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FOR REGISTRATION REGISTER OF DEEDS  
 JENNIFER LEGGETT WHITEHURST  
 BEAUFORT COUNTY, NC  
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NORTH CAROLINA  
 BEAUFORT COUNTY

**DECLARATION OF CONDOMINIUM  
 ESTABLISHING  
 EAGLE TRACE BOATAMINIUM, A CONDOMINIUM  
 (PLAT AND PLANS IN ACCORDANCE WITH N.C.G.S. § 47C-2-109 FILED  
 IN UO # 1 PAGE 16  
 WHICH ARE INCORPORATED HERIN BY REFERENCE)**

THIS DECLARATION is made as of the 23 day of December, 2004, by CHARLESTON ASSOCIATES, L.L.C., a Maryland limited liability company doing business in North Carolina as EAGLE TRACE PROPERTIES, L.L.C. ("Declarant"), pursuant to the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

**WITNESSETH:**

WHEREAS, Declarant is the owner of record of the an interest in real property title to certain real property in Richland Township, Beaufort, North Carolina, more particularly described in Exhibit A attached hereto; and

WHEREAS, Declarant has constructed on the Property improvements in the way of bulkheads, docks, fingerpiers, boat slips and dock house; and

WHEREAS, it is the desire and intention of Declarant to market, sell and convey an interest in the Property and improvements constructed thereon as a condominium and/or BOATAMINIUM project pursuant to the provisions of Chapter 47C of the North Carolina General Statutes; and

WHEREAS, Declarant hereby establishes by this declaration a plan for the individual ownership of the real property estates consisting of the area or space contained in each of the Boat Slips; and their rights in the limited common elements; and

WHEREAS, a Marina, dock house, and ten (10) boat slips have been constructed by Declarant on the real property described as Exhibit A as evidenced by the attached certificate of completion attached hereto as Exhibit C;

NOW, THEREFORE, Declarant hereby declares that the property as well as all of the improvements constructed thereon and to be constructed thereon, shall be held conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration, all of which are declared to be in furtherance of a plan for the

BOATAMINIUM boat slips and shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns, and any Person acquiring or owning an interest in the property and improvements thereon, their grantees, successors, heirs, executors, administrators, devisees and assigns.

## ARTICLE 1

### DEFINITIONS

As used herein, the following words and terms shall have the following meanings:

- 1.1 ETBOA. EAGLE TRACE BOAT OWNER'S ASSOCIATION, INC., its successors and assigns.
- 1.2 ETBOA-BOD. Those persons elected or appointed to act collectively as the Directors of the ETBOA.
- 1.3 ETMHOA. EAGLE TRACE MASTER HOME OWNER'S ASSOCIATION, INC., its successors and assigns.
- 1.4 The Board. Those persons elected or appointed to act collectively as the Directors of the ETMHOA.
- 1.5 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.
- 1.6 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.
- 1.7 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.
- 1.8 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.
- 1.9 Limited Common Elements. The Dock House as shown on the Plat recorded in UO# 1, Page 14 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.
- 1.10 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, as defined in § 47C 1-103(a) of the Act, except Security Holders and those persons whose interests in the Property will not be conveyed to Boat Slip Owners, and any person who succeeds to any Special Declarant Rights as provided in § 47C-1-103(23) of the Act.

1.11 Declarant Control Period. The period commencing on the date hereof and continuing until the earlier of (i) 120 days after conveyance of seventy-five percent (75%) of the Boat Slips to Boat Slip Owners other than Declarant; (ii) two years after the Declarant has ceased to offer Boat Slips for sale in the ordinary course of business; or (iii) the time at which Declarant voluntarily surrenders the right to appoint and remove officers and members of the board.

1.12 Eligible Mortgagee. An institutional lender holding a first mortgage or first deed of trust ("First Mortgage") encumbering a Boat Slip that has notified the ETMHOA in writing of its status, stating both its name and address and the Boat Slip number or address of the Boat Slip that is encumbered by the first mortgage of the lender, and which lender has requested all rights under the BOATAMINIUM documents.

