

CERTIFICATE OF INCORPORATION

OF

EAGLE TRACE MAINTENANCE CORPORATION

1. The name of this corporation is **EAGLE TRACE MAINTENANCE CORPORATION**.
2. The address of the registered office is 910 Gilpin Avenue, Wilmington, Delaware 19806, located in New Castle County.
3. The name of the registered agent for service of process at the aforesaid registered address is Roeberg, Moore & Associates, P.A.
4. The name and mailing address of the incorporator is David Roeberg, Roeberg, Moore & Associates, P.A., 910 Gilpin Avenue, Wilmington, Delaware 19806.
5. This corporation is not organized for profit. It shall have no authority to issue stock whatsoever.
6. The purposes of the corporation are as follows:
 - (a) To provide such services as required and essential to the good order, maintenance, and improvement of the "Common Facilities" of the townhome portion (95 lots) of Eagle Trace, Pencader Hundred New Castle County, Delaware and as set forth in a Maintenance Declaration dated July 12, 1996 and recorded in the Office of the Recorder of Deeds on July 25, 1996 in Deed Book 2141, Page 74 (the "Maintenance Declaration"). Said townhome portion of Eagle Trace is shown on a Record Major Subdivision Plan for Eagle Trace recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware in Microfilm No. 12907.

(b) To provide such or similar services to any extension of any Common Facilities, Private Open Space or any other similar facilities in Eagle Trace as the corporation may determine.

(c) Receive by assignment from Handler Construction, Inc., the developer of the townhome portion of Eagle Trace or its assigns, the duties, powers and rights of said Handler Construction, Inc. or its assigns to exercise architectural control over the townhome portion of Eagle Trace, all pursuant to the terms of a Declaration of Restrictions for the townhome portion of Eagle Trace by Handler Construction, Inc. as Declarant, as amended from time to time, dated _____ and intended to be recorded in the Office of the Recorder of Deeds in and for New Castle County.

(d) Any other lawful purpose of corporations not organized for profit.

7. No part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation or participating in or intervening in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

8. The record holder of a fee simple title to each of the 95 residential townhome lots in Eagle Trace, Pencader Hundred, New Castle County, Delaware as shown on the Eagle Trace Plan, shall be a member of the corporation with respect to each said townhome residential lot. Membership in the corporation is appurtenant to and inseparable from ownership of such townhome lot.

9. The record holder of a single townhome lot shall be entitled to one vote at any meeting of members for each such townhome lot held by such person. If more than one person

is the record holder of any such townhome lot, all such persons together shall be entitled to one vote at any meeting of members with respect to such townhome lot. The Members of the Corporation shall be divided into two (2) separate classes, Class A Members and a Class B Member as follows:

Class A Members

Class A Members shall be all the owners of lots excepting Handler Construction, Inc. and excepting any other person or entity which acquires title to all or a substantial portion of the townhome portion of the Eagle Trace subdivision for the purpose of developing thereon a residential community. Class A Members shall be entitled to one vote for each lot in which they hold the interest required for membership. When more than one person hold such interest or interest in any lot all such persons shall be members, and the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such lot.

Class B Member

The Class B Member shall be Handler Construction, Inc., its successors and assigns. The Class B Member shall be entitled to one vote for each lot in which it holds the interest required for membership, provided that upon the happening any either of the following events, whichever first occurs, the Class B Member, with respect to said lot, shall cease and be converted to a Class A membership:

- (a) When, in its discretion, the Class B Member so determines, or
- (b) When a purchaser of an individual lot takes title thereto from the Class B Member, at which time the purchaser becomes a Class A Member and the Class B membership with respect to such lot shall cease.

From and after any of these events, whichever occurs earlier, the Class B Member with respect to said lot shall be deemed to be a Class A Member entitled to one vote for each lot in which it holds the interest required for membership.

10. At any meeting of members of the corporation, persons who are the record holders of twenty-five (25) townhome lots, present or represented by proxy, shall constitute a quorum for the transaction of any business, and the affirmative vote of a majority of such members, present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number or percentage is required under the circumstances, by law, by the terms of this Certificate of Incorporation or under the By-Laws of the corporation.

11. The powers of the Incorporator shall terminate upon the filing of this Certificate of Incorporation. The business and affairs of the Corporation shall be carried on by a Board of Directors which shall consist of no less than two (2) nor more than five (5) persons elected for such term or terms as may be fixed by the By-Laws and said By-Laws may be amended as therein provided. Any vacancy occurring in the Board of Directors may be filled by a majority of the remaining members of the Board until the next annual meeting of the members. The incorporator shall designate the persons who are to serve as the Directors of the Corporation until their successors are elected and qualified in accordance with the By-Laws.

The names and addresses of the persons to serve as Initial Directors are as follows:

Mark L. Handler
Handler Construction, Inc.
5169 West Woodmill Drive
Wilmington, Delaware 19808

Ruth M. Handler
Handler Construction, Inc.
5169 West Woodmill Drive
Wilmington, DE 19808

Prior to the time that Handler Construction, Inc. holds legal title to less than twenty-three (23) lots in the townhome portion of the Eagle Trace subdivision, the Initial Directors shall serve as the Board of Directors of the Corporation, with the sole power to elect their successors and to fill any vacancies. Thereafter, the Directors shall be elected as provided in the By-Laws.

12. There shall be no personal liability of a director to the corporation or its members for money damages for breach of fiduciary duty as a director, provided that the foregoing shall not eliminate the liability of a director: (i) for any breach of the director's duty of liability to the corporation or its members, (ii) for acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of law, (iii) for any liability under §174 of the Delaware Code as to unlawful payment of dividends or (iv) for any transaction from which the director derived an improper personal benefit.

13. The private property of the incorporator, members, directors, officers or members of council shall not be subject to payment of the corporate debts to any extent whatever.

14. This corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation upon the affirmative vote of both the Class B Member as to all townhome lots owned by such Member and two-thirds (2/3) of the Class A Members.

15. If this corporation is dissolved, the assets of the corporation shall be dedicated to a public body, or conveyed to a non-profit organization with similar purposes to this corporation. Moreover, this corporation shall be dissolved at such time as the Private Open Spaces are taken

over and maintained by New Castle County, or any other governmental body having jurisdiction thereof.

16. The Corporation is a non-profit organization that is now or may become the owner of parkland as defined in 9 Del.C. §8109(a)(1) and its property constituting such parkland shall not be liable to taxation or assessment pursuant to 9 Del.C. §8109(a)(1).

THE UNDERSIGNED, being the sole incorporator, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware and the Acts amendatory thereof and supplemental thereto, does make and file this Certificate of Incorporation, hereby declaring and certifying that the facts stated herein are true, and accordingly hereunto have set my hand and seal on August 6, 1997.

In the Presence of:


Witness



DAVID ROEBERG