subsequent year, but the annual Assessment fixed the preceding year shall continue until a new annual Assessment is fixed.

4.5 Personal Liability of Transferee; Statement; Liability of Mortgagee.

4.5.1 The transferee of a Boat Slip shall be jointly and severally liable with the transferor for all unpaid Assessments against the latter for his proportionate share of the Limited Common Expenses up to the time of the grant or conveyance, without prejudice to the transferee's right to recover from the transferor the amounts paid by the transferee therefor. However, any such

transferee shall be entitled to a statement from the ETBOA-BOD or its designated agent, setting forth the amount of the unpaid Assessments against the transferor and such transferee shall not be liable for, nor shall the Boat Slip conveyed be subject to a lien for, any unpaid Assessment in excess of the amount therein set forth.

4.5.2 Any transferee referred to in section 4.5.1 above shall be entitled to a statement from the ETBOA-BOD, and such transferee's Boat Slip shall not be subject to a lien for any unpaid Assessments against such Boat Slip in excess of the amount therein set forth.

4.5.3 Where a mortgagee, or other person claiming through such mortgagee, pursuant to the remedies provided in a deed of trust, or by foreclosure or by deed or assignment in lieu of foreclosure, obtains title to a Boat Slip, the liability of such mortgagee or such other person for Assessments shall be only for the Assessments, or installments thereof, that would become delinquent, if not paid, after acquisition of title. For purposes hereof, title to a Boat Slip shall be deemed acquired by foreclosure upon expiration of the applicable period of redemption.

4.5.4 Without releasing the transferor from any liability therefor, any unpaid portion of Assessments which is not a lien under section 4.5.2 above or resulting, as provided in section 4.5.3 above, from the exercise of remedies in a deed of trust, or by foreclosure thereof or by deed, or assignment in lieu of such foreclosure, shall be a Limited Common Expense collectible from all Boat Slip Owners, including the transferee under section 4.5.2 above and the mortgagee or such other person under section 4.5.3 above who acquires ownership by foreclosure or by deed, or assignment in lieu of foreclosure.

4.6 Prohibition of Exemption from Liability for Contribution Toward Common Expenses.

No Boat Slip Owner may exempt himself from liability for his share of the Limited Common Expenses assessed by the ETBOA by waiver of the use or enjoyment of any of the Common Elements or the Limited Common Elements or by abandonment of his Boat Slip or otherwise.

4.7 Assessment Reserves. The ETBOA shall establish a reserve fund to meet expected future costs of long-term or emergency repairs. In any given fiscal year, if the ETBOA has surplus funds, then such funds shall be deposited in the reserve fund account and not distributed back to the Boat Slip Owners. Amounts paid into the reserve fund are not considered to be an advance payment of Assessments.

4.8 Fines. The ETBOA may impose charges for late payment of Assessments as outlined in the Bylaws.

ARTICLE 5**MANAGEMENT, MAINTENANCE, REPAIRS****REPLACEMENTS, ALTERATIONS AND IMPROVEMENTS**

5.1 Maintenance of Limited Common Elements by the ETBOA. The management, replacement, maintenance, repair, alteration and improvement of the Limited Common Elements shall be the responsibility of the ETBOA, and subject to the provisions of section 5.4 hereof, the cost thereof shall be a Limited Common Expense to the extent not paid by Boat Slip Owners pursuant to section 5.2 hereof, provided the ETBOA shall have no duty to maintain any Limited Common Elements which are maintained by any governmental body, by any public utility company, or by the Eagle Trace Master Homeowner's Association. All damage caused to a Boat Slip by any work on or to the Limited Common Elements done by or for the ETBOA shall be repaired by the ETBOA, and the cost thereof shall be a Limited Common Expense.

5.2 Damage of Limited Common Elements or Common Elements by Boat Slip Owners.

Each Boat Slip Owner shall pay all costs to repair and replace all portions of the Limited Common Elements or Common Elements that may become damaged or destroyed by reason of his intentional or negligent acts or the intentional or negligent acts of any Occupant of his Boat Slip. Such payment shall be made upon demand made by the ETBOA if the damage is to Limited Common Elements, or to the ETMHOA if the damage is to Common Elements.

5.3 Owner's Maintenance

5.3.1 Every Owner shall promptly repair any damage to a Boat Slip which is caused by that particular Owner or Occupants and/or his or her immediate family, guests, invitees or licensees. Should any Owner or Occupant by the operation of a vessel damage any of the Boat Slips, the Limited Common Elements or the Common Elements, then such Owner shall be responsible to repair same, and should such Owner fail to do so, then the appropriate Association may repair same and such Owner shall be responsible for any and all sums incurred by that Association in repairing same. All parts of a Boat Slip shall be kept in good condition and repair, in a clean and safe condition, free of nuisance, by and at the expense of the Owner. Each Owner shall promptly comply with any requirements of the insurance underwriters of the insurance for the Limited Common Elements and/or Common Elements when so requested in writing by the Board or its designated agent. Any failure of a Owner to repair, maintain or replace as may be required pursuant to this Declaration or a determination by the appropriate Board or its designated agent that such failure will endanger or

impair the value of the Common Elements, the Limited Common Elements, or any Boat Slip, may, upon written notice to the Owner of the nature of the required repair, maintenance or replacement, be repaired or replaced by the appropriate Board at the expense of the Owner, to be collected by special Assessment by that Board as provided herein, in all Bylaws, and covenants of record. Such Assessment may include the cost incurred in the abatement of any nuisance maintained by the Owner therein.

