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RECORDED AND VERIFIED
REBECCA P. TUCKER
REGISTER OF DEEDS
NEW HANOVER CO. NC

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

MAR 12 3 27 PM '90

DECLARATION OF RESTRICTIONS
OF FINAL PHASE OF
RABBIT RUN SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, VIRGINIA S. THOMAS (hereinafter referred to as "Declarant") who is the owner and developer of that certain real property in New Hanover County, North Carolina, known as the Final Phase of Rabbit Run Subdivision, a map of which real property being recorded in Map Book 31, page 6 of the New Hanover County Registry;

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W I T N E S S E T H :

THAT WHEREAS, Declarant is the owner of all of the lots in The Final Phase of Rabbit Run Subdivision, a map of which is recorded in Map Book 31, page 6 of the New Hanover County Registry; and

WHEREAS, it is the desire of the Declarant, for herself, her heirs, administrators, executors, personal representatives and assigns, does hereby covenant and agree to and with all persons, firms, or corporation, now owning or hereafter acquiring any property in The Final Phase of Rabbit Run Subdivision, that all of the lots in said subdivision as shown on the map thereof recorded in Map Book 31, page 6 of the New Hanover County Registry, are hereby made subject to the following restrictions as to the use thereof, running with the land by whomsoever owned, to-wit:

1. HOMEOWNERS ASSOCIATION. For the purpose of maintaining roads, drainage, the common area and community pier and the enforcement of the covenants, conditions and restrictions set forth in this Declaration of Restrictions, and maintaining all common services, if any, of every kind and nature required or desired within the

RETURNED TO *William A. Hill II*

subdivision for the general use and benefit of all lot owners. Each and every lot owner, in accepting a deed or contract for any lot in said subdivision, agrees to and shall be a member and subject to the obligations and duly enacted by-laws and rules of the Rabbit Run Homeowners Association, Inc. a non-profit corporation.

2. RESIDENTIAL USE.

(a) All lots shall be known and used as single-family residential lots, and shall be used for residential purposes only and may not be used for commercial purposes. No building or structure shall be erected, placed or permitted to remain on any lot other than one detached single-family dwelling and a private garage. No structure of a temporary nature, trailer, tent, shack, barn, or other outbuilding shall be permitted on any lot either temporarily or permanently, at any time; provided however, that this prohibition shall not apply to shelters used by contractors during the construction of the dwelling house, it being clearly understood that such temporary shelters may not, at any time, be used as residences, or be permitted to remain on the lot after completion of construction of the dwelling house. No structure on any lot other than a fully completed residence shall be occupied.

(b) No poultry or livestock may be kept on the property. Personal household pets such as birds, cats and dogs must be kept under control by owners.

3. NO DIVISION OF LOTS. No lots shall be resubdivided unless a part of the subdivided lot becomes a part of a whole lot, and the remainder of the subdivided lot becomes a part of another whole lot.

4. PLANS APPROVED.

(a) No dwelling may be erected, placed or permitted to remain on any lot unless and until the proposed building plans, specifications, exterior colors and finishing, site and grading plans (showing the proposed location of such building or structure, driveways, parking areas and proposed alterations to the grade, elevation or physical characteristics of the site) and construction schedule shall have been submitted to and approved by Declarant or her designated agent.

(b) Before construction shall begin, the lot owner shall submit to Declarant each of the items enumerated in subparagraph (a) of this paragraph.

(c) All dwellings must be appropriate to the area, it being the express intention of Declarant to maintain a uniform plan of development with respect to design, size, cost, and general appearance of the dwellings to be erected on all lots.

(d) Refusal of approval of plans may be based by Declarant upon any grounds Declarant deems sufficient.

(e) Two (2) copies of all plans and specifications as stated in subparagraph (a) of this paragraph shall be provided to Declarant. One (1) copy shall be kept by Declarant and the second copy shall be returned to the lot owner and approval of same shall be evidenced by the written endorsement of Declarant on the same. No changes or deviations from the approved plans shall be made before, during or after construction of the approved building.

(f) Declarant may appoint or designate the Rabbit Run Homeowners Association, Inc. as her agent for the purpose of reviewing and approval/disapproval of plans.

5. RESIDENCES.

(a) The minimum square footage of the dwelling shall be 1800 square feet of heated area.

(b) No more than 8400 square feet of any lot shall be covered by structures and/or paved surfaces, including walkways or patios paved with brick, stone, slate or any other impervious material. This covenant is intended to assure continuing compliance with storm water run off rules adopted by the State of North Carolina and therefore benefits may be enforced by the State of North Carolina.

(c) Off street parking shall be provided for no less than two vehicles.

(d) No buildings may be built within the sewer right-of-way, the designated wetlands, or within seventy-five (75) feet of the mean high water line of Costains Branch or Hewletts Creek.

(e) No tree with a diameter of over four inches may be removed unless approved by Declarant or her designee.

(f) Each lot owner shall provide a receptacle for garbage containers in an area screened from general visibility from the road.

(g) No fuel tanks or similar devices may be exposed to view.

(h) No sign of any character may be displayed on the lot without permission of the Declarant or her designee except a property identification sign showing lot number and telephone number.