1.13 Member. Those persons entitled to membership in the ETBOA as provided in covenants establishing the ETBOA, the articles of incorporation of the ETBOA, its Bylaws, and this Declaration.

1.14 Occupant. Any Person or Persons in possession of a Boat Slip, including Boat Slip Owners, the family members, permitted lessees, guests, and invitees of such person or persons, and family members, guests and invitees thereof.

1.15 Owner or Boat Slip Owner. The Person or Persons, including the Declarant, owning a Boat Slip (including contract sellers of a Boat Slip), but not including Security Holders.

1.16 Person. A natural person, corporation, partnership, trust, limited liability company or other entity, or any combination thereof.

1.17 Property. The real estate described in Exhibit A, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

1.18 Rules and Regulations. Those written actions of the ETBOA-BOD, duly adopted, and any amendments thereto. The purpose of such Rules and Regulations is to interpret and apply the provisions of the Declaration and the Bylaws and to establish and prescribe the administration and management of the boataminium and the use, operation, and management of the Common Elements of the Eagle Trace Boat Owner's Association.

1.19 Security for an Obligation. The vendor's interest in a contract for deed, mortgagee's interest in a mortgage, trustee's interest in a deed of trust, or the holder's interest in a lien, or similar interests.

1.20 Security Holder. Any Person owning a Security for an Obligation in a Boat Slip.

1.21 Special Declarant Rights. The rights reserved herein for the benefit of Declarant.

1.22 Boat Slip. Any one of the boatslips of the BOATAMINIUM. Mechanical equipment and appurtenances located within any Boat Slip and designed to serve only that Boat Slip shall be part of the Boat Slip. All electrical switches, wiring, pipes, ducts, conduits, and television, data, communication, telephone, and electrical receptacles and wiring, light fixtures, and hardware, if any, designed to serve only that Boat Slip shall be part of that Boat Slip.

1.23 Boat Slip Boundaries. The boundaries of each Boat Slip, which as to vertical planes shall be the planes formed by the interior facing of the docks, finger piers and mooring pilings; as to the lower horizontal plane, shall be the top of the river bed; and as to the upper horizontal plane, shall be 65 feet above the surface of the water.

## ARTICLE 2

### LEGAL DESCRIPTION OF BOATAMINIUM PROPERTY

The EAGLE TRACE BOATAMINIUM, a Condominium, referred to hereinafter is situated in Beaufort County, North Carolina, and is described in Exhibit A as the "Property," and is subject to the exceptions set forth on Exhibit B attached hereto. The BOATAMINIUM consists of 10 boatslips further described or shown on the plat and plans. Declarant reserves the right to add forty (40) more boat slips to the Boataminium, for a total of fifty (50) units.

## ARTICLE 3

### DESCRIPTION OF PROPERTY DEDICATED TO BOATAMINIUM OWNERSHIP

Declarant is the owner of the an interest in real property title to that certain real property described in Exhibit A attached hereto and incorporated herein by reference. The Property hereby dedicated to boataminium ownership is situated in Beaufort County, North Carolina.

## ARTICLE 4

### SUBMISSION OF PROPERTY TO THE ACT

4.1 Submission. CHARLESTON ASSOCIATES, L.L.C., hereby submits the Property to the Act.

4.2 Name. The Property shall hereafter be known as the EAGLE TRACE BOATAMINIUM, a Condominium.

4.3 Division of Property into Separately Owned Boat Slips. Declarant, pursuant to the Act, and to establish a plan of condominium ownership for the BOATAMINIUM, does hereby divide the Property into 10 boatslips, the Common Elements of the Eagle Trace Boat Owner's Association and does hereby designate all such Boat Slips for separate ownership as freehold estates subject to the Act. Upon the addition of the additional forty (40) boatslips as contemplated herein, Declarant shall divide the Property into 50 total boatslips.