5.3.2 If an Owner fails to maintain the Boat Slip as required or makes any structural addition or alteration to the Common Elements or the Limited Common Elements without the required consent of the appropriate Board, or fails to permit entrance to the appropriate Board, or its authorized agents, the appropriate Board shall have the right to proceed either at law or in equity for whatever appropriate remedy the circumstances require. In lieu thereof and/or in addition to this remedy, the appropriate Board, shall have the right and power to levy an assessment against the Owner and the Boat Slip itself for such necessary sums to remove any unauthorized structure or alteration and the restore the Property to its former condition. The appropriate Board, shall have the further right and power to have its employees or agents, or any subcontractor appointed by it, enter the Boat Slip at any and all reasonable times, to do such work as it deems necessary by that Board to enforce compliance with the provisions hereof.

5.4 Limited Common Expenses Associated with Limited Common Elements of Benefitting Less Than All Boat Slips. The ETBOA may assess any Limited Common Expense benefitting less than all of the Boat Slips against the Boat Slips benefitted in proportion to their Limited Common Expense liability.

5.5 Boat Slips. Each Boat Slip Owner shall maintain his Boat Slip at all times in a good and clean condition, and repair and replace, at his expense, all portions of his Boat Slip; shall perform his responsibilities in such manner as not to unreasonably disturb other Occupants; shall promptly report to the Board, or its Agents, any defect or need for repairs, the responsibility for which is that of the ETBOA; and, to the extent that such expense is not covered by the proceeds of insurance carried by the ETBOA, shall pay costs to repair and replace any portion of another Boat Slip that has become damaged or destroyed by reason of his own acts or omissions, or the acts or omissions of any Occupant of his Boat Slip. Such payment shall be made upon demand by the Boat Slip Owner of such other Boat Slip or the Board. Nothing herein contained shall modify any waiver by insurance companies of rights or subrogation.

5.6 Waiver of Claims. Except as otherwise provided, the ETBOA agrees that it shall make no claim against a Boat Slip Owner or Occupant, and each Boat Slip Owner and Occupant agrees that he shall make no claim against the ETBOA, the members of the ETBOA-BOD, officers of the ETBOA-BOD, or employees or agents of any thereof, or against any manner retained by the ETBOA-BOD, or his or its officers, directors, employees or agents, or other Boat Slip Owners or Occupants, for any loss or damage to any of the Property, or to a Boat Slip or personal property therein; provided that this waiver shall not apply to any such loss or damage due to intentional acts. This waiver shall also not apply to damages caused by the owner of a boat or vessel moored, docked, or stored in any Boat Slip and which causes damages to the Property as a result of the owner's failure or refusal to remove the boat or vessel from the boat slip in the event of severe weather as set forth in Paragraph 6.10 of the Declaration of Condominium recorded contemporaneously herewith.

5.7 Right of Entry by the ETBOA. The ETBOA, and any person authorized by the ETBOA, may enter any Boat Slip or any of the Limited Common Elements without prior notice in case of any emergency or dangerous condition or a situation originating in or threatening that Boat Slip or any of the Limited Common Elements. The ETBOA, and any person authorized by the ETBOA, after reasonable notice to a Boat Slip Owner or Occupant may enter that Boat Slip or any of the Common Elements for purposes of performing any of the ETBOA's duties or obligations or exercising any of the ETBOA's powers under the Act, this Declaration or the Bylaws with respect to that or any other Boat Slip, or the Limited Common Elements. Notwithstanding anything herein to the contrary, the ETBOA shall be responsible for the repair of any damage caused by the ETBOA or its authorized person to the entered Boat Slip, and the cost thereof shall be a Limited Common Expense. All such entries shall be made and done so as to cause as little inconvenience as possible to the Boat Slip Owner and Occupant of the entered Boat Slip or any portion of the Limited Common Elements allocated to the Boat Slip Owner.

5.8 Right of Entry by Boat Slip Owners. Each Boat Slip Owner and Occupant shall allow other Boat Slip Owners and Occupants, and their representatives, to enter his Boat Slip, or Limited Common Elements allocated to his Boat Slip, when reasonably necessary for the purpose of altering, maintaining, repairing or replacing the Boat Slip, or performing the duties and obligations under the Act, the Declaration or the Bylaws of the ETBOA. In case of an emergency or dangerous condition or situation, such right of entry shall be immediate. Notwithstanding anything herein to the contrary,

the person making such entry shall be responsible for repair of any damage caused by such person to the entered Boat Slip or Limited Common Elements.