6. SETBACK LINES AND SITE PLAN. To assure that buildings best fit the tree stand and the contour of the land and are also aesthetically pleasing, a site development plan must be approved by the Declarant or her designee prior to any site development activity. Generally the setback of a building shall be no less than thirty (30) feet from a road right-of-way and no less than fifteen (15) feet from side and back lines of the lot. However, the Declarant or her designee may make adjustments in order to carry out the intent of this provision. Notwithstanding anything contained to the contrary elsewhere in this Declaration of Restrictions of Final Phase of Rabbit Run Subdivision all lots contained in the said Final Phase of Rabbit Run having a common boundary line with the real property described in those deeds recorded in Book 1244 at Page 400 and Book 1220 at Page 1331 of the New Hanover County Registry, North Carolina shall have and be subject to a setback requirement of thirty (30') feet from such common boundary line. If no lot in the Final Phase of Rabbit Run has a common boundary line with the real property described in the deeds mentioned above, then, in such event, any building or structure constructed on a lot in the said Final Phase having a lot line, or any part thereof, at or within thirty (30') feet of a lot line of the said real property described in said deeds mentioned above shall be subject to a setback requirement of thirty (30') feet as measured from the nearest lot line of the real property described in the deeds mentioned above.

7. PIER AND DOCKING FACILITIES.

(a) Declarant has applied for a permit to construct a community pier containing nine (9) small boat slips adjoining the common area. Lot owners shall have access to the common area and community pier, if Declarant is permitted to construct said community pier, but the floating dock and boat slips shall be reserved for the use of Declarant or to those persons purchasing or leasing the boat slips. If Declarant is permitted to construct the community pier, waterfront lot purchasers shall be prohibited from building their own private pier, but said waterfront lot owners shall have the option to purchase (or long term lease) a boat slip at the time a lot is purchased, the particular boat slip and price to be designated by Declarant; provided that if the option is not exercised by lot owner at the time his lot is purchased, Declarant will make the boat slip available to purchasers of upland lots so long as said boat slips are unsold or unleased.

(b) No boat slip shall be used as dockage for "live aboard" boats.

(c) Declarant and/or Association shall not be responsible for any structural or other defects in the plans or specifications in the design of or the plans for any pier or dock or in the structure erected according to such plans or specifications.

(d) The Homeowners Association shall maintain the common area and community pier in good repair and purchasers (or long term lessees) of the floating dock and boat slips shall maintain the floating dock and boat slips in good repair.

8. RABBIT RUN ROADWAY. The 13.41 acres which contain the 14 lots in The Final Phase of Rabbit Run Subdivision adjoin lots located on Rabbit Run which provides access to Old Military Road. It is the intention of Declarant to upgrade the existing Rabbit Run to North Carolina Department of Transportation standards and request that it be accepted for maintenance by the N. C. Department of Transportation. In the event that said existing portion of Rabbit Run is not accepted for maintenance by the N. C. Department of Transportation, then the owners of lots in The Final Phase of Rabbit

Run agree to maintain and repair that portion of Rabbit Run which is located in The Final Phase of Rabbit Run and also on a prorata basis share the maintenance and repair costs with those lot owners located on Rabbit Run between the Old Military Road and The Final Phase of Rabbit Run Subdivision. Declarant reserves unto herself, her heirs, administrators, executors and assigns a right of way and easement for ingress and egress over the roadway known as Rabbit Run.

9. ASSESSMENTS.

(a) The owner of each lot shall, by acceptance of a deed or other conveyance for such lot, be deemed to covenant and agree to pay to the Association:

- (1) Annual assessments, dues or charges; and
- (2) Special assessments for capital improvements, such assessments or charges to be established and collected by the Association as hereinafter provided.

(b) The annual and special assessments shall be due and payable on May 1, of the year for which they are assessed.

(c) The annual and special assessments shall be determined, fixed, established and collected on a lot by lot basis.

(d) Each annual and/or special assessment, when due, shall become a lien against the lot against which such assessments are made and shall continue as lien against such lot and shall be deemed to run with the land until such time as collected by the Association or paid in full.

(e) The annual and/or special assessments shall be in an amount to be fixed from year to year by the Association, which may establish different rates from year to year as it may deem necessary and may establish different rates for various general classifications of lots according to the use or location of said lots.

(f) Delinquent assessments shall bear interest at the maximum rate allowed by law and the owner of any lot shall pay the delinquent assessments plus interest and any costs, including reasonable attorney's fees incurred by the Association in any action

at law against the owner for the collection of said assessments and interest thereon.

(g) The Association shall have the right to collect past due or delinquent assessments by an action at law against the owner as for a debt and may bring and maintain such other suits and proceedings at law or at equity as may be available.

(h) The Association shall not be obligated to spend in any one calendar year all of the sums collected during said year by way of assessments and may carry forward to surplus any balance remaining. The Association shall not be obliged to apply any such surplus to the reduction of charges in the succeeding year.

