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RECORDED AND VERIFIED
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STATE OF NORTH CAROLINA : RESTRICTIVE COVENANTS OF
COUNTY OF NEW HANOVER SEP 6 1 26 PM '91 POINTE SANTA MARIA SUBDIVISION

WHEREAS, JAMES R. BURRIS and wife, SARAH M. BURRIS, sometimes hereafter referred to as the "Developer", desire to submit the properties described in a Plat of POINTE SANTA MARIA Subdivision recorded in Map Book 31 at Page 131 of the New Hanover County Register of Deeds Office to Restrictive Covenants and further desire to submit Lots C and D, La Foret Subdivision as the same appear on Map Book 29 at page 156 of the New Hanover County Register of Deeds Office to the Restrictive Covenants of Pointe Santa Maria as set forth herein to Restrictive Covenants.

NOW, THEREFORE, the developer, does hereby declare that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property and which shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the above described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1: "Association" shall mean and refer to POINTE SANTA MARIA HOMEOWNER'S ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 2: "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

Section 3: "Building" shall mean and refer to a home and associate garage constructed or erected on a lot shown on a recorded map of the property or each single family residential structure.

Section 4: "By-Laws" mean the By-Laws of the Association as they now or may hereafter exist.

Section 5: "Home" shall mean and refer to a detached, free-

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standing dwelling or place of residence and attached or detached garage constructed upon a lot within the property, and each dwelling unit or residential structure designed to accommodate and be occupied by a single family unit.

Section 6: "Common Area" shall mean and refer to all land within the property owned by the Association, together with all easements, roadways and areas designated "Common Area" on the recorded plat, along with facilities and improvements erected or constructed thereon, including but not limited to nature trails, walk trails, docks, piers, boat ramps, easements, and rights-of-way for ingress and egress as shown on the recorded plat of the subdivision. Said common areas shall be maintained by the Association.

Section 7: "Common expenses" shall mean and include:

(a) All sums lawfully assessed by the Association against its members;

(b) Expenses of administration, maintenance, repair, replacement of or construction upon the common areas specifically including improvements to streets, utilities, fences, trails, boat ramps, docks and piers;

(c) Expenses declared to be common expenses by the provisions of this Declaration or the By-Laws;

(d) Liability or such other insurance premiums as the Declaration or By-Laws may require the Association to purchase;

(e) Expenses agreed by the members to be common expenses of the Association;

(f) Any ad valorem taxes and public assessments levied against the Common Area.

Section 8: "Common profits" shall mean and refer to the balance of all income, rents, profits and revenues of the Association remaining after the deduction of the common expenses or reserves therefore. Common profits shall not mean or include any sums lawfully assessed against members by the Association.

Section 9: "Declarant" shall mean and refer to the Developer, JAMES R. BURRIS AND WIFE, SARAH M. BURRIS, their successors and

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assigns.

Section 10: "Lot" shall mean and refer to any plot of land or subdivision thereof, other than the common area, shown on the recorded plat of the subdivision referred to above and upon which a home has been or may be constructed.

Section 11: "Member" shall mean and refer to every person who is a member of the Association as said membership is determined pursuant to Article III hereof.

Section 12: "Owner" shall mean and refer to the record owner whether one or more persons or entities, of a fee simple title to any lot, building or home which is a part of the property, including contract sellers, but excluding those who have such interests merely as security for the performance of any obligation. That each owner joining in or consenting to the execution hereof does so for the purpose of subjecting any lot owned within the property to these covenants and agrees to accept the terms and conditions contained herein and further agrees that all future conveyances of the property shall be made subject hereto.

Section 13: "Person" shall mean and refer to an individual, corporation, partnership, association, trustee or other legal entity.

Section 14: "Property" shall mean and refer to that certain real property shown on the plats referred to above.

ARTICLE II

PROPERTY RIGHTS

Section 1: Owner's Easements of Enjoyment: Every Owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every assessed lot, subject to each of the following provisions:

(a) The right of the Association to limit the number of guests of members.

(b) The right of the Association to suspend the voting rights and rights to use of the Common Area and facilities (except streets) by a member, or any person to whom he has delegated his voting right, for any period during which any assessment against

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his lot remains unpaid; and for a period not to exceed ninety (90) days for an infraction of its published rules and regulations.

(c) The right of the Association to formulate, publish and enforce rules and regulations as provided in ARTICLE VIII.

(d) Easements as provided in ARTICLE VIII hereof.