5.9 Manager. The ETBOA may enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the BOATAMINIUM. All the powers and duties of the ETBOA necessary or convenient for such maintenance and management may be delegated to and invested in the manager by the ETBOA-BOD, except as are specifically required by the Declaration, the Bylaws, or the Act, to have approval of the ETBOA-BOD or the ETBOA. The manager is hereby further authorized to recommend the annual budget, and upon approval thereof by the ETBOA-BOD, collect assessments, subject always to the supervision and right of approval of the ETBOA-BOD.

All other affairs of the ETBOA shall be conducted by a Board who shall be designated as provided in the Bylaws of the ETBOA.

ARTICLE 6 INSURANCE

6.1 Ownership of Policies. All insurance policies upon the Common Elements, Limited Common Elements and Boat Slips shall be purchased by the ETMHOA for the benefit of the Board and the Boat Slip Owners and their mortgagees as their interest may appear, and provision shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of Boat Slip Owners. Boat Slip Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and personal liability and such other coverage as they may desire.

6.2 Coverage. All improvements upon the land and all personal property included in the Limited Common Elements shall be insured in an amount determined annually by The Board with the assistance of the insurance company providing such coverage. Such coverage shall provide protection against (i) loss by fire and other hazards covered by standard extended coverage endorsement, (ii) such other risks as from time to time shall be customarily covered with respect to marinas similar in construction, location and use, and (iii) worker's compensation insurance, if and to the extent required by law.

The Board may, if it so elects, include in its insurance coverage for the benefit of the Boat Slip Owners any or all of those items owned by the Boat Slip Owners which would normally be deemed real estate under the laws of the State of North Carolina. If such items are included in the insurance

coverage, the extra cost of such coverage shall be borne by the Boat Slip Owners in the same ratio that applies to other Assessments.

To the extent obtainable, public liability and property damage insurance in such limits as The Board may from time to time determine, shall be purchased, insuring each member of The Board, the Manager, if any, and each Boat Slip Owner against any liability to the public or to the Boat Slip Owners (and their invitees, agents, and employees) arising out of or incident to the ownership and/or use of the Common Elements or the Limited Common Elements. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to this action against another insured. Such other insurance coverage shall also be obtained as the Board shall determine from time to time to be desirable and necessary.

6.3 Premiums. Premiums upon insurance policies purchased by The Board shall be paid by the ETMHOA as a Common Expense; however, that portion attributable to the premium paid for insurance for Limited Common Elements shall be a Limited Common Expense, and shall be reimbursed to the ETMHOA by the ETBOA.

6.4 Proceeds. All insurance policies purchased by the ETMHOA shall be for the benefit of the ETBOA and the Boat Slip Owners and their mortgagees as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Board as insurance trustee under this Declaration. The sole duty of the Board as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated in the Bylaws.

6.5 Carrier. The carrier of each type of insurance purchased by the ETMHOA shall be an insurance company authorized to do business in the State of North Carolina as selected, from time to time, by the EMHOA.

6.6 Additional Coverage. Each individual Boat Slip Owner shall be responsible for purchasing insurance, at his own expense, including but not limited to, liability insurance with respect to his ownership and/or use of his Boat Slip, coverage upon his own personal property, fire and other hazards, mortgage insurance and such other insurance as the respective Boat Slip Owner deems necessary or desirable. Any insurance procured by any Boat Slip Owner shall provide that it is without contribution as against the insurance purchased by the ETMHOA. If a casualty loss is sustained and there is a reduction in the amount of proceeds that would otherwise be payable on the insurance purchased by the Boat Slip Owner, such Boat Slip Owner shall be liable to the ETMHOA

to the extent of such reduction and shall pay the amount of such reduction to the ETMHOA upon demand, and shall assign the proceeds of such reduction to the ETMHOA.

ARTICLE 7

EASEMENTS

7.1 Encroachments. If any Boat Slip shall encroach upon any of the Common Elements, the Limited Common Elements or any other Boat Slip for any reason not caused by the purposeful or negligent act of a Boat Slip Owner or agents of same, then an easement appurtenant to such encroaching Boat Slip shall exist for the continuance of such encroachment shall naturally exist. If any Boat Slip, Common Elements or Limited Common Elements shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and if upon the reconstruction of such Boat Slip, Common Elements or Limited Common Elements in accordance with this Declaration, an encroachment of portions of the Common Elements or the Limited Common Elements shall be created upon any Boat Slip, or of any Boat Slip upon any other Boat Slip or upon any portion of the Common Elements or Limited Common Elements, then such encroachment shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain. Notwithstanding the foregoing, such easement for encroachment shall not be created or permitted to exist if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of any of the Common Elements, Limited Common Elements or Boat Slips so encroached upon.

