

Prepared By: David G. Neumann  
Attorney at Law

STATE OF NORTH CAROLINA  
COUNTY OF TRANSYLVANIA

RESTRICTIVE AND PROTECTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS AND CONDITIONS, made and entered into this 3rd of March 1989, by and between FRANK J. GOTTUS, JR., and wife, HELLA E. GOTTUS, parties of the first part; hereinafter referred to as DEVELOPER; and PROSPECTIVE PURCHASERS of Lots 1, 6 and 9 through 19 inclusive, as shown and delineated on a plat entitled PHASE I OF EAGLE POINT, located in Brevard Township, Transylvania County, North Carolina, parties of the second part;

W I T N E S S E T H:

WHEREAS, the DEVELOPER has heretofore acquired title to a certain tract or parcel of land which has been subdivided into lots number 1, 6 and 9 through 19, inclusive, according to a certain map or plat entitled Phase I of Eagle Point (hereinafter sometimes referred to as the "SUBDIVISION"), which map appears of record in the office of the Register of Deeds of Transylvania County, in Plat File 3, Slide 300; and

WHEREAS, the DEVELOPER intends to convey said numbered lots as the same are shown and delineated on the above-mentioned map, by deeds, deeds of trust, mortgages, and other instruments to various persons, firms and/or corporations, subject to certain restrictive and protective covenants and conditions which are deemed to make the subdivision more desirable and to be for the benefit of all those who acquire title to any one or more of said numbered lots to the end that the restrictive and protective covenants and conditions herein set out shall inure to the benefit of each person, firm or corporation which may acquire title to any or all of said numbered lots and which shall be binding upon each such person, firm or corporation to whom or to which the DEVELOPER may hereafter convey any of said numbered lots by deed, mortgage, deed of trust, or other instrument.

NOW, THEREFORE, in consideration of the premises, the DEVELOPER hereby covenants and agrees with said PROSPECTIVE PURCHASERS that each of the aforementioned lots shall be held, sold, encumbered and conveyed subject to the restrictive and protective covenants and conditions hereinafter set forth and said restrictive and protective covenants and conditions shall become a part of each instrument conveying any of said numbered lots as fully and to the same extent as if set forth therein. As a condition of the sale or conveyance of any of said numbered lots, the purchasers agree and covenant to abide by and conform with said restrictive and protective covenants and conditions.

THE RESTRICTIVE AND PROTECTIVE COVENANTS

AND CONDITIONS ARE AS FOLLOWS:

A-1. Lot. The word "Lot" as used herein shall mean the separately numbered parcels depicted on the above-mentioned map. Provided, however, that the owner of all of a numbered parcel on said map may combine with such numbered parcel, parts or portions of another numbered parcel or parcels and the aggregate shall be considered as one "Lot" for the purposes of these restrictive and protective covenants and conditions.

A-2. Land Use and Building Type. A private garage, outbuildings as herein expressly permitted and an overhead story for servant's quarters not rented, leased or utilized for any

renumeration are permitted. No outbuilding shall be erected upon any lot unless same is incidental to the residential use of said lot and conforms architecturally with the primary structure. No mobile or modular home may be erected or permitted to remain upon any lot. It is provided, however, that the DEVELOPER, during the development stage, may maintain a dwelling for use as a model home to aid sales in the subdivision. After development has been completed, no such model home may be maintained in the subdivision.

**A-3. Architectural Control Committee.** No building shall be erected, placed or altered on any lot until the construction plans, specifications, to include, but not limited to roof material and color and siding material and color, and a plan showing the location of the structure on the lot have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structure and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot unless similarly approved. Additionally, the entrance for any driveway entering any lot must be similarly approved as to location and form. Approval shall be as provided in Part C hereof. Lot owners shall consult with the committee before any major lot clearing or any grading is begun. Natural drainage shall not be changed without the approval of the appropriate government agency and said Committee. The Developer shall not be responsible for any drainage problems affecting any lot.

**A-4. Dwelling Quality and Size.** No dwelling shall be permitted on any lot in said subdivision unless the same shall meet the following minimum standards: The ground floor of the main structure, exclusive of one story open porches and garages, shall be not less than eighteen hundred (1,800) square feet, outside measurements, for a one story dwelling, not less than one thousand (1,000) square feet outside measurements for a structure of more than one story.

**A-5. Building location.** No building or part thereof shall be located on any lot nearer than thirty-five (35) feet to the front lot line on all streets, no nearer than ten (10) feet to an interior lot line and no nearer than twenty (20) feet to the rear lot line. Additionally, building location must comply with the setback requirements of the City of Brevard. Eaves, steps, stoops and fireplace chaises shall not be considered a part of the building for the purposes of interpreting this paragraph of this Declaration. An error in the placement of structures in an amount less than ten percent of the setback requirement in question is not a violation of this Declaration or of the provisions of the recorded plat.

**A-6. Motor Vehicle and Mechanical Equipment Repairs.** No truck, except a common pickup or common van not in excess of three-quarter (3/4) ton load capacity, buses or any inoperative motor vehicle of any type shall be kept on any lot nor any repairs made on any motor vehicle on any lot with the exception of minor emergency work such as replacement of flat tires or dead batteries. No wrecked or junked motor vehicle or vehicle without current license plates and registration shall be permitted to remain upon any lot unless it is located so as not to be visible from any street or road within the subdivision.