(e) The right of the Developer to convey, assign, transfer, quitclaim and deed to individual lots a permanent, perpetual and exclusive easement and license to the boat slips and dock space on the Association's pier as the same appears on Exhibit "A" attached hereto and incorporated by reference herein. That in addition to the reservation of said rights herein, said appurtenances and easements shall be deeded by the Developer to the Association owner subject to each owner, his successors and assigns, accepting the pro-rata cost of maintaining the pier, docks and boat slip nor deeded an interest therein as an additional assessment as hereafter provided in ARTICLE V. That Lot 4 of Pointe Santa Maria shall not be entitled to a boat slip but shall be entitled to access to the pier and common areas.

Section 2: Delegation of Use: Any owner may delegate, in accordance with the By-Laws, his right of enjoyment of the common area to the members of his family, his tenants, or contract purchasers, provided, every such delegee shall reside on the property.

Section 3: Parking Rights and Restrictions: Adequate off-street parking shall be provided by the owner of each lot for the parking of automobiles and other vehicles owned or controlled by such owner. Members of the owner's family or employees of the owner and tenants, and owners (including family members and tenants) of lots covenant and agree not to store or house their automobiles, trucks, boats, trailers and other vehicles on the streets or common areas located on the property.

Section 4: Easements in Favor of Developer: The common area is hereby subjected to the right of the Developer to subject said common area to utility easements for the benefit of the subdivision and private easements for ingress or egress, sewer and

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water lines which may be granted to individual lot owners or the Association.

The developer reserves the right to subject the real property in this subdivision to a contract with Carolina Power and Light Company for the installation of street lighting which will require a continuing monthly payment to Carolina Power and Light Company by the owner of each lot.

ARTICLE III

MEMBERSHIP

Every person who is record owner of a fee or undivided fee interest in any lot or subdivision which is subject by these covenants of record to assessment by the Association including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a member of the Association. Ownership of such interest shall be the sole qualification for such membership; no individual owner shall have more than one membership in the Association and there shall be only one vote per lot in such Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. The Board of Directors may make reasonable rules regarding proof of ownership.

ARTICLE IV

VOTING RIGHTS

Section 1: Classes: The Association shall have one class of voting membership.

The membership shall be all owners. Members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot all such persons shall be members. The vote for such lot shall be exercised as the owners thereof determine, but in no event shall more than one vote be cast with respect to any lot, and no fractional vote may be cast with respect to any lot.

Section 2: Restrictions No lot may vote to assess any charge or assessment unless said lot will bear a pro rata share of said assessment. Lot 4 may not participate in votes regarding pier

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assessments under Article V, Section 1 (c), unless it consents to a pro rata share of assessments under said section.

ARTICLE V

COVENANT FOR ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligation of Assessments: The Declarant hereby covenants, and every other Owner of any lot by acceptance of a deed therefore or by consent hereto or joinder herein, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges;

(b) Special assessments for capital improvements.

(c) Pier, dock and boat slip assessments for the maintenance or improvement of the dock facility appurtenant to Lot 4; provided that Lot 4 by virtue of its lack of license to or ownership interest in or to a boat slip in the Common Area shall be excluded from assessments under this sub-paragraph (c). Lot 4 shall not be excluded from its pro-rata share of the costs associated with the bridge appurtenant to Lot 4.

Such assessments shall be fixed, established and collected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon, costs of collection thereof, and reasonable attorney's fees as may be established by the Association, shall be a charge on the land and shall be a continuing lien upon the lot or home and improvements against which each such assessment is made. Each such assessment, together with such interest and costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the lot at the time the assessment became due. The personal obligations of an owner for delinquent assessment shall not pass to his successors in title unless expressly assumed by them and then only with the consent of the Association. All general assessments shall be shared equally by the owners of each lot however the cost of maintaining, insuring and paying taxes upon the pier, docks and boat slips shall be

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prorated among the lot owners who are entitled to the exclusive use of the boat slips as an additional special assessment allocated under paragraph (c) hereinabove for pier rights which shall be payable with the general assessment and shall be a charge upon and a lien against the lot owners lot within the subdivision. The nonpayment of said assessments shall be subject to the same collection practices as an unpaid lot assessment including interest, attorneys fees, court costs and judicial foreclosure costs.

Section 2: Amount of Annual Assessments:

(a) Maximum Annual Assessment: To and including the third anniversary of the recordation of this Declaration, the maximum annual general assessment under Section 1, paragraph (a) shall not be in excess of the ONE HUNDRED FIFTY AND NO/100 (\$150.00) DOLLARS per lot or home, the exact amount of which shall be determined from time to time as provided in this Subsection.