4.4 Alterations of Boat Slips. Subject to the provisions of the Bylaws, a Boat Slip or Boat Slips may be later added pursuant to the provisions of § 47C-2-111 of the Act.

4.5 Unit Allocations. Each Unit shall be allocated a 1/10 undivided interest in the Limited Common Elements and of the Limited Common Expenses. The allocation of undivided interests in the Limited Common Elements and of the Limited Common Expenses is equal for all Units. The votes in the Association are equally allocated to all Units; each Unit shall have one (1) vote, with a total of ten (10) votes for the BOATAMINIUM. In the event that additional Units are added, the percent ownership in the undivided interest in the Limited Common Elements and of the Limited Common Expenses shall be reallocated according to the following formula: number of total final units divided by 100 equals the percent ownership in the undivided interest in the Limited Common Elements and of the Limited Common Expenses. As it is contemplated that forty (40) additional units will be added for a total of fifty (50) units, at which time each unit shall be finally allocated a 2/100 undivided interest in the Limited Common Elements and of the Limited Common Expenses; each Unit will continue to carry one (1) vote for an ultimate total of fifty (50) votes.

4.6 Voting Rights. The votes in the Association are equally allocated to all Boat Slips; each Boat Slip shall have one (1) vote, with a total of ten (10) votes for the BOATAMINIUM as filed herein; in the event that Boat Slips are added, each additional Boat Slip shall have one (1) vote, with the total number of votes being the same as the total number of Boat Slips.

## ARTICLE 5

### EASEMENTS

5.1 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.

5.2 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.

5.3 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.

5.4 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.

5.5 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.

5.6 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.

5.7 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.

5.8 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.

5.9 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.

5.10 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 6

### RESTRICTIONS, CONDITIONS AND COVENANTS

6.1 Compliance with Declaration, Bylaws and Rules and Regulations. Each Boat Slip Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, the Restrictions, as recorded and amended, the Covenants, as recorded and amended, the Bylaws, the Articles of Incorporation of the ETBOA, and any rules promulgated by the ETBOA-BOD, as amended. Failure to comply shall be grounds for an action by the ETBOA, an aggrieved Boat Slip Owner, or any person adversely affected, for recovery of damages, injunction or other relief.

6.2 Administration of Condominium. The BOATAMINIUM shall be administered in accordance with the provisions of the Act, this Declaration and the Bylaws.

#### 6.3 Use Restricted: Use by Declarant and ETBOA.

6.3.1 Each Boat Slip is hereby restricted to moor and dock vessel, which may be used by the Boat Slip Owner, his immediate family, guests and invites for recreational or noncommercial purposes. No Owner may use his Boat Slip for the docking of commercial fishing or other commercial vessels. No business activity or trade of any kind whatsoever shall be carried on in any Boat Slip. Boat Slip Owners may lease their Boat Slip thereby owned to other Persons entitled to Membership in the ETMHOA or to other Persons holding a valid lease as allowed by Article III of the New Covenants, and who shall use such Boat Slip for noncommercial or recreational purposes only. No Boat Slip may be used for residential purposes.

6.3.2 No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances, and regulations of all government agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations, and requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property shall be complied with, by and at the sole expense of the Boat Slip Owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property.

6.3.3 No Boat Slip Owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon, within or around any Boat Slip or any portion of the Common Elements, except as allowed by the Association pursuant to its Bylaws, provided, however, Declarant reserves the right to place any such signs on or in front of any Boat Slips until such time as they have been conveyed by it, and Boat Slip Owners may display "for sale" signs on such Boat Slip Owner's vessel advertising the vessel for sale.

