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NEW CASTLE COUNTY, DE  
OCT 01 1996

Tax Parcels No.: 11-017.00-037,  
11-017.00-041

Part of 11-017.00-042

Prepared by: Robert L. Thomas, Esq.  
Young, Conaway, Stargatt & Taylor  
P. O. Box 391  
Wilmington, DE 19899-0391

### MAINTENANCE DECLARATION

THIS DECLARATION is made as of this 12<sup>th</sup> day of July, 1996, by CLAIRE H. RIZZO, MARGARET M. RASH, DIANE SALINSKI, individually and as personal representative of the Estate of Robert A. Salinski, DAVID SALINSKI, DEBORAH EVANS, ROBERT A. SALINSKI, JR. and ANDREW SALINSKI (collectively hereinafter referred to as "Declarant").

WHEREAS, Declarant is the owner of record of those parcels of land, comprising 17.36± acres (hereinafter "the Property"), in Pencader Hundred, New Castle County and State of Delaware, situated along that certain Frontage Road currently proposed parallel to the westerly side of Delaware Route 896 and terminating immediately south of the intersection of Delaware Route 896 and Four Seasons Parkway, all as shown on the May 16, 1996 Record Major Subdivision Plan (hereinafter "the Plan") for Eagle Trace (hereinafter "the Subdivision") prepared by Karins and Associates, such Plan appearing of record in the Office of the Recorder of Deeds in and for New Castle County and State of Delaware, in Microfilm No. 12907, and such Property being more particularly bounded and described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Property is currently improved with three (3) single-family residences; and

WHEREAS, the Declarant, or Declarant's successors and/or assigns intends to construct additional dwelling units (hereinafter, the "townhomes") on a portion of the Property (such portion comprising 15.122± acres and being hereinafter referred to as "the Land"), with appurtenant private open space, sidewalks abutting or located within that private open space, bituminous pathways, active recreation areas, parking spaces in the open space areas, overflow parking spaces, and stormwater management areas (collectively, the "Common Facilities"), all as more particularly set forth by the Plan; and

WHEREAS, Declarant desires to provide for the orderly and proper maintenance of the Common Facilities; and

WHEREAS, Declarant desires to impose upon each townhome lot to be developed on the Land, certain covenants and obligations with respect to the maintenance of the Common Facilities and to bind to such covenants Declarant as well as Declarant's successors and assigns with respect to the Land.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT:

Declarant does covenant and declare that Declarant shall hold and stand seized of all the Land, under and subject to the following covenants with respect to the maintenance of the Common Facilities, which covenants shall perpetually run with the Land and bind Declarant, and Declarant's successors and assigns (as the owner(s) from time to time of the lots established by the Plan) for the benefit of Declarant and such subsequent owners and for the

benefit of New Castle County, Delaware (hereinafter "the County").

1. The following definitions are applicable hereto:

(a) "Common Facilities" shall mean any and all common facilities designated and established as such on the Plan, including, without limitation, private open space, sidewalks abutting or located within that private open space, bituminous pathways, active recreation areas, parking spaces in the open space areas, overflow parking spaces, stormwater management areas, and other common amenities depicted on the Plan or otherwise hereafter located or constructed on the Land, as determined by the Corporation.

(b) "Corporation" shall mean and refer to the "maintenance corporation" (as defined in Paragraph 2) its successors and assigns, such properly named corporate entity to be formed as provided hereunder.

(c) "Lot" or "lot" shall mean and refer to a separately subdivided residential lot or parcel as shown on the Plan.

(d) "Member" shall mean and refer to every person or entity who holds membership in the Corporation.

(e) "Owners" shall mean and refer to the record owners of a fee simple title to any Lot.

(f) "Plan" shall mean the Plan referred to on page 1 of this Declaration or the most currently recorded subdivision, resubdivision or land development plan or plans for the Land, or portions thereof, as the same is amended, resubdivided or enlarged from time to time by Declarant, its successors and assigns.



(g) "Townhome lot" shall mean each of lots #1 through #95 identified as such on the plan.

