

34863

ADOPTION OF "EAGLE TRACE

AND

DECLARATION OF RESTRICTIONS THEREFOR

This Declaration, made and entered into by Eagle Trace Investors, Inc. an Ohio Corporation, hereinafter referred to as "DEVELOPER"; this 22 day of July, 1994.

WITNESSETH THAT:

WHEREAS, Developer is the owner of the following described real estate, situated in the City of Sylvania, Lucas County, Ohio, viz:

Lots Numbers One hundred nineteen (119) through One hundred forty six (146), both inclusive, in Eagle Trace Plat Three, a Subdivision in the City of Sylvania, Lucas County, Ohio.

which real estate is hereinafter for convenience referred to as "Eagle Trace Plat Three" and,

WHEREAS, Developer desires to establish for its own benefit and for the benefit of all future owners or occupants of all or any part of Eagle Trace Plat Three, certain easements and rights in, over and to Eagle Trace Plat Three and certain restrictions with respect to the use thereof.

NOW THEREFORE, Developer, as the owner of such real estate and for the purpose aforesaid, hereby declares as follows:

ARTICLE ONE

SECTION 1. No dwelling or any addition thereto or any alterations thereof shall be erected, reconstructed, placed.

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or suffered to remain upon said premises, unless nor until the size, location, type, style or architecture, use, the materials of construction thereof, and the color scheme therefor, the grading plan of the lot, including the grade elevation of said dwellings, the plot plan showing the proposed location of said dwelling upon said premises and the plans, specifications and details of said dwellings shall have been approved in writing by Developer, its successors or assigns and a true copy of said plans, specifications and details shall have been lodged permanently with Developer, and no dwelling except such as conforms to said plans, specifications and details shall be erected, reconstructed, placed or suffered to remain upon said premises.

SECTION 2. All lots shall be used and occupied solely and exclusively for private residence purposes by a single family, including their family servants, and no other than one single family, private residence purpose building, hereinafter for convenience called "DWELLING" shall be erected, reconstructed, placed or suffered to remain thereon.

SECTION 3. No dwelling shall be erected, reconstructed, placed or suffered to remain upon said premises, nearer the front or street line or lines than the building setback lines, or lines shown upon the Plat of said subdivision, nor nearer to any side line or rear line than shall be determined by Developer in writing at the time of the approval of the plans and specifications for said dwelling. This restriction

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as to the distance at which said dwelling house shall be placed from the front, side and rear lines of said premises shall apply to and include porches, verandas, portes cochere, and other similar projections of said dwelling. The parcel of land upon which a dwelling is to be constructed and/or maintained together with the land adjacent thereto and used in conjunction therewith may include one lot or part of one, two or more lots delineated on the recorded Plat of Eagle Trace Plat Three, but only with the written consent of Developer. Developer may require dwellings to be erected farther from the street than the building set-back line or lines.

SECTION 4. No garage or any addition thereto or alteration thereof shall be erected, reconstructed, placed or suffered to remain upon said premises except for the exclusive use of the family occupying said dwelling and the servants thereof, nor unless, such garage be made an integral part of said dwelling, nor unless, nor until the size, location, type, style of architecture, cost, use, the materials of construction thereof, the color scheme therefor, the grade elevation thereof, and the plans, specifications and details of said garage, including the driveway approach, and the garage entrance shall have been first approved in writing by Developer, and a true copy of said plans, specifications and details of said garage shall have been lodged permanently with Developer, and no garage except as

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conforms to said plans, specifications and details shall be erected, reconstructed, placed or suffered to remain upon said premises. Such garage shall be subject to all of the covenants, rights, terms, reservations, limitations, agreements and restrictions at any point herein made applicable to said dwelling. [No detached shed, garage, barn, or any type of detached structure whatsoever shall be erected, reconstructed, placed or suffered to remain upon said premises. [No radio or television antennas or satellite "dishes" shall be erected, reconstructed, placed or suffered to remain on said premises.

SECTION 5. The location of any and all driveways shall be determined by Developer in writing at the time of the approval of the plans and specifications for said dwelling. No driveway shall be located, relocated, or suffered to remain upon said premises except as determined in writing by Developer. Complete specifications for construction of driveways shall be submitted to Developer and its approval thereof endorsed thereon in writing.