6.3.4 No Boat Slip Owner shall permit or suffer anything to be done or kept at his Boat Slip or on the Common Elements which will increase the rate of insurance on the Boat Slips or the BOATAMINIUM or which will obstruct or interfere with the rights of any other Boat Slip Owner, the ETMHAO or the ETBOA, or annoy them by unreasonable noises, nor shall Boat Slip Owner undertake any use or practice which shall create and constitute a nuisance to any other Boat Slip Owner, the ETMHOA or the ETBOA or which interferes with the peaceful possession and proper use of any other Boat Slip or the Common Elements.

6.3.5 The use of the Common Elements by the Boat Slip Owners and Occupants shall at all times be subject to the Rules and Regulations which may be prescribed and established governing such use, or which may be hereafter prescribed and established by the Association.

6.3.6 No Boat Slip Owner, except the Declarant during the Declarant Control Period, shall permit any structural modification or alteration to be made to such Boat Slip without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Directors shall determine, to their sole discretion, that such structural modification or alteration would adversely effect or in any manner endanger the Boat Slip or the BOATAMINIUM in part or in its entirety.

6.4 Hazardous Use and Waste. Nothing shall be kept and no activity shall be carried on in any Boat Slip or on the Common Elements which will increase the rate of insurance for the Property or the contents thereof. No Owner or Occupant shall do or keep anything, nor cause or allow anything to be done or kept, in his Boat Slip or on the Common Elements which will result in the cancellation of insurance on any portion of the Property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Elements.

6.5 Alterations of Common Elements. No Boat Slip Owner or Occupant, except Declarant during the Declarant Control Period, shall alter, construct anything upon, or remove anything from the Common Elements, or paint, decorate, or adorn any portion of the Common Elements, without the prior written consent of the Board.

6.6 Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to Boat Slip Owners, their employees, agents and invitees within the Property.

6.7 Rules and Regulations. In addition to the foregoing restrictions, conditions and covenants concerning the use of the BOATAMINIUM, reasonable Rules and Regulations not in conflict therewith, and supplementary thereto may be promulgated, enforced and amended from time to time by the Board or the Association, as fully provided in the Bylaws.

6.8 Restrictions on Transfer. For a period beginning on the date this Declaration shall be recorded with the Beaufort County Registry, and continuing for thirty (30) years thereafter, no Boat Slip Owner shall sell, assign,

or convey any interest in such Owner's Boat Slip to any Person not a member of the Eagle Trace Master Homeowner's Association, Inc., or its successors or assigns (established by the Declaration of Covenants and Restrictions recorded in Book 1351, Page 379, and First Amendment in Book 1362, Page 503, and the Second Amendment in Book ~~1420~~ <sup>1430</sup> Page ~~466~~ all as recorded in the Beaufort County Registry); provided, however, that nothing herein shall restrict the transfer of an interest in a Boat Slip by an Owner to an Eligible Mortgagee or to one holding Security for an Obligation.

The foregoing notwithstanding, in the event that a Boat Slip is foreclosed upon by an Eligible Mortgagee, the eligible Mortgagee may offer the Boat Slip for sale at public sale to the highest bidder, in accordance with the terms of any deed of trust applicable thereto, and transfer title thereto, even if said high bidder is not eligible for membership in the ETMHOA. Said high bidder, upon conveyance of ownership, shall be a member of the ETBOA, shall have an easement over the Limited Common Elements, shall be liable for Limited Common Expenses, shall receive his proportionate share of undivided interest in the Limited Common Elements and voting rights in accordance with the terms of this declaration of condominium, the Bylaws of the ETBOA, and all covenants of record. Likewise, should any Person purchase a Boat Slip after the expiration of the thirty year (30) period, and said Person is not eligible for membership in the ETMHOA, that Person, upon obtaining ownership of a Boat Slip, shall be a member of the ETBOA, shall have an easement over the Limited Common Elements, shall be liable for Limited Common Expenses, shall receive his proportionate share of undivided interest in the Limited Common Elements and voting rights in accordance with the terms of this declaration of condominium, the Bylaws of the ETBOA, and all covenants of record.