7.2 Easements in Favor of Association. Easements are hereby declared and granted to the ETBOA and the ETMHOA, their agents and assigns, to install, lay, maintain, repair and replace any chutes, flutes, ducts, vents, pipes, wires, conduits and other utility installations, and structural components through any Limited Common Elements, Common Elements or otherwise.

7.3 Easements to Repair, Maintain, Restore and Reconstruct. Wherever in, and whenever by, this Declaration, the Bylaws or the Act, a Boat Slip Owner, the ETBOA, the ETMHOA or any other Person, is authorized to enter upon a Boat Slip, the Limited Common Elements or the Common Elements to repair, maintain, restore or reconstruct all or any part of the same, and such easements as are necessary for such entry and such repair, maintenance, restoration or reconstruction, such easements are hereby declared and granted.

7.4 Declarant's Easement. Declarant hereby reserves such easements through all Common Elements and Limited Common Elements as may be reasonably necessary for the purposes of

discharging its obligation, and exercising Declarant's Rights, which easements shall exist as long as reasonably necessary for such purposes.

7.5 Boat Slip Owner's Easement. Every Boat Slip Owner shall have a right and easement of enjoyment in and to all of the Common Elements and the Limited Common Elements. Each Boat Slip Owner specifically shall have an easement to maintain all components serving his Boat Slip in their present location and as shown on the architectural plans. Every Boat Slip Owner shall have a right and easement of enjoyment in and to the Limited Common Elements allocated to his or her Boat Slip. Each Boat Slip Owner shall further have an easement in common with the other Boat Slip Owners to use all pipes, wires, ducts, cables, conduits, public utility lines, and other common facilities located in any of the other Boat Slips and serving his or her Boat Slip. Each Boat Slip shall be subject to an easement in favor of the other Boat Slip Owners to use the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving such other Boat Slips and located in such Boat Slip. The Board, the ETBOA-BOD or its designees shall have the right of access to each Boat Slip to inspect the same, and to remove violations therefrom and to maintain, repair or replace the common facilities contained therein or elsewhere.

7.6 Grant of Easements by ETMHOA. The Board may grant or assume easements, leases or licenses for utility purposes for the benefit of the BOATAMINIUM, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone, television, data or other communication wires, conduits and equipment, and electrical conduits and wires over, under, along and on any portion of the Boat Slips, Common Elements or Limited Common Elements; and each Boat Slip Owner hereby grants the ETMHOA an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Boat Slip Owner such instruments as may be necessary or desirable to effectuate the foregoing.

7.7 Governmental Easements. Easements are hereby established over all Limited and Common Elements for the benefit of applicable government agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water and sewer facilities, electrical, telephone, data and cable lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities, and law enforcement activities.

7.8 Easement for Emergency Situations. In the case of any emergency originating in or threatening any Boat Slip, regardless of whether the Boat Slip Owner is present at the time of such emergency, the ETBOA and/or the ETMHOA, or any other person authorized by it shall have the

right to enter such Boat Slip for the purpose of remedying or abating the cause of such emergency, and this right of entry shall be immediate.

7.9 Easement for Ingress and Egress. An easement for ingress and egress is hereby reserved and created for pedestrian traffic over, through and across bulkheads, docks, piers, sidewalks, paths, walks and lanes as the same from time to time exist upon the Common Elements; and for vehicular traffic over, through and across such portion of the Common Elements as from time to time may be paved or intended for such purposes, for the benefit of all Boat Slip Owners, their Occupants, the ETBOA, the Declarant, and their respective heirs, successors, and assigns.

7.10 Easement for Diesel and Gas Pumps. An easement for the location of gasoline, diesel and motor fuel pumps and related lines is hereby reserved and created over the Common Elements for the benefit of the Declarant, and its successors and assigns.

ARTICLE 8

RESPONSIBILITIES AND DUTIES OF ETBOA

The ETBOA shall at all times maintain in good, working condition all improvements to the Boat Slips, Condominium and Dock House, lights or area lights constructed within any Limited Common Area and Boat Slips, to the extent any such lights are not owned and/or maintained by a public utility. The ETBOA shall further have the responsibility of maintaining a sightly appearance of the Limited Common Areas.

To the extent deeded to the ETBOA, the ETBOA shall be obligated to accept ownership of all Limited Common Areas designated on any recorded subdivision plat of any portion of Eagle Trace made subject to the terms and provisions of these Protective Covenants.