SECTION 6. No portion of the within described premises nearer to any highway than the building set-back line or lines shown upon the plat of said Subdivision shall be used for any purpose other than that of a lawn; nothing herein contained however, shall be construed as preventing the use of such portion of said premises for walks (and drives if otherwise permitted), the planting of trees, or shrubbery,

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the growing of flowers or ornamental plants, or statuary fountains, and similar ornamentations, for the purpose of beautifying said premises, but no vegetables, so called, nor grains of the ordinary garden or field variety shall be grown upon such portion thereof; and no weeds, underbrush or other unsightly objects shall be permitted to grow or remain anywhere upon said premises, and no unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Within sixth (6) months after a residence has been completed and occupied on any lot in Eagle Trace Plat Three, the front yard of said lot shall be sodded from the front of the singled family residence to the curb line in the case of interior lots. In the case of corner lots, the front yard shall be sodded from the front of the single family residence to the curb line and the side yard facing the dedicated public street shall be sodded from the single family residence to the curb line. Any portion of the lot not built upon or not required to be sodded, as provided for herein, shall be seeded within said six (6) month period. No fence, hedge, wall or enclosure of any kind, for any purpose shall be erected, placed or suffered to remain upon said premises until the written consent of Developer shall having been first obtained therefore, and to be subject to the terms and conditions of said consent as to its type, height, width, color, upkeep and any general conditions pertaining thereto that said consent may name.

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SECTION 7. In connection with the provisions contained in Section 3. above, it is hereby provided that if, in the opinion of Developer, by reason of the shape, dimensions or topography of the premises herein described, or by reason of the type of dwelling to be erected thereon, or for any other reason, satisfactory to it, the enforcement of the provisions of said Section would work a hardship, Developer may modify such provisions so as to permit variations in cost, size, type, locations or otherwise that will not, in its judgment, do material damage to any abutting or adjacent property.

SECTION 8. Developer reserves the exclusive right to grant consent for the construction, operation and maintenance of electric light, telephone, telegraph and cable television poles, lines and conduits, and for water, gas, sewer and pipes and conduits or any other public utilities facilities, together with the necessary or proper incidents and appurtenances, in, through, under, over and/or upon any and all highways, now existing or hereafter established, upon which any portion of said premises may now or hereafter front or abut.

SECTION 9. Developer reserves to himself, its successors and assigns a perpetual easement in, through, under and/or over those portions of each lot, as shown on the Plat of Eagle Trace Plat Three designated as "Utility Easement" for the construction, operation and maintenance of electric lights, telephone, telegraph and cable television

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poles, lines and conduits, and for water, gas and sewer lines and conduits or any other public utility facilities, together with the necessary or proper incidents and appurtenances, and no building or other structure, or any part thereof, shall be erected, or maintained upon any part of the property in Eagle Trace Plat Three, over or upon which easements for the installation and maintenance of public utilities and storm sewers will be or have been granted. All electrical service to homes shall be underground from the main electrical supply lines.

SECTION 10. No spirituous, vinous or fermented liquors of any kind shall be manufactured or sold, either at wholesale or retail, upon said premises, no industry business or trade, occupation or profession of any kind shall be conducted, maintained or permitted upon said premises, no well for gas, water, oil or other substance, shall at any time, whether intended for temporary or permanent purpose, be erected, placed or suffered to remain upon said premises (except wells for lawn and landscape watering, if written approval is first obtained from Developer and all necessary public authorities and Developer approves the location and other specifications in writing); nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the quiet of the owner or owners of any adjoining land. No advertising sign, billboard or other advertising devise shall be erected, placed or

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suffered to remain upon said premises or upon or visible from the outside of said dwelling without the consent of Developer first having been obtained. A standard real estate sign not exceeding six (6) square feet in area on a side and advertising the lot or dwelling "For Sale" or "For Rent" shall, however, be permitted. The right is reserved by Developer to erect small structures and place signs on any unsold lot or improvements thereon.

SECTION 11. No animals, rabbits or poultry of any kind, character or species of fowl or livestock shall be kept upon or maintained on any part of any lot or tract. Developer reserves the right to adopt reasonable regulations governing the keeping within any dwelling house of domestic dogs, cats, or other household pets, calculated not to becoming a nuisance to the owners or inhabitants of Eagle Trace Plat Three.

SECTION 12. No boats, trailers, motor homes, recreational vehicles, motor couches or trucks [except pick-up trucks not exceeding one (1) ton and window and panel vans not exceeding one (1) ton, so-called] shall be parked, stored or suffered to remain upon said premises or in the streets within Eagle Trace Plat Three unless parked or stored within a garage on said premises out of view.