6.9 Restrictions, Conditions and Covenants to Run With Land. Each Boat Slip Owner and Occupant shall be subject to all restrictions, conditions and covenants of this Declaration, and all such restrictions, conditions and covenants shall be deemed to be covenants running with the land, shall bind every person having all interest in the Property, and shall inure to the benefit of every Boat Slip Owner.

6.10 Severe Weather Conditions. Each Boat Slip Owner and Occupant shall immediately remove, or cause to be removed, any boat or vessel moored, docked or stored in any Boat Slip as required or specified by the insurer and within the requirements of any applicable insurance policy that provides coverage for storm damage to the Improvements. In the event that the Boat Slip owner or occupant thereof fails or refuses to remove or cause to be removed any boat or vessel moored, docked or stored therein in a timely manner, such that the Property may be subject to damage thereby, the ETBOA or the ETMHOA or its designees, may remove or cause to be removed or relocated any such boat or vessel. The cost of such removal or relocation shall be charged to the owner of the Boat Slip as a special assessment, payable within thirty (30) days in accordance with the terms of all covenants applicable hereto, and the same, if unpaid, shall become a lien on the boat slip accordingly. In refusing or failing to remove any boat or vessel moored, docked or stored within a Boat slip, the owner thereof waives any and all right to claims for damages caused to his boat or vessel caused by the removal or relocation of same. Any and all damage caused by the boat or vessel to the Property shall be the responsibility of the Boat owner and shall become a lien upon the said Boat slip and enforceable according to the terms of all covenants of record.

6.11 Force Majeur; Destruction and Reconstruction of Marina and Boat Slips. In the event that the Marina or Boat Slips are destroyed in whole or in part by *force majeure*, or any act or event, the Marina and/or each Boat Slip or Boat Slips will be reconstructed within the area set forth in Exhibit A, in the same dimensions for each Boat Slip as shown on a plat attached to the easement recorded in Book 1410, page 969, and each reconstructed Boat Slip will constitute the identical Boat Slip that existed prior to the damage. The Association will file an amended map showing the location of each reconstructed Boat Slip or Boat Slips and the ownership will be the same in the reconstructed Boat Slip as was in the destroyed Boat Slip with corresponding Boat Slip number. The provisions of Paragraph 5.1 apply to the reconstruction of any Boat Slip as provided herein.

6.12 Public Trust Rights. In accordance with the submerged lands easement from the State of North Carolina recorded in Book 1410, Page 969, neither Declarant nor its assigns shall exclude or prevent the general public from exercising public trust rights, including commercial and recreational fishing, shell fishing, seine netting, pound netting, and other fishing rights in navigable waters within the easement premises.



6.13 Easement Defined. The easement (The Easement) which gives rise to the property interest subject to this declaration may be inspected at Book 1410, Page 969, Beaufort County Registry; said Easement is granted to Declarant for a term of Fifty years, with a renewal of one (1) additional fifty year term; unit owners may have the right to redeem the reversion by complying with Paragraphs 12 and 13 of The Easement; unit owners do have the right to remove improvements at the end of the term of the easement or any renewals thereof; unit owners have the right to apply for an additional submerged lands easement with the State of North Carolina in accordance with Chapter 146 of the North Carolina General Statutes.

## ARTICLE 7

### SPECIAL DECLARANT RIGHTS

7.1 Reservation of Special Declarant Rights. With respect to the property, for a period of ten (10) years from the date of this Declaration, unless sooner released by the Declarant, and subject to the provisions of § 47C-3-104 of the Act, Declarant hereby reserves unto itself, its successors and assigns, the following Special Declarant Rights:

- (a) the right to maintain, within the Boataminium, sales offices and signs advertising the BOATAMINIUM;
- (b) an easement through the Common Elements for the purpose of making improvements within the BOATAMINIUM; and
- (c) the right to appoint or remove any member of the Board during the Declarant Control Period.
- (d) the right to add additional Units.