**A-7. Lot Width and Area.** No further subdivision of any lot is permitted.

**A-8. Easements.** Easements for installation and maintenance of the utilities and drainage facilities are reserved as shown on the recorded plat. Within said easements so reserved, no structure shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may interfere with drainage and the flow water within the easement areas. The owner of each lot shall maintain that portion

subdivision will be maintained at a high standard; the entrance sign and landscaping to include shrubs, flowers, and grass shall be maintained in the following manner:

(i) Each lot owner shall be responsible for maintenance of the entrance sign and landscaping of the subdivision in a fractional sum equal to the fractional number his lot bears to the total number of lots within the subdivision. Until seventy percent (70%) of the lots are sold by the DEVELOPER, the DEVELOPER will provide for the maintenance of the entrance sign and landscaping and pay his fractional share, that fractional share depending on the number of lots remaining unsold.

(ii) A bill will be sent by the DEVELOPER to the lot owners, as maintenance work is performed, showing the total costs and the costs to be borne by the lot owner; that any amounts for maintenance owed by a lot owner remaining unpaid for a period of sixty (60) days shall be, and constitute, a lien against the lot owned by the lot owner, inuring to the benefit of the DEVELOPER if said sum is paid by him.

(iii) That when seventy percent (70%) of all lots are sold, the DEVELOPER shall call a meeting of the lot owners and a majority of those in attendance shall elect a committee of three (3) lot owners who shall be in charge of the maintenance of the entrance sign and landscaping in place of the DEVELOPER.

#### ARCHITECTURAL CONTROL COMMITTEE

C-1. Membership. The Architectural Control Committee shall be composed of from two (2) to five (5) members duly elected by the lot owners in said subdivision, it being understood and agreed that every firm, person or corporation owning one or more lots shall have one vote in selecting the Architectural Control Committee. Until fifty percent (50%) of the lots have been sold by the DEVELOPER, the DEVELOPER shall have the authority to designate and appoint up to three (3) members of the Architectural Control Committee. Members shall be elected annually by a written ballot each December and shall serve for the next calendar year. In the event of the death or resignation of any member of the Committee during his term of office, the remaining members of the Architectural Control Committee shall have the authority to designate his successor. No member of the Architectural Control Committee shall be entitled to any compensation for services performed pursuant to this covenant. A majority of said Committee shall have authority to act on all matters submitted to the Committee.

C-2. Procedure. The Architectural Control Committee's approval or disapproval as required by the covenants shall be in writing. In the event the Committee, or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with. Any improvements approved by the said Committee shall be completed within one (1) year from the date of issuance of the Building Permit by the local governing body. Any improvement not so completed, shall be deemed to be in violation of this declaration.

C-3. Fee. Each submission of a proposed project to the Architectural Control Committee shall be accompanied by a check in

of said lot lying within the easement areas as defined herein and shall maintain such improvements as may be located thereon except those improvements installed and maintained by a public authority or utility company.

A-9. Nuisances. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

A-10. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

A-11. Signs. No sign of any kind shall be displayed to the public view on any lot except: (i) one professional sign of not more than one (1) square foot, (ii) one sign of not more than six (6) square feet advertising the property for sale or rent, and (iii) signs of the DEVELOPER during the construction and sales period.

A-12. Livestock and Poultry. No animals, livestock, or poultry, of any kind shall be raised, bred or kept on any lot, except that maximum of four (4) dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes.

A-13. Garbage and Refuse Disposal. No lot shall be used or maintained for a garbage dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers.

A-14. Ditches and Swales. Each owner shall keep drainage ditches and swales located on his lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon his lot as may be reasonably required for proper drainage.

A-15. Removal of Trees. No tree over three (3) inches in diameter may be removed from any lot without prior written consent of the Committee.

A-16. Satellite Dishes and Antennas. No satellite dishes, radio antennas or television antennas are permitted without prior written consent of the Committee.

#### AESTHETIC PROVISIONS AND COVENANTS

B-1. Sight Distance at Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street, property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such lines.

B-2. Maintenance of Subdivision Sign and Entrance Right-of-way. All streets in the subdivision to include the entrance road shall be maintained by the City of Brevard. However, the City of Brevard will not maintain the entrance sign and landscaping. In order to insure that the entrance to the

the amount of Two Hundred Fifty and 00/100 (\$250.00) Dollars to be placed in escrow by the Committee.

- (i) In the event of cancellation of the project prior to commencement of construction, a refund of the Two Hundred Fifty and 00/100 (\$250.00) Dollars will be made upon written request to the Committee by the Owner.
- (ii) Upon completion of construction of a particular project, the Owner will request a final inspection by the Committee. Upon verification by the Committee of the completion of construction and satisfactory compliance with this section, the Committee shall disburse from escrow the Two Hundred Fifty and 00/100 (\$250.00) Dollars minus any costs the repair of any damage to the curbs, road or landscaping within the subdivision.

GENERAL PROVISIONS

D-1. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of ten (10) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by seventy percent (70%) of the then owners of the lots have been recorded, agreeing to change said covenants in whole or in part.

D-2. Enforcement. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

D-3. Severability. Invalidation of any one of these covenants by Judgment or Court Order shall in no way affect any of the other provisions which shall remain in full force and effect.

IN TESTIMONY WHEREOF, the Party of the First Part has caused this instrument to be executed the day and year first above-written

*Frank J. Gottus, Jr.* (SEAL)  
FRANK J. GOTTUS, JR.

*Hella E. Gottus* (SEAL)  
HELLA E. GOTTUS

STATE OF NORTH CAROLINA  
COUNTY OF MACON

I, *Suzanne De Souza*, a Notary Public of said State and County, do hereby certify that Frank J. Gottus, Jr., and Hella E. Gottus personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and Notarial Seal, this *3rd* day of *March*, 1989.

My Commission Expires:  
COMMISSION EXPIRES, 06-19-1991

*Suzanne De Souza*  
Notary Public