2. In order that the Common Facilities as set forth on the Plan shall be maintained in a good and proper condition, fit for their intended purposes, and according to the provisions of Section 32-447 of the New Castle County Code ("the County Code") and this Declaration, Declarant shall, prior to the conveyance of the first townhome lot within the Subdivision, incorporate under the laws of the State of Delaware, a non-profit Corporation to be known as "Eagle Trace Maintenance Corporation". Such Corporation shall be charged with the duty of maintaining the Common Facilities in accordance with the terms of this Declaration and such other or more stringent standards imposed by the County or assuring that such maintenance is performed. The Members of the Corporation shall be the owner(s) (including the Declarant) from time to time of the several townhome lots comprising the Subdivision. Declarant shall be responsible to secure a Federal Employer Identification Number for the Corporation and to file an application to secure Internal Revenue Service status as a corporation not organized for profit and to be qualified as an exempt organization under Section 501(c) of the Internal Revenue Service Code of 1954 [26 U.S.C. §501(c)1, as amended.

3. (a) Following formation of the Corporation in accordance with the County Code, the purchaser of any townhome lot, by the acceptance of the deed thereto, shall thereby obligate and bind such purchaser as well as the purchaser's heirs, successors

and assigns as a member of the Corporation, be bound by all of the Corporation's rules and regulations, and be subject to all of the duties and obligations imposed by reason of such membership.

(b) Each owner of any townhome lot, by accepting the deed thereto, is deemed to covenant and agree to pay to the Corporation, when necessary, periodic assessments or charges, such assessments to be fixed, established and collected from time to time as hereinafter established, provided that all assessments must be fixed at a uniform rate for all of the townhome lots. In addition, at the time of the initial settlement on any townhome lot within the Subdivision following formation of the Corporation, the Declarant, on behalf of the Corporation, shall, collect the equivalent of not less than Two Hundred Dollars (\$200.00), of assessments for the maintenance costs associated with the maintenance of the Common Facilities. The assessments levied by the Corporation shall be used exclusively for the purpose of maintaining the Common Facilities after the Common Facilities have been transferred to the Corporation in accordance with the provisions contained herein and in Section 32-447 of the County Code. Nothing in this Declaration shall prevent the Corporation from levying other assessments for such purposes as the Corporation, pursuant to its governing documents, determines appropriate.

(c) An annual assessment, if necessary, shall be set by a majority of the Corporation's members in good standing voting in person or by proxy at the annual meeting. Similarly any special assessments or other matters to be decided by the members



of the Corporation with respect to the Subdivision or the Corporation's ongoing operation shall, unless otherwise specified in this Declaration, be set or decided by a majority vote of the Corporation's members in good standing, voting in person or by proxy at the annual meeting or at any other membership meeting duly called for this purpose. A member shall be in good standing only if all assessments and other charges due the Corporation from such member or with respect to such member's particular townhome lot are current. Each townhome lot shall be entitled to one vote regardless of whether or not such townhome lot is owned by a single individual or entity. In the case of a townhome lot owned by an entity rather than a single individual, the vote pertaining to such townhome lot shall be effective only if such vote constitutes the duly authorized action of such entity. In the case of any townhome lot having multiple owners such vote, to be effective, shall require the unanimous accord of such multiple owners.

(d) No owner may waive or otherwise avoid liability for the assessments provided for herein by nonuse of the Common Facilities. The due date for payment of each assessment shall be established by the Corporation at the time such assessment is levied. Any assessment not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of one and one-half per centum (1-1/2%) per month (or, if less, the maximum rate of interest then chargeable for such purpose under applicable law) until such delinquency is cured and the Corporation may bring an action at law or in equity

against the delinquent townhome lot owner (who shall be personally obligated to pay the same) or foreclose the lien against the pertinent townhome lot. Costs and reasonable attorney's fees incurred by the Corporation incident to any such action, as well as interest due on delinquent assessments, shall be added to the amount of the original assessment.

(e) It is expressly agreed that the assessments referred to above shall be a lien or encumbrance on the townhome lot(s) with respect to which the assessments are made and it is expressly stated that by acceptance of title to any townhome lot within the Subdivision, the owner from the time of acquiring title thereto shall be held to have covenanted and agreed to pay all applicable assessments to the Corporation (including both current and prior unpaid assessments).

(f) By acceptance of title to any townhome lot within the Subdivision an owner shall be held to vest in the Corporation the right and power (in addition to the authority established by subsection (d) of this provision) to take and prosecute all actions or suits, legal, equitable or otherwise, which may, in the opinion of the Corporation, be necessary or advisable for the collection of any assessment(s) imposed pursuant to the terms of this Declaration.