The Declarant may exercise the Special Declarant Rights over any portion of the BOATAMINIUM as it, in its discretion, deems necessary or appropriate.

## ARTICLE 8

### CASUALTY DAMAGE

If all or any part of the Property shall be damaged or destroyed, the same shall be repaired or replaced and proceeds of insurance shall be used and applied in accordance with the provisions of § 47C-3-113 of the Act.

## ARTICLE 9

### CONDEMNATION

In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Property, the same shall be repaired or restored and the awards paid on account thereof shall be used and applied in accordance with § 47C-1-107 of the Act.

## ARTICLE 10

### TERMINATION

The BOATAMINIUM may be terminated only in strict compliance with § 47C-2-118 of the Act or upon the expiration of the rights granted pursuant to that certain Easement dated July 22, 2004, by the State of North Carolina

recorded in Deed Book 1410, page 969, Beaufort County Registry, or any extension, modification, renewal, novation or amendment thereof.

## ARTICLE 11

### AUTHORITY TO MORTGAGE

Any mortgage or encumbrance by the ETBOA of the Common Elements of the Eagle Trace Boat Owner's Association shall have the assent of Boat Slip Owners to which at least eighty percent (80%) of the votes in the ETBOA are allocated.

## ARTICLE 12

### AMENDMENT

This declaration may be amended only in strict compliance with § 47C-2-117 of the Act. Except as limited by §47C-2-117 (d) this Declaration may be amended only by the affirmative vote of, or a written agreement signed by, Boat Slip Owners of Boat Slips to which at least seventy-five (75%) percent of the votes in the ETBOA are allocated. No such amendment shall be effective until recorded in the Office of Register of Deeds of Beaufort County, North Carolina.

## ARTICLE 13

### RIGHTS OF ELIGIBLE MORTGAGEES, MISCELLANEOUS PROVISIONS

13.1 Availability of Boataminium Documents, Books, Records and Financial Statements. The ETBOA shall, upon reasonable notification and during normal business hours, make available for inspection by Boat Slip Owners and the Eligible Mortgagees and its insurers and guarantors of a mortgage on any Boat Slip, current copies of the Declaration, the Bylaws, other Rules and Regulations governing the Boataminium and the books, records and financial statements, if any, of the ETBOA. The ETBOA shall provide an audited financial statement for the preceding fiscal year if requested in writing by an eligible mortgagee or insurer or guarantor of a mortgage. The ETBOA shall, upon reasonable notification and during normal business hours, make available for inspection by prospective purchasers of Boat Slips, current copies of the Declaration, Bylaws, other Rules and Regulations governing the BOATAMINIUM, and the most recent annual audited financial statement (if one is prepared).

13.2 Breach of Restrictions. In the event of a violation or a breach of any other restrictions contained in this Declaration of any other covenants contained in this Declaration, the Bylaws or Rules and Regulations by any Boat Slip Owner or Occupant, the ETBOA shall have the right to proceed at law or equity, or both, to compel compliance with the terms of or to prevent the violation or breach of this Declaration, the Bylaws, or Rules and Regulations. In addition to the foregoing, the ETBOA, its Board or agents shall have the right, whenever there shall have been any violation of these restrictions, to enter upon the Property where such violation exists and summarily abate or remove the same at the expense of the Boat Slip Owner, if after thirty (30) days written notice of such violation shall not be deemed a trespass. The failure to enforce any right, reservation, or condition in this Declaration, the Bylaws, or Rules and Regulations however long continued, shall not be deemed a waiver of the right to do so thereafter, as to the same breach or as to a breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement.

13.3 Rights of Eligible Mortgagee; Insurance Proceeds or Awards. With respect to mortgages held by or for the benefit of Eligible Mortgagees, no provision of this Declaration or the Bylaws shall be deemed to give a Boat Slip Owner, or other party, priority over any rights of an Eligible Mortgagee pursuant to its mortgage on said Boat Slip Owner's Boat Slip, in the case of a distribution to said Boat Slip Owner of insurance proceeds or condemnation awards for lessee to or taking of Boat Slips and/or Common Elements.