To the extent necessary, the ETBOA may employ personnel necessary to perform its obligations, or needed to benefit the owners of the Boat Slips within the Condominium. The ETBOA shall have the obligation to provide for itself and for the benefit of the owner of each Boat Slip all necessary professional services to promote the proper maintenance of all Limited Common Areas and Boat Slips and to provide the smooth, proper and legal administration of the ETBOA. These services may include services of an engineer, lawyer, accountant or other professional. The ETBOA is specifically authorized to provide such other incidental services for the benefit of Eagle Trace Boataminium and in the management of the ETBOA as deemed reasonably necessary by the ETBOA-BOD. The ETBOA shall maintain common properties as warranted by Declarant in any amendment to this amendment to the Protective Covenants.

BK 1430 PG 681

The ETBOA shall have the optional authority to provide any service it believes desirable, including, but not limited to waste collection or utility service. Such services may be provided by the ETBOA directly, by a subsidiary owned by the ETBOA or by contract with a third party. Assessments may be collected to pay for the provision of such services. Such services must be for the benefit of owners of Boat Slips.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed, this 23 day of December 2004.

DECLARANT:

CHARLESTON ASSOCIATES, L.L.C.

D/b/a Eagle Trace Properties, L.L.C.

BY: Ranee Singleton Holbrook (SEAL)
RANEE SINGLETON HOLBROOK, Attorney-In-Fact

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

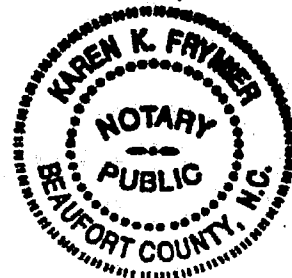
I, KAREN K. FRYMER, a Notary Public for said County and State, do hereby certify that RANEE SINGLETON HOLBROOK, attorney in fact for CHARLESTON ASSOCIATES, L.L.C a Maryland limited liability company doing business in North Carolina as Eagle Trace Properties, L.L.C. personally appeared before me this day, and being by me duly sworn, says that she executed the foregoing and annexed instrument for and in behalf of the said CHARLESTON ASSOCIATES, L.L.C a Maryland limited liability company doing business in North Carolina as Eagle Trace Properties, and that her authority to execute and acknowledge said instrument is contained in instruments duly executed, acknowledged, and recorded in Book 1381, page 985 in the office of the Register of Deeds of Beaufort County, North Carolina, on the 10th day of March, 2004, and recorded in Book 1386, page 103 in the office of the Register of Deeds of Beaufort County, North Carolina, on the 2nd day of April, 2004, and an instrument duly executed, acknowledged, and recorded in Book 1410, Page 743 in the office of the Register of Deeds of Beaufort County, North Carolina, on the 16th day of August, 2004, this instrument was executed under and by virtue of the authority given by said instruments granting her power of attorney.

I do further certify that the said RANEE SINGLETON HOLBROOK acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said CHARLESTON ASSOCIATES, L.L.C., a Maryland limited liability company doing business in North Carolina as Eagle Trace Properties, L.L.C.

Witness my hand and official stamp or seal, this the 23rd day of DECEMBER, 2004.

Karen K. Frymer
Notary Public

My Commission Expires: 1-27-08



BK 1430 PG 682



JENNIFER LEGGETT WHITEHURST
BEAUFORT COUNTY REGISTER OF DEEDS
COURTHOUSE BUILDING
112 W. 2ND STREET
WASHINGTON, NC 27889

Filed For Registration: 12/23/2004 01:39:14 PM
Book: RE 1430 Page: 666-682
Document No.: 2004010060
DECLR 17 PGS \$59.00

Recorder: BARBARA TAYLOR

State of North Carolina, County of Beaufort

The foregoing certificate of KAREN K FRYMIER Notary is certified to be correct. This 23 RD of December 2004

JENNIFER LEGGETT WHITEHURST , REGISTER OF DEEDS

By: Barbara Taylor
Deputy/Assistant Register of Deeds

Ramee H.

2004010060

2004010060

BK 1 4 6 0 PG 2 5 1

STATE OF NORTH CAROLINA

COUNTY OF BEAUFORT

FOR REGISTRATION REGISTER OF DEEDS
JENNIFER LEGGETT WHITEHURST
BEAUFORT COUNTY, NC
2005 JUN 16 02:26:03 PM
BK 1460 PG:251-256 FEE:\$26.00
INSTRUMENT # 2005004742

**THIRD AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

This AMENDMENT made this 16th day of June, 2005, by Charleston Associates, LLC., a Maryland limited liability company, doing business in North Carolina as Eagle Trace Properties, L.L.C. under the assumed name of Eagle Trace Properties, hereinafter referred to as "Declarant";

WITNESSETH

WHEREAS, Declarant is the owner of real property described in covenants filed on August 29, 2003, with the Beaufort County Register of Deeds Office in Book 1351, Page 379 (hereafter the "New Covenants"); and

WHEREAS, on December 23, 2004, a Second Amendment to the Restrictive Covenants was filed with the Beaufort County Register of Deeds Office in Book 1430, Page 666 (hereafter the "Second Amendment to the New Covenants"); and