(g) Such assessments shall be subordinate in lien to the lien of any bona fide mortgage or mortgages on any townhome lot which is subject to such charges regardless of when such mortgage lien or liens were created or when such charges accrued; provided that such subordination shall apply only to charges that



shall have become payable prior to the passing of title pursuant to foreclosure under such mortgage or mortgages. The foreclosure purchaser(s) shall not be liable for payment of any assessments accruing prior to the foreclosure sale, but nothing herein shall affect the rights of the Corporation to enforce the collection of assessment charges accruing prior to such foreclosure sale under such mortgage or mortgages against any pre-foreclosure owner(s) of the pertinent townhome lot or to enforce collection of assessment charges accruing after such foreclosure sale against any post-foreclosure owner(s) of the pertinent townhome lot or against the townhome lot itself; provided further, however, that assessment charges accruing after such sale shall also be subordinate in lien to the lien of any further bonafide mortgage or mortgages which are placed against the pertinent townhome lot which is subject to such charges, with the intent being that no such charges shall at any time be prior in lien to any bonafide mortgage or mortgages whatsoever on such townhome lot.

(h) In the event the Corporation fails to maintain the Common Facilities as contemplated herein, Declarant hereby grants to the County, its successors and assigns, the right, privilege and authority to enter upon the Land for the purposes of maintaining the Common Facilities at the collective expense of the owner(s) from time to time of the townhome lots. In the event that the County elects to maintain the Common Facilities as set forth above, all maintenance expenses which the County elects to assess against the townhome lot owners shall be allocated among the owners as contemplated by Paragraph 4 of this Declaration and shall be



collectible by the County in accordance with procedures established by the County for that purpose, or in the manner set forth above with respect to collection by the Corporation. The provisions of Paragraph 3(g) above to the contrary notwithstanding, any lien for such expenses or maintenance asserted by the County and filed with the Recorder of Deeds shall be a lien from the time of recording and shall have priority in relation to all other liens, either general or special (including mortgages) according to the time of the proper recording of the same.

4. The expenses chargeable from time to time by the Corporation shall be assessed equally among the several townhome lots.

5. (a) Declarant, its successors and assigns, grants forever to the owner(s) from time to time of each townhome lot within the Subdivision the free and uninterrupted use of the Common Facilities in common with the owner(s) of the remaining townhome lots within the Subdivision as provided by this Declaration.

(b) The owner(s) from time to time of each townhome lot, by acceptance of the deed therefor, shall thereby have further granted to the Corporation the right to come upon such townhome lot as reasonably necessary at any time or times to maintain the Common Facilities as hereinafter provided.

6. (a) Maintenance of the Common Facilities shall include, without limitation:

(i) Keeping such areas policed for trash, debris, and other refuse and washing or sweeping paved areas as required.

(ii) Maintaining, replacing and supplementing common area landscaping.

(iii) Maintaining the stormwater management areas in accordance with County regulations.

(b) Maintenance of the Common Facilities may also include, without limitation:

(i) Posting, maintaining and replacing as required within the Subdivision necessary, reasonable or otherwise appropriate identification, entrance, exit, and other directional signs, markers or lights at the entrances or along the roadway servicing the Subdivision.

(ii) Cleaning, relamping and replacing lighting and lighted sign fixtures located at the entrance to or within the Subdivision.

(iii) Painting and repainting of striping, markers, light fixtures and signage relating to the overall operation of the Subdivision.

(iv) Maintaining the Subdivision entrances and thoroughfares free from any obstructions affecting the intended use thereof.

(v) Maintaining, replacing and supplementing utility conduits and service equipment used in whole or in part to provide services to common area facilities.



(vi) Maintaining, replacing and supplementing equipment and facilities in the common active recreation areas.

The cost of maintenance and operation of matters with respect to which the Corporation is hereby directed to assume responsibility, as such cost shall be charged to the several townhome lots comprising the Subdivision, shall be defined to mean the total of all items of direct cost and expense properly expended by the Corporation or others on the Corporation's account for performing, planning, supervising, coordinating or otherwise providing services relating thereto, or causing others to do the same, as determined in accordance with generally accepted accounting principals on the accrual method for accounting. Such cost shall include all maintenance, replacement and reconstruction services necessary to preserve the entrances and other common area in good order, condition and repair, and further includes all rental charges for equipment, the cost of small tools and supplies, all costs for security protection and traffic direction and control; the cost of cleaning, including removal of rubbish, dirt, and debris; the cost of landscaping and supplies incidental thereto; all charges for utility services used in connection with such, together with all costs of maintaining lighting fixtures and all premiums for public liability and property damage insurance covering matters with respect to which the Corporation has responsibility.