SECTION 13. No clothes lines, clothes, sheets, blankets or other articles shall be hung out or exposed on any part of said premises.

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SECTION 14. All dwellings shall be equipped with a "rustic cedar" mailbox (so-called) approved by the United States Postal Service. In addition, each dwelling must have sidewalks constructed by the contractor at the time the residence is built as prescribed by the City of Sylvania. In the event the contractor who constructs the single family residence on any lot or the owner of any lot fails to construct a sidewalk as prescribed by the City of Sylvania within the time period allowed by the City of Sylvania, then in that event, if Developer is compelled to construct said sidewalk at Developer's expense, the Developer shall have the right to record a lien against such lot by recording a document having the formalities of deed which sets forth the legal description of the lot, the present owner of record, and the amount expended by Developer for the construction of said sidewalk. The unpaid portion of such construction costs which is to be secured by the lien shall bear interest at the rate of twelve (12%) percent per annum from the date such lien is filed with the Lucas County Recorder until fully paid and shall be subject to foreclosure as though the same were a mortgage. Such lien shall also secure payment of all costs and expenses of the Developer including court costs and attorneys fees incurred in collecting same. Such lien shall be subordinate to any institutional mortgages existing at the time of filing the lien. Furthermore, each builder of dwellings on any lots in Eagle Trace Plat three shall comply

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with the site grading plan prescribed by the City of Sylvania. The City of Sylvania may determine that certain lots may require retaining walls in order to preserve trees presently located on said lots. If said retaining walls are necessary and if the owner of said lots desires to preserve said trees, then said retaining walls will be constructed only after the plans have been approved by the City of Sylvania and the Developer as herein provided. If the owner of any of said lots does not wish to construct retaining walls which may be necessary, then in that event the site grading plan prescribed by the City of Sylvania shall be complied with including grading to accomplish the required slope along the public road right-of-ways.

SECTION 15. No above ground swimming pools shall be constructed, reconstructed, allowed or suffered to remain upon said premises unless said above ground swimming pools have a total water surface of less than seventy-five (75) square feet and a depth of less than twenty-four (24) inches.

SECTION 16. Developer, subject to Section 14. above, reserves the sole and exclusive right to establish grades and slopes on the premises herein described, and to fix the grade at which any dwelling shall hereafter be erected or placed hereon, so that the same may conform to a general plan.

SECTION 17. All rubbish and debris, combustible and noncombustible, and all garbage shall be stored in underground containers or stored and maintained in containers

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entirely within the garage, basement or in the rear or at the side of the dwelling. In no event shall any rubbish, debris or containers be visible from any street in the front or at the side of the dwelling. Additional regulations for the storage, maintenance and disposal of rubbish, debris, leaves, and garbage may, from time to time, be established by Developer.

SECTION 18. The only type of fence which will be allowed to be constructed on any lot on Eagle Trace Plat Three is a three rail split-rail fence. The maximum height shall be forty-eight (48") inches above ground level to the top of the top-most rail. It will be permissible to affix "hog wire", or an equivalent wire mesh, to the split-rail fence. No chain-link, stockade, privacy or other type of fencing whatsoever shall be permitted in Eagle Trace Plat Three.

SECTION 19. Developer reserves and is hereby granted the right in case of any violation or breach of any of the restrictions, rights, reservations, limitations, agreements, covenants and conditions herein contained, to enter the property, upon or as to which such violation or breach exists and to summarily abate and remove, at the expense of the owner thereof, any erection, thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof as interpreted by Developer and Developer shall not, by reason thereof, be deemed guilty of any manner

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of trespass for such entry, abatement, or removal. A failure of Developer to enforce any of the restrictions, rights, reservations, limitations, agreements, covenants and conditions contained herein shall in no event be construed, taken or held to be a waiver therefor or acquiescence, in or consent to any continuing, further or succeeding breach or violation thereof, and Developer shall at any and all times have the right to enforce the same.

SECTION 20. No grantee or successor in title shall subdivide or convey less than the whole of any lot without first obtaining the written consent of Developer.

SECTION 21. In all instances where plans and specifications are required to be submitted to and are approved by Developer, if subsequent thereto there shall be any variance in the actual construction and location of any alteration or addition, fence, wall, hedge or roadway, any such variance shall be deemed a violation of these restrictions.