WHEREAS, Joseph A. Paul and wife, Julia A. Paul (hereinafter "Paul"), are the owners of a parcel of land conveyed to them by deed recorded in Deed Book 1038, Page 617, Plat Cabinet D, slide 342, and Lot 3 all as shown on a Plat entitled "Survey of Whitehurst Shores" dated October 25, 2001, by The East Group and recorded in Plat Cabinet F, Slide 92-1 on February 25, 2002 in the Beaufort County Registry; and

WHEREAS, Larry E. Drinnon and wife, Janet V. Drinnon (hereinafter "Drinnon"), are the owners of a parcel of land conveyed to them by deed recorded in Deed Book 1021, Page 237, Beaufort County Registry, and also shown as a lot owned by them on a Plat entitled "Survey of Whitehurst Shores" dated October 25, 2001, by The East Group and recorded in Plat Cabinet F, Slide 92-1 on February 25, 2002 in the Beaufort County Registry; and

WHEREAS, John K. Westra and wife, Ann B. Westra (hereinafter "Westra"), are the owners of a parcel of land conveyed to them by deed recorded in Deed Book 1009, page 491 and Deed Book 1026, page 11, Beaufort County Registry, and also shown as a lot owned by them on a Plat entitled "Survey of Whitehurst Shores" dated October 25, 2001, by The East Group and recorded in Plat Cabinet F, Slide 92-1 on February 25, 2002 in the Beaufort County Registry; and

WHEREAS, Joseph A. Paul and wife, Julia A. Paul, Larry E. Drinnon and wife Janet V. Drinnon, John K. Westra and wife Ann B. Westra have performed numerous services for the Company during the development phase of Eagle Trace Subdivision, and in particular; attending planning and zoning meetings in representation of the Company; signing waivers and releases to their own property rights regarding access and egress to their property in favor of Eagle Trace; promoting sales of the subdivision resulting in numerous sales of lots; overseeing the construction and safety of the subdivision, road, and marina during the absence of the out-of-state developer; preventing trespassers and otherwise monitoring traffic; and performing other acts beneficial to the development, promotion, and sales of lots within Eagle Trace Subdivision, the value of which is determined to be no less than Twelve Thousand Five Hundred Dollars (\$12,500.00) per family; and

WHEREAS, Joseph A. Paul and wife, Julia A. Paul, Larry E. Drinnon and wife Janet V. Drinnon, John K. Westra and wife Ann B. Westra have agreed to submit their lots to ^{some of the} restrictive covenants applicable to Eagle Trace Subdivision, to make their lots part of the said subdivision, and to become members of the Eagle Trace Master Homeowner's Association; and

WHEREAS, the homeowner's dues for the Eagle Trace Master Homeowner's Association is no more than Five Hundred Dollars (\$500.00) per year; and

WHEREAS, the value of the services of the Joseph A. Paul and wife, Julia A. Paul, Larry E. Drinnon and wife Janet V. Drinnon, John K. Westra and wife Ann B. Westra to the Company and to Eagle Trace Subdivision is equal to homeowner's dues for a period of twenty-five (25) years; and

WHEREAS, Declarant intends to make a minor revision to said Covenants; and

WHEREAS, on January 1, 2005 all members and managers of Charleston Associates, LLC., a Maryland limited liability company, doing business in North Carolina as Eagle Trace Properties, L.L.C. under the assumed name of Eagle Trace Properties signed a Consent to allow Paul, Drinnon and Westra to become members of the homeowner's association under the terms and conditions set forth herein; and,

WHEREAS, on January 1, 2005, a majority of the members of the Eagle Trace Master Homeowner's Association signed a Consent to allow Paul, Drinnon and Westra to become members of the homeowner's association under the terms and conditions set forth herein.

NOW THEREFORE, the Declarant hereby amends the said Covenants as follows.

ARTICLE I

Paul, Drinnon, and Westra shall be members of the Eagle Trace Master Homeowner's Association. The payment of annual dues thereto shall be waived for each above referenced family for a period of twenty five (25) years or upon the transfer of title or conveyance of the said property owned by each of them respectively, which ever event shall occur first, at which time annual dues in the amount in effect at that time shall become due and payable in accordance with the terms of all covenants and amendments thereto for all prospective owners thereof. The foregoing notwithstanding, Joseph A. Paul and wife, Julia A. Paul, Larry E. Drinnon and wife Janet V. Drinnon, John K. Westra and wife Ann B. Westra shall be responsible for payment of any special assessments assessed by the Board of Directors of the Eagle Trace Master Homeowner's Association. The structures located on the property owned by Paul, Drinnon, and Westra shall be "grandfathered" into the subdivision, and shall be accepted as is, and do not have to comply with the structural requirements of all prior covenants of record.

The following provisions of prior covenants specifically apply to the property of Paul, Drinnon, and Westra.