(i) The assessments levied and collected by the Association shall be used exclusively for the maintenance and improvement of streets, roads, rights-of-way, drainage, common area and pier; enforcing these restrictions; and, in addition, doing any other things necessary or desirable or necessary in the opinion of the Association to keep the subdivision in neat and good order and to promote and provide for the health, welfare, safety and recreation of the owners and residents of the subdivision.

10. NO NUISANCE OR OFFENSIVE ACTIVITY. No noxious or offensive activity shall be carried on or upon any lot nor shall anything be done thereon which may be or may become an annoyance, embarrassment, discomfort or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkept condition of buildings or grounds on such lot which would tend to substantially decrease the beauty of the neighborhood as a whole or the specific area. No inoperative cars shall be allowed on any lot.

11. COVENANTS AND RESTRICTIONS TO RUN WITH THE LAND. All of the covenants, conditions, restrictions and reservations set forth herein shall run with the land, shall inure to the benefit of each

owner and each owner, by accepting the deed to such premises, accepts the same subject to such covenants, conditions, restrictions and reservations and agreed for himself, his heirs, successors, administrators, executors, assigns, and successors in interest to be bound by each of such covenants, conditions, restrictions and reservations, jointly, separately and severally. Each and every one of these covenants, conditions, reservations and restrictions is and are for the benefit of each owner of land in the subdivision, or any interest therein and shall inure to and pass with each and every lot of said subdivision.

12. COVENANTS AND RESTRICTIONS, ENFORCEABLE JOINTLY AND SEVERALLY. Each and every one of the covenants, conditions, restrictions and reservations contained herein shall be considered to be an independent and separate covenant and agreement and in the event any one or more of such covenants, conditions, restrictions and reservations shall for any reason be held to be invalid or unenforceable all remaining covenants, restrictions, and reservations shall nevertheless remain in full force, effect and virtue.

13. MODIFICATIONS AND AMENDMENTS. The right and power to amend or change any part or all of the restrictions, reservations, covenants and conditions herein set out is vested in full in the Declarant. Such modifications and/or amendments to this Declaration of Restrictive Covenants shall be made and accomplished by the filing in the Office of the Register of Deeds of New Hanover County a declaration of amended restrictive covenants, which such amendments, modifications or additions to the restrictive covenants contained in this Declaration shall be made applicable to the conveyance of lots made subsequent to the recording of such declaration of amended restrictive covenants.

14. DURATION. All of the foregoing covenants, reservations, restrictions, and conditions shall continue and remain in full force and effect at all times as against the owner of any lot in such premises, regardless of how he acquired title, for a period of time of twenty (20) years from the date hereof at which time these covenants, reservations, restrictions and conditions shall terminate

and end and thereafter be of no further legal or equitable effect on such premises or any owner thereof; provided, however, that these covenants, conditions, reservations and restrictions shall be automatically extended for a period of ten (10) years, and thereafter in successive ten-year periods, unless the owners of a majority of the lots in the subdivision shall by written instrument duly recorded in the New Hanover County Registry declare a termination or modification of the same. In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such terms shall be reduced to a period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of North Carolina.

15. VIOLATIONS. In the event of a violation or breach of any of these covenants, conditions, restrictions or reservations by any lot owner, or agent of such owner, the Association or lot owner, or any of them jointly or severally shall have the right to proceed at law or equity to compel a compliance to the terms hereof or to prevent the violation or breach. In addition to the foregoing, the Association shall have the right, at its option, whenever there shall have been built on any lot any structure which is in violation of these restrictions, to enter upon such property where such violation exists, and summarily abate or remove the same at the expense of the owner, if after thirty (30) days' written notice of such violation it shall not have been corrected by the owner. Any such entry, abatement or removal shall not be deemed a trespass. The failure to enforce any covenants, restrictions, reservations or conditions contained in these Restrictions, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach, or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

16. ENFORCEMENT. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, reservations, restrictions, liens and charges

now or hereafter imposed by the provisions of this Declaration of Restrictive Covenants.

IN TESTIMONY WHEREOF, the said Declarant, VIRGINIA S. THOMAS, has set her hand and seal this 26th day of February, 1990 .

Virginia S. Thomas (SEAL)
VIRGINIA S. THOMAS

STATE OF NORTH CAROLINA,
COUNTY OF NEW HANOVER.

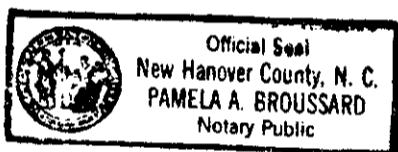
PERSONALLY APPEARED before me, Pamela A. Broussard, a Notary Public in and for the State and County aforesaid, VIRGINIA S. THOMAS, and acknowledged the due execution of the foregoing instrument for the uses and purposes therein expressed.

WITNESS my hand and notarial seal, this the 26th day of February, 19 90 .

Pamela A. Broussard
Notary Public

My commission expires: 1/25/93

(SEAL)



STATE OF NORTH CAROLINA
New Hanover County
The Foregoing / Annexed Certificate(s) of

Pamela A. Broussard
Notary (Notaries) Public is / are certified to be correct.

This the 12 day of MARCH 1990
Rebecca P. Tucker, Register of Deeds

By Linda P. Alton
Deputy / Assistant