SECTION 22. Whenever any of the foregoing covenants, reservation, agreements or restrictions provide for any approval, designation, determination, modification, consent or any other action by Developer, any such approval, designation, determination, modification, consent or any other such action shall be valid if accomplished by Developer, or his assigns or by any other person authorized in writing to sign deeds on behalf of Developer.

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ARTICLE TWO

SECTION 1. Developer retains the right to manage, repair, replace and otherwise deal with all common area landscaping, identification signage and other types of signage, fencing originally installed by Developer, monuments, lighting, utilities and any and all such other common improvements as may be installed by Developer. Each lot in Eagle Trace Plat Three shall be liable for an annual assessment. The assessment shall be \$100.00 Dollars per lot for the calendar year 1994. For subsequent calendar years, the \$100.00 Dollars per lot assessment may be increased by Developer in an amount not to exceed the increase, if any, in the Consumer Price Index All Urban Consumers United States Average All Items 1967=100 Revised, for the twelve (12) month period which ends on August 31st of the calendar year which precedes the calendar year for which the increased assessment is to be calculated. Any lots sold by the Developer prior to January 1, 1995, shall be liable, at closing, for the \$100.00 Dollar annual assessment for calendar year 1994 which shall be due and payable at the time of the closing. Any lots in Eagle Trace Plat Three sold subsequent to January 1, 1995 shall be liable, on a pro-rate basis, for the balance of the assessment due for the calendar year in which said lot or lots are sold. Developer shall not be liable for payment of any assessment for any lots in Eagle Trace Plat Three. In the event annual assessments are not paid by January 31st of

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each calendar year, then in that event, Developer shall have the right to record a lien against such lot by recording a document having the formalities of a Deed which sets forth the legal description of the lot, the present owner of record, and the amount of the assessment due. The unpaid portion of the assessment which is to be secured by the lien shall bear interest at the rate of twelve (12%) percent per annum from the date such lien is filed with the Lucas County Recorder until fully paid and shall be subject to foreclosure as though the same were a mortgage. Such lien shall also secure payment of all costs and expenses of the Developer including court costs and attorneys fees incurred in collecting same. Such lien shall be subordinate to the lien of any institutional mortgages existing at the time of filing the lien. Proceeds from the assessments shall also be used for court costs, attorneys fees and other costs incurred incidental to the enforcement of this Declaration of Restrictions. Developer shall be entitled to a management fee in the amount of fifteen (15%) percent of all expenses incurred which are paid out of the fund created by the collection of the aforementioned assessment. If the assessment is insufficient to pay the costs incurred and the management, maintenance and repair of the aforementioned common areas and other costs incurred in collecting assessments or enforcing the Declaration of Restrictions, developer shall have the right, but not the obligation, to

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lend to the fund sufficient funds to cover the deficit. Such loans shall not bear interest but shall be a charge upon future collections into the assessment fund and at such time as sufficient funds are available to reimburse Developer, such funds will be distributed to Developer in reimbursement of such non-interest bearing loans. If a surplus is created due to the collection of the aforementioned assessments, then in that event such surplus shall be paid over to the Eagle Trace Homeowners Association to be formed in accordance with SECTION 2. below. However, nothing contained herein, shall require the Developer to render an accounting of income and expenses to the owners of lots in Eagle Trace Plat Three except as may be required by law. Developer is also the owner of, has the right to acquire, or may acquire in the future, land adjacent to Eagle Trace Plat Three or in the immediate vicinity of Eagle trace Plat Three. In the event all or any portion of said land is later developed by Developer or its successors or assigns, or any of the entities which make up the "Developer", then in that event, the owners of lots, parcels, condominiums, homes, or cluster homes, or any other structure used for residential purposes may become members of the Eagle Trace Homeowners Association provided for below and if they become members, shall be subject to all rules and regulations and assessments, as provided for herein. Developer's failure to assess or collect the abovementioned assessment shall not in any way

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impair, prohibit or bar, by waiver or otherwise, its right or ability to collect the assessment for both past years and future years.

