

Eagle Trace

STATE OF NORTH CAROLINA  
COUNTY OF BEAUFORT

FOR REGISTRATION REGISTER OF DEEDS  
JENNIFER LEGGETT WHITEHURST  
BEAUFORT COUNTY, NC  
2003 AUG 29 03:00:02 PM  
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This DECLARATION made this 29<sup>th</sup> 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WHEREAS, said Covenants were withdrawn by Revocation of Declaration of Covenants, Conditions and Restrictions recorded on August 25, 2003, in Book 1349, Page 632 of the Beaufort County Registry; and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.



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

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 sightly 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**

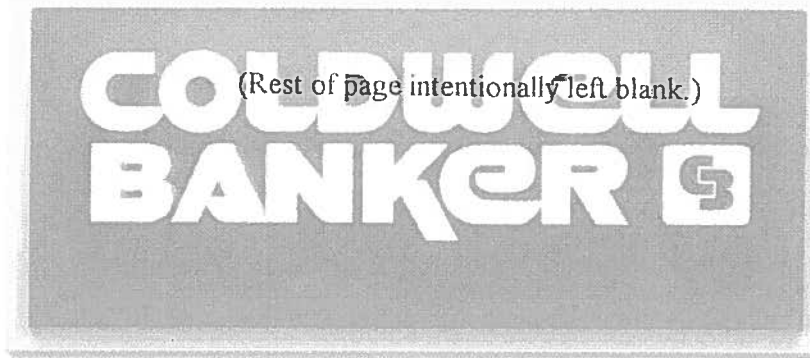
**ENFORCEMENT**

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.



COASTAL RIVERS  
REALTY

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

DECLARANT:

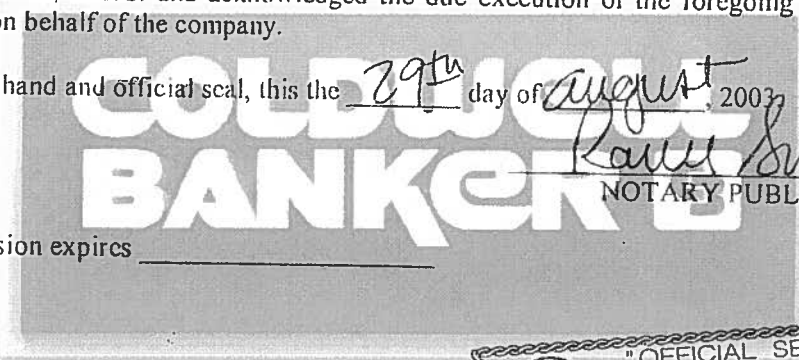
CHARLESTON ASSOCIATES, L.L.C.  
d/b/a EAGLE TRACE PROPERTIES, L.L.C.  
under the assumed name of Eagle Trace Properties

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

NORTH CAROLINA  
BEAUFORT COUNTY

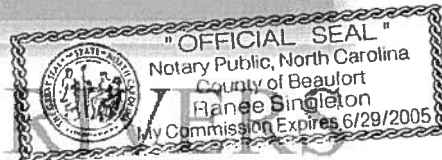
I, Ranee Singleton, Notary Public, certify that CHARLES E. SMITH personally came before me this day and acknowledged that he is a member and manager of CHARLESTON ASSOCIATES, L.L.C., a Maryland limited liability company, doing business in North Carolina as Eagle Trace Properties, L.L.C. and acknowledged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

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



Ranee Singleton  
NOTARY PUBLIC

My commission expires \_\_\_\_\_



COASTAL REALTY

## 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.

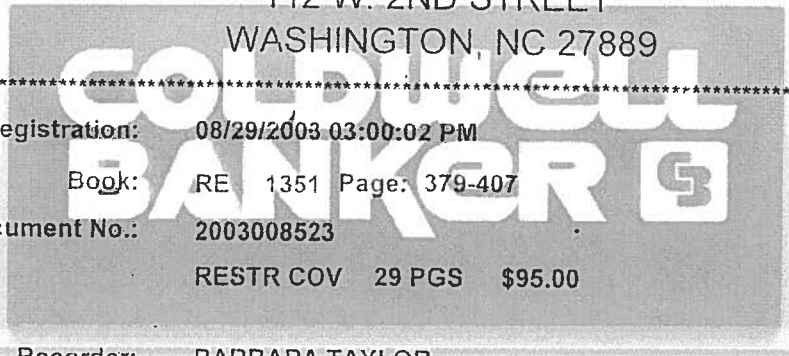
This property also includes the following tract of land more specifically described as follows:

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\***

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