7. The Plan, as of the date hereof, anticipates that the Subdivision will consist of ninety-eight (95) townhome lots. In the event that any additional lots are established on the Land,

or existing lots are merged or otherwise realigned by means of a duly approved and recorded resubdivision plan, the terms of this Declaration (unless correspondingly amended in accordance with paragraph 12 hereof) shall continue to apply to such redefined lots and be interpreted and enforced by the Corporation in an equitable manner consistent with the intent hereby reflected in the context of the Plan as originally approved and recorded.

8. Prior to the completion and conveyance of seventy-five per cent (75%) of the townhome lots in the Subdivision, but no later than the conveyance of ninety percent (90%) of such townhome lots, Declarant shall: (a) transfer control of the Board of Directors for the Corporation to the respective owners of the townhome lots; and (b) convey good title to the Private Open Space(s), and any other common facilities to the Corporation, free of liens (collectively the "Affirmative Acts"), all in accordance with the provisions of Section 32-447 of the County Code. Notwithstanding any other provision contained herein, the Declarant shall be solely responsible for the maintenance of the Common Facilities, at Declarant's sole expense, during all periods of construction within the Subdivision, unless and until control of the Corporation has been properly conveyed to the townhome lot owners in accordance with the provisions contained herein.

9. The provisions of this Declaration shall bind all the lots shown on the Plan, and shall apply to and govern all lots created by any subsequent plan which may supersede the Plan, in whole or in part, and the owners of any such lots.



10. Nothing herein shall preclude the Corporation from fixing, establishing and collecting, from time to time, additional assessments or charges for such purposes as the Corporation deems necessary or desirable, including for example, but not by way of limitation, snow removal and community activities. Such additional assessments or charges shall be established, paid and collected in accordance with the provisions and procedures set forth herein.

11. These covenants and restrictions shall be real covenants running with the Property and shall bind the Property perpetually.

12. The foregoing covenants may not be modified, amended or altered, in whole or in part, without the express written consent of two-thirds (2/3) of the townhome lot owners of record as

of the date of such modification, amendment or alteration, together with the written consent of the then County Council of New Castle County, Delaware.

IN WITNESS WHEREOF, Declarant has executed and sealed this Declaration as of the day and year first above written.

WITNESS:

[Signature]  
[Signature]  
[Signature]

Claire H. Rizzo (Seal)  
 CLAIRE H. RIZZO

Margaret M. Rash (Seal)  
 MARGARET M. RASH

[Signature] (Seal)  
 DIANE SALINSKI, individually  
 and as personal representative  
 of the Estate of Robert A.  
 Salinski

\_\_\_\_\_ (Seal)  
 DAVID SALINSKI

\_\_\_\_\_ (Seal)  
 DEBORAH EVANS

Susan M Smith

Robert A. Salinski, GR. (Seal)  
 ROBERT A. SALINSKI, GR.

Susan M Smith

Andrew Salinski (Seal)  
 ANDREW SALINSKI



of the date of such modification, amendment or alteration, together with the written consent of the then County Council of New Castle County, Delaware.

IN WITNESS WHEREOF, Declarant has executed and sealed this Declaration as of the day and year first above written.

WITNESS:

\_\_\_\_\_  
CLAIRE H. RIZZO (Seal)

\_\_\_\_\_  
MARGARET M. RASH (Seal)

\_\_\_\_\_  
DIANE SALINSKI, individually and as personal representative of the Estate of Robert A. Salinski (Seal)

*David B. Salinski*  
\_\_\_\_\_  
DAVID SALINSKI (Seal)

\_\_\_\_\_  
DEBORAH EVANS (Seal)


\_\_\_\_\_  
ROBERT A. SALINSKI, JR. (Seal)

\_\_\_\_\_  
ANDREW SALINSKI (Seal)

STATE OF DELAWARE     )  
                                   ) SS.  
 NEW CASTLE COUNTY    )

BE IT REMEMBERED, that on this 9<sup>th</sup> day of July, 1996, personally came before me, the Subscriber, a Notary Public in and for the State and County aforesaid, CLAIRE H. RIZZO, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be her act and deed and the act.

GIVEN under my Hand and Seal of office, the day and year aforesaid.