(b) Increase by Association: From and after the date specified in subparagraph (a) above, the maximum annual assessment may be increased, effective January 1 of each year, by the Board of Directors, by not more than 20% without a vote of the membership.

(c) Increase by Members: From and after the date specified in subparagraph (a) above, the annual assessment may not be increased by more than 20% in any given year unless approved by an affirmative of two-thirds (2/3) of the members who are in person or by proxy, at a meeting duly called for such purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

(d) Minimum Annual Assessment: In order to establish a capital fund from which future maintenance can be made, a ONE HUNDRED AND NO/100 (\$100.00) DOLLAR minimum assessment per lot or unit is hereby established, until such time as the Board of Directors of the Association deems adequate capital funds are collected.

(e) Criteria for Establishing Annual Assessment: In

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proposing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs.

(f) Lots Owned by Declarant: Notwithstanding anything in this Article V to the contrary, all lots owned by Declarant and held for sale shall be assessed at the same amount as all other lots.

(g) Initial Set up Fee: In order to cover fixed expenses until sufficient assessments are collected a \$150.00 set up fee shall be payable at closing for creation of an operating account from which insurance and other common expenses shall be paid.

Section 3: Special Assessments for Capital Improvements: In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repairs, or replacement of a described capital improvement upon the streets or common area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-third (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting.

Section 4: Uniform Rate of Assessment: Both annual and special assessments must be fixed at a uniform rate for all lots, on a per lot basis, and may be collected on a monthly, quarterly or annual basis, save and except Lot 4 which shall not be liable for any charges in conjunction with the pier, docks or boat slips constructed upon the Common Area but shall be liable for its pro-rata share of all other charges including but not limited to bridge maintenance.

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Section 5: Quorum for an Action Authorized under Sections 2 and 3: At the first meeting called, as provided in Sections 2 and 3 hereof, the presence at the meeting of members or of proxies entitled to cast fifty-one (51%) percent of all the votes of each member shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth in Sections 3 and 4 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6: Date of Commencement of Annual Assessments; Due Dates: The annual assessments provided for herein shall be paid in monthly, quarterly or annual installments and the payment of such shall commence as to each lot on the first day of the year following the recordation of the Declaration for the section within which each lot lies. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association, upon demand at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 7: Effect of Nonpayment of Assessments; Remedies of the Association: Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or any portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of twelve (12%) percent per annum. The Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property, and, in either

event, interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common area or abandonment of his lot.

Section 8: Subordination of the Lien to Mortgages and Ad Valorem Taxes: The lien of the assessments provided for herein on any lot shall be subordinate to the lien of any first mortgage and ad valorem taxes on such lot. The sale or transfer of any lot shall not affect the assessment lien; however, the sale or transfer of any lot pursuant to such mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI

ARCHITECTURAL CONTROL

No building, fence, signs, wall or other structure shall be commenced, erected, or maintained upon the property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the said improvements or alterations shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee. The Committee shall have the right to approve or disapprove of submitted plans on purely aesthetic or any other grounds in their sole discretion. In the event that the said Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to them, approval will not be required and this Article will be deemed to have been fully complied with; provided, that the plans and specifications required to be submitted shall not be deemed to have been received if they contain erroneous data

or fail to present accurate information upon which the Committee can arrive at a decision. Notwithstanding anything to the contrary herein, the minimum square feet of heated area within any residential dwelling shall not be less than 1,750 square feet, for one story structures and 2,000 square feet for two story or multi-level structures. The Committee shall have the right to approve and or designate the location of each well, septic tank and drainfields or sewer lines located upon each lot. A vote by a majority of the committee to approve any set of plans shall constitute approval of said plans by the committee.

The said Committee shall have the right, at their election, to enter upon any lot during construction, erection or installation or improvements or alterations to inspect the work being undertaken in order to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

The initial Architectural Committee shall consist of all property owners. Thereafter the Architectural Committee shall be those persons named as such by the Board of Directors and need not be members.

ARTICLE VII

USE RESTRICTIONS

Section 1: Rules and Regulations: The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the common areas. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours. Such rules and regulations shall not prohibit or infringe upon the exercise of any rights expressly granted to the Developer or members herein.

Section 2: Stormwater Runoff Regulations: Restriction of

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built upon areas:

a. Built upon area, defined: "Built upon area" shall mean that portion of each lot that is covered by impervious or partially impervious cover, including building, pavement, recreational facilities, etc., but not