SECTION 2. Upon the completion, sale and occupancy of all lots in the Eagle Trace Development, including Plat Three and such additional Plats on adjacent land or land in the vicinity of Eagle Trace Plat Three which will collectively comprise the Eagle Trace Development, or as such earlier date as Developer in its sole discretion shall determine, Developer may cause to be incorporated a nonprofit corporation under the laws of the State of Ohio, to be called the "Eagle Trace Homeowners Association" or a name similar thereto, and upon the formation of such Association, every owner (meaning a full building site) shall become a member thereof, and each such owner, including Developer shall be entitled to one vote on each matter submitted to a vote of members for each lot owned by him; provided, however, that where title to a lot is in more than one person, such co-owners acting jointly shall be entitled to but one vote. Until such Association is formed, Developer shall retain all the rights, privileges and powers as are herein provided. Developer reserves the right to incorporate one (1) nonprofit corporation under the laws of the State of Ohio for a Homeowners Association made up of all single family homeowners in the entire Eagle Trace Development. In such event the membership and voting rules set forth above and

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below in Article Three shall apply to all single family Plats of Eagle Trace which exist at the time the Association is formed and also to future single family Plats in the Eagle Trace Development.

SECTION 3. The Association, by vote of two-thirds (2/3) of its members may adopt such reasonable rules and regulations, including the right to levy reasonable assessments for the maintenance of common areas or other activities undertaken by the Association as it may deem advisable for the maintenance, conservation and beautification of the property, and for the health, comfort, safety, general welfare of residents on said property and all parts of said property shall at all times be maintained subject to such rules and regulations.

SECTION 4. Developer, by an instrument in writing in the nature of an assignment, shall vest the association, if and when formed, with the rights privileges and powers herein retained by the said Developer, which said assignment shall be recorded in the office of the Recorder of Deeds of Lucas County, Ohio.

ARTICLE THREE

SECTION 1. Each grantee of Developer, by the acceptance of a Deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, easements and the jurisdiction, right and powers of Developer, created

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or reserved by this Declaration of Restrictions or by Plat of Deed restrictions heretofore recorded, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed, shall run with the land and bind every owner of any interest therein, and inure to the benefit of such owner, in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every Deed of conveyance. The violation of any restriction or condition, or the breach of any covenant or provision herein contained shall give Developer or its successors or assigns, or the Association, the right (a) to enter upon the land upon which or as to which such violation or breach exists, and to summarily abate and remove, at the expense of the owner of said lot or lots any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and Developer or its successors and/or assigns, or the Association, or its agents shall not thereby be deemed guilty of any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either in law or equity, the continuance of any breach.

SECTION 2. All restrictions, covenants, conditions, agreements and other provisions herein contained shall be deemed subject to and subordinate to all mortgages or deeds of trust in the nature of a mortgage now or hereafter

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executed, encumbering any of the real property herein described, and none of said restrictions, covenants, conditions, agreements or other provisions shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust in the nature of a mortgage. It is distinctly understood and agreed, however, that if any portion of said property is acquired in lieu of foreclosure, or is sold under foreclosure of any mortgage, or under the provisions of any deed of trust in the nature of a mortgage, or under any judicial sale, any purchaser at such sale, his heirs, successors or assigns shall hold any and all property it purchased or acquired subject to all of the restrictions, covenants, agreements, conditions and other provisions of this Declaration.

SECTION 3. No restrictions imposed hereby shall be abrogated or waived by any failure to enforce the provisions hereof, no matter how many violations or breaches may occur.

SECTION 4. The invalidity of any restriction hereby imposed, or of any provision hereof, or of any part of such restriction or provision, shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration.

SECTION 5. Developer reserve the right to change, modify, alter or rescind any of the restrictions and covenants herein contained, except those set forth in Section 8. of Article One hereof.

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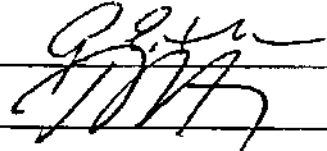
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SECTION 6. A violation of any of the rules and regulations adopted by Developer or by the property owners shall be deemed a violation of this Declaration and may be enjoined as herein provided.

SECTION 7. The rights, privileges and powers herein retained by Developer shall be assignable to, and shall inure to the benefit of its successors and assigns.

IN WITNESS WHEREOF, Eagle Trace Investors, Inc., an Ohio Corporation, has caused this Declaration to be signed on the day and year first written.

WITNESSES:



Eagle Trace Investors, Inc.,
an Ohio Corporation

By: 
Donald J. Kuhn, President

STATE OF OHIO, COUNTY OF LUCAS, SS:

22 The foregoing instrument was acknowledged before me this
day of July, 1994, by Donald J. Kuhn, President of Eagle
Trace Investors, Inc., on behalf of said corporation.



NOTARY PUBLIC
GARY E. TARSHA
Notary Public, State of Ohio
My Commission Expires 8-3-97

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