1. The property shall be limited to a single family dwelling.
2. In the event that the residential structure located on each respective lot is substantially destroyed, said structure may be replaced with a stick built dwelling as it exists on the date of the execution of this document, and with the same square footage, which is less than that required under prior covenants of record.
3. No animals, livestock, or poultry shall be kept or maintained on the lot in any living Unit with the exception of cats, dogs, or small indoor pets.
4. Mail delivery will be accepted at the community mailhouse as provided by the Master Homeowner's Association.

ARTICLE II

The provisions of this Third Amendment to Declarations of Covenants, Conditions and Restrictions shall not be subject to amendment by the Eagle Trace Master Homeowner's Association.

ARTICLE III

Subsequent or amended maps and deeds evidencing the dedication of the property owned by Paul, Drinnon and Westra shall be filed with the Office of the Register of Deeds of Beaufort County. Additionally Declarant reserves the right to file or negotiate additional conditions of transfer that relate solely to the property owned by Paul, Drinnon and Westra, including filing additional covenants which apply solely to the property owned by Paul, Drinnon and Westra, and which may be less restrictive than all prior covenants of record that apply to all other property owned or conveyed by Declarant.

BK 1460 PG 255

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed, this 16th day of June, 2005.

CHARLESTON ASSOCIATES, L.L.C.

D/b/a Eagle Trace Properties, L.L.C.

BY: Ranee Singleton Holbrook (SEAL)

RANEE SINGLETON HOLBROOK, Attorney-In-Fact

NORTH CAROLINA
BEAUFORT COUNTY

I, KAREN K. FRYMIER, a Notary Public for said County and State, do hereby certify that RANEE SINGLETON HOLBROOK, attorney in fact for CHARLESTON ASSOCIATES, L.L.C. a Maryland limited liability company doing business in North Carolina as Eagle Trace Properties, L.L.C. personally appeared before me this day, and being by me duly sworn, says that she executed the foregoing and annexed instrument for and in behalf of the said CHARLESTON ASSOCIATES, L.L.C. a Maryland limited liability company doing business in North Carolina as Eagle Trace Properties, and that her authority to execute and acknowledge said instrument is contained in instruments duly executed, acknowledged, and recorded in Book 1381, page 985 in the office of the Register of Deeds of Beaufort County, North Carolina, on the 10th day of March, 2004, and recorded in Book 1386, page 103 in the office of the Register of Deeds of Beaufort County, North Carolina, on the 2nd day of April, 2004, and an instrument duly executed, acknowledged, and recorded in Book 1410, Page 743 in the office of the Register of Deeds of Beaufort County, North Carolina, on the 16th day of August, 2004, this instrument was executed under and by virtue of the authority given by said instruments granting her power of attorney.

I do further certify that the said RANEE SINGLETON HOLBROOK acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said CHARLESTON ASSOCIATES, L.L.C., a Maryland limited liability company doing business in North Carolina as Eagle Trace Properties, L.L.C.

Witness my hand and official seal, this the 16th day of June, 2005.

Karen K. Frymier
NOTARY PUBLIC

My commission expires: 1-27-08





BK 1460 PG 256

JENNIFER LEGGETT WHITEHURST
BEAUFORT COUNTY REGISTER OF DEEDS
COURTHOUSE BUILDING
112 W. 2ND STREET
WASHINGTON, NC 27889

Filed For Registration: 06/16/2005 02:26:03 PM
Book: RE 1460 Page: 251-256
Document No.: 2005004742
AMEND 6 PGS \$26.00

Recorder: REBECCA JORDAN

State of North Carolina, County of Beaufort

The foregoing certificate of KAREN K FRYMIER Notary is certified to be correct. This 16TH of June 2005

JENNIFER LEGGETT WHITEHURST, REGISTER OF DEEDS

By Rebecca Jordan
Deputy Assistant Register of Deeds

Barney Holbrook

2005004742
2005004742

BYLAWS

EAGLE TRACE MASTER HOMEOWNER'S ASSOCIATION

Beaufort County, North Carolina

ARTICLE I

NAME AND PRINCIPAL OFFICE

The Name of this organization shall henceforth be Eagle Trace Master Homeowner's Association (hereinafter called "the Association"). The Principal Office of the Association shall be located at 112 S. Respass Street, Washington, Beaufort County, North Carolina 27889. The Association may have Offices, or may move its Office(s) to such other locations within the Beaufort County, North Carolina, as the Board of Directors may designate from time to time.

ARTICLE II

DEFINITIONS

1. "Association" shall mean and refer to Eagle Trace Master Homeowner's Association, its successors and assigns.
2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants filed in Book 1351, Page 379, Beaufort County Registry, and all amendments thereto, and includes and incorporates all definitions set out therein as if fully set forth.
3. "Member" shall mean and refer to those persons entitled to membership in the Association as provided for in the Declaration of Covenants.
4. "Common Expenses" shall mean and include:
 - (a) All sums lawfully assessed by the Association against its members;
 - (b) Expenses of the common areas and administration, maintenance, repair, or replacement of the amenities;
 - (c) Expenses declared to be common expenses by the provisions of the Declaration of Covenants or these Bylaws;
 - (d) Hazard, liability, or such other insurance premiums as the Declaration or the By laws may require the Association to purchase;
 - (e) Ad valorem taxes and public assessment charges lawfully levied against the common areas;
 - (f) Expenses agreed by the members to be common expenses of the Association.