 (Seal)  
 Notary Public

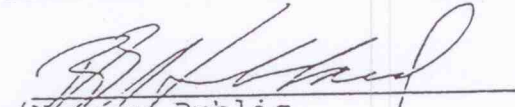
Bruce E. Hubbard  
 Attorney At Law  
 Notarial Officer  
 State of Delaware  
 Permanent Appointment

Name (Please Print) \_\_\_\_\_  
 Title \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_

STATE OF DELAWARE     )  
                                   ) SS.  
 NEW CASTLE COUNTY    )

BE IT REMEMBERED, that on this 9<sup>th</sup> day of JULY, 1996, personally came before me, the Subscriber, a Notary Public in and for the State and County aforesaid, MARGARET M. RASH, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be her act and deed and the act.

GIVEN under my Hand and Seal of office, the day and year aforesaid.

 (Seal)  
 Notary Public

Bruce E. Hubbard  
 Attorney At Law  
 Notarial Officer  
 State of Delaware  
 Permanent Appointment

Name (Please Print) \_\_\_\_\_  
 Title \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_

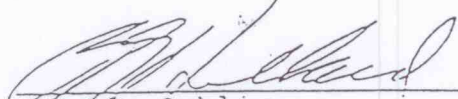


STATE OF DELAWARE )  
 ) SS.  
 NEW CASTLE COUNTY )

BE IT REMEMBERED, that on this 8<sup>th</sup> day of July, 1996, personally came before me, the Subscriber, a Notary Public in and for the State and County aforesaid, DIANE SALINSKI, individually and as personal representative of the Estate of Robert A. Salinski, parties to this Indenture, known to me personally to be such, and acknowledged this Indenture to be her act and deed and the act.

GIVEN under my Hand and Seal of office, the day and year aforesaid.

Bruce E. Hubbard  
 Attorney At Law  
 Notarial Officer  
 State of Delaware  
 Permanent Appointment

 (Seal)  
 Notary Public

Name (Please Print) \_\_\_\_\_  
 Title \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_

STATE OF DELAWARE )  
 ) SS.  
 NEW CASTLE COUNTY )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 1996, personally came before me, the Subscriber, a Notary Public in and for the State and County aforesaid, DAVID SALINSKI, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed and the act.

GIVEN under my Hand and Seal of office, the day and year aforesaid.

\_\_\_\_\_  
 Notary Public (Seal)

Name (Please Print) \_\_\_\_\_  
 Title \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_

Notarized: COUNTY )

SS.

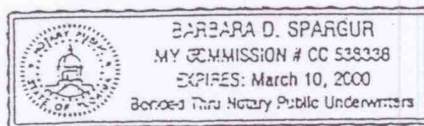
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BE IT REMEMBERED, that on this 26<sup>th</sup> day of June, 1996, personally came before me, the Subscriber, a Notary Public in and for the State and County aforesaid, DEBORAH EVANS, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be her act and deed and the act.

GIVEN under my Hand and Seal of office, the day and year aforesaid.

Barbara D. Spargur (Seal)  
Notary Public

Name (Please Print) Barbara D. Spargur  
Title Customer Service Rep. First Union Bank  
My Commission Expires: 10 March 2000



STATE OF DELAWARE )

) SS.

NEW CASTLE COUNTY )

BE IT REMEMBERED, that on this 7<sup>th</sup> day of July, 1996, personally came before me, the Subscriber, a Notary Public in and for the State and County aforesaid, ROBERT A. SALINSKI, JR., party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed and the act. BY 13th  
E. 14th  
his A  
12

GIVEN under my Hand and Seal of office, the day and year aforesaid.


[Signature] (Seal)  
Notary Public

Name (Please Print) Robert F. Welshmer  
Title Attorney At Law  
My Commission Expires: Notarial Officer  
State of Delaware  
Permanent Appointment

STATE OF DELAWARE     )  
                                   )   SS.  
 NEW CASTLE COUNTY    )

BE IT REMEMBERED, that on this 9<sup>th</sup> day of July, 1996, personally came before me, the Subscriber, a Notary Public in By: and for the State and County aforesaid, ANDREW SALINSKI, party to Beuce this Indenture, known to me personally to be such, and acknowledged He this Indenture to be his act and deed and the act. IN

GIVEN under my Hand and Seal of office, the day and year aforesaid.

  
 \_\_\_\_\_  
 Notary Public

(Seal)

Name (Please Print)	Robert F. Welshmer
Title	Attorney At Law
My Commission Expires:	Notarial Officer
	State of Delaware
	Permanent Appointment