13.4 Rights of Mortgagee; Amendment to Plans. Except resulting out of the exercise of a Special Declarant Right reserved hereunder, the percentage of undivided interest of obligation of any Boat Slip for purposes of determining shares of the Common Elements of the BOATAMINIUM shall not be changed except in conformity with the Act and unless all holders of First Mortgages on individual Boat Slips have given their prior written approval.

#### ARTICLE 14

##### WATER AND SEWAGE CHARGES

Any water supplied to all Boat Slips and the Common Elements of the Eagle Trace Boat Owner's Association through a master water meter shall be a Common Expense of the ETBOA. Sewer charges, if any, shall be considered a Common Expense and paid for by the ETBOA.

#### ARTICLE 15

##### GENERAL PROVISIONS

15.1 Construction. In interpreting any and all provisions of this instrument, the exhibits attached hereto, and subsequent deeds and deeds of trust covering individual Boat Slips, the actual location of the Boat Slip shall be deemed conclusively to be the Property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations either horizontally or vertically, from the locations indicated on the architectural plans, or in minor variations in the description of the Boat Slip contained herein. To the extent that such minor deviations in location do or shall exist, a valid easement therefore and the maintenance thereof does and shall exist.

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

15.3 Waiver. No provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

15.4 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit, or describe the scope of this declaration nor the intent of any provisions hereof.

15.5 Law Controlling. This Declaration and the Bylaws shall be construed and controlled by and under the laws of the State of North Carolina.

15.6 Definition of Terms. Any terms used herein which are defined in the Act shall have the meaning specified in said Act unless a contrary intent clearly appears.

15.7 Warranties and Representations. The Declarant specifically disclaims any intent to have made any warrant or representation in connection with the Property or the BOATAMINIUM documents, except as specifically set forth herein, and no person shall rely upon any warranty or representation not so specifically made therein. Any estimates of Common Expenses, taxes or other charges are based on information deemed reliable by the Declarant, and therefore accurate as projection, but no warranty or guaranty is made or intended to be made, nor may one be relied upon.

15.8 Covenants. All provisions of this Declaration and exhibits attached hereto and amendments hereof, shall be construed to be covenants running with the land, and of every interest therein, including but not limited

to the appurtenances thereto, including Boat Slip Owner and any claimant of any interest therein, his heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of said Declaration and any amendments and exhibits annexed hereto.

IN WITNESS WHEREOF, the undersigned has executed this Declaration under seal as of the day and year first written above.

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

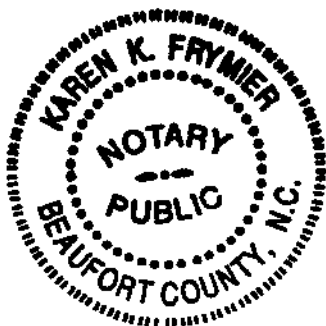
STATE OF NORTH CAROLINA

COUNTY OF BEAUFORT

I, KAREN K. 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 10<sup>th</sup> 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 2<sup>nd</sup> 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 16<sup>th</sup> 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 23<sup>rd</sup> day of DECEMBER, 2004.