ARTICLE III MEETING OF MEMBERS

1. *Annual Meetings.* The first annual meeting of the members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year hereafter, at the hour of 6:00 PM (six o'clock PM. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.
2. *Special Meetings.* Special meetings of the members may be called at any time by the President or by the Board of Directors, or upon written request of one-fourth (1/4) of the members who are entitled to vote.
3. *Notice of Meetings.* Unless otherwise specified in the Declaration, Articles of Incorporation or By-Laws, written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.
4. *Quorum.* Unless otherwise specified in the Declaration, Articles of Incorporation or By-Laws, the presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.
5. *Proxies.* At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

ARTICLE IV BOARD OF DIRECTORS: SELECTION; TERM OF OFFICE

1. *Number.* The affairs of this Association shall be managed by a Board of three (3) directors, after the first year, who need not be members of the Association.
2. *Term of Office.* At the first annual meeting the members shall elect two (2) directors for a term of one (1) year. Said directors shall remain in office until their successors have been duly elected and qualified, and, after the first year, an additional director shall be elected, so that the Board shall thereafter consist of three (3) persons.

3. *Compensation.* No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

4. *Action Taken Without a Meeting.* The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE V NOMINATION AND ELECTION OF OFFICERS

1. *Nomination.* Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than a number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

2. *Election.* Election to the Board of Directors shall be a secret written ballot. At such elections the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI MEETINGS OF DIRECTORS

1. *Regular Meetings.* Regular Meetings of the Board of Directors shall be held every six (6) months without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

2. *Special Meetings.* Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3) days' notice to each director.

3. *Quorum.* A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

1. *Powers.* The Board of Directors shall have power to:
 - (a) adopt, amend and publish rules and regulations governing the use of the Permanent Common Open Space and facilities, and the personal conduct of the members of their guests thereon, and to establish penalties for the infraction thereof;
 - (b) suspend the voting rights and right to use the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
 - (c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;
 - (d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and,
 - (e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.
2. *Duties.* It shall be the duty of the Board of Directors to:
 - (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the members who are entitled to vote;
 - (b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
 - (c) as more fully provided in the Declaration, to:
 - (1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;
 - (2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and,
 - (3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action or law against the owner personally obligated to pay the same.
 - (4) issue, or to cause an appropriate office to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
 - (5) procure and maintain adequate liability and hazard insurance on property owned by the Association;
 - (6) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
 - (7) cause the Permanent Common Open Space to be maintained;
 - (8) pay ad valorem taxes and public assessments levied against the common areas.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

1. *Enumeration of Officers.* The officers of this Association shall be a President and a Vice-President, who shall at all times be members of the Board of Directors, a Secretary, a Treasurer, and such other officers at the Board may from time to time by resolution create.
2. *Election of Officers.* The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.
3. *Term.* The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.
4. *Special Appointments.* The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.
5. *Resignation and Removal.* Any officer of the Association may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
6. *Vacancies.* A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the office he replaces.
7. *Multiple Offices.* The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any other offices except in the case of special offices created pursuant to Section 4 of this Article.
8. *Duties.* The duties of the officers are as follows:
 - President*
 - (a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.
 - Vice-President*
 - (b) The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.
 - Secretary*
 - (c) The Secretary shall record the votes and keep minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate

current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse the funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by an independent public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members. The Treasurer shall issue certificates indicating the payment or non-payment of assessments on specified lots.

**ARTICLE IX
COMMITTEES**

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

**ARTICLE X
ASSESSMENTS**

As more fully provided in the Declaration, each member is obligated to pay the Association annual and special assessments which are secured by a continuing lien upon the property on which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six percent (6%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property in the same manner that Deeds of Trust may be foreclosed under Power of Sale under Chapter 45 of the North Carolina General Statutes, or its successors; and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Permanent Common Open Space or abandonment of his Lot.

**ARTICLE XI
CORPORATE SEAL**

The Association shall have a seal in circular form having within its circumference the words: EAGLE TRACE MASTER HOMEOWNERS' ASSOCIATION, INC.

**ARTICLE XII
AMENDMENTS**

1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of majority of a quorum of members present in person or by proxy.

2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XIII MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Eagle Trace Master Homeowner's Association, a non-profit, North Carolina Corporation, and

That the foregoing By-Laws constitute the original By-Laws of the said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 30th day of April, 2004.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Association this the 9th day of August, 2004.


Rance Singleton Holbrook