Karen K. Frymier  
Notary Public

My Commission Expires: 1-27-08

Exhibit A

Lying and being in Richland Township, Beaufort County, North Carolina and being further described as follows:

Beginning at N.C.G.S. monument "BEA 61 1987"; North 83°24'45" West 1,960.52 feet to an existing iron pipe; thence North 25°38'23" East 20.00 feet to a point; thence North 21°23'08" West 27.74 feet to a point; thence North 81°11'12" West 41.48 feet to the point of beginning; thence South 10°46'38" West 10.00 feet to a point; thence North 79°13'22" West 6.00 feet to a point; thence North 10°46'38" East 9.79 feet to a point; thence North 10°46'38" East 270.79 feet to a point; thence North 79°13'22" West 30.00 feet to a point; thence North 10°46'38" East 72.00 feet to a point; thence South 79°13'22" East 30.0 feet to a point; thence North 10°46'38" East 3.00 feet to a point; thence South 79°13'22" East 6.00 feet to a point thence South 10°46'38" East 3.00 feet to a point; thence South 79°13'22" East 30.00 feet to a point; thence South 10°46'38" West 72.00 feet to a point; thence North 79°13'22" West 30.00 feet to a point; thence South 10°46'38" West 270.79 feet to the place and point of beginning, containing 0.15 acres approximately as depicted on a survey attached to the Submerged Lands Easement granted to Declarant by the State of North Carolina and recorded in Book 1410, Page 969, Beaufort County Registry.

Being a portion of the land described in Deed Book 1264, Page 133 of the Beaufort County Registry, and also as shown on a plat recorded in U03, Page 16, Beaufort County Registry.

TOGETHER WITH a non-exclusive easement for ingress, egress and regress as shown on the aforesaid plat;

TOGETHER WITH a non-exclusive easement to use and enjoy all existing sanitary sewer lines from and benefitting the Common Areas or Boat Slips located on the lands currently owned by Declarant;

AND TOGETHER WITH a non-exclusive easement to use and enjoy all existing electrical and other utility lines from and benefitting the Common Elements or Boat Slips over the lands currently owned by Declarant;

AND TOGETHER WITH an exclusive easement and all of the rights granted to Declarant as set forth in that certain easement dated July 22, 2004 by the State of North Carolina, recorded in deed Book 1410, Page 969, Beaufort County Registry, or any extension, modification, renewal, novation or amendment thereof.

**EXHIBIT B  
TO DECLARATION OF  
EAGLE TRACE BOATAMINIUM, A CONDOMINIUM**

**RECORDED EASEMENTS AND LICENSES APPURTENANT TO PROPERTY**

1. 2004 ad valoren taxes not yet due and payable;
2. Documents of record containing restrictive covenants and all amendments thereto applicable to both the property described herein and Eagle Trace Subdivision.
3. Easements of record for all utilities.
4. Rights of others in and to the continued uninterrupted flow of the Pamlico River; and
5. Easement to Declarant recorded in Book 1410, Page 969, Beaufort County Registry, and subject to all terms, conditions and termination provisions contained therein.

**EX 1430 PC 697**

**EXHIBIT C  
TO DECLARATION OF  
EAGLE TRACE BOATAMINIUM, A CONDOMINIUM  
CERTIFICATE OF COMPLETION**



EAGLE TRACE Subdivision, BOAT RAMP and 10-SLIP MARINA  
Beaufort County, North Carolina


**Corporate Office**

PO Box 7305  
324 S Evans St  
Greenville  
NC 27835  
www.eastgroup.com

**Tel** 252.758.3746  
**Fax** 252.830.3954

**ENGINEER'S CERTIFICATION:**

I, Drexel Kermit Smith, P.E., as a duly registered Professional Engineer in the State of North Carolina, having been authorized to observe periodically the construction of the BOAT RAMP and 10-SLIP MARINA, in Beaufort County to serve EAGLE TRACE Subdivision, hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction, such that the construction of the BOAT RAMP and 10-SLIP MARINA and other appurtenances were observed by my representatives to be built within substantial compliance and intent of the approved plans and specifications.

Signature  Registration No. 6838  
Date 12/14/04



ENGINEERING  
-  
ARCHITECTURE  
-  
SURVEYING  
-  
TECHNOLOGY  
-

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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: 683-699  
Document No.: 2004010061  
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

\*\*\*\*\*  
Rance H.

**\*2004010061\***  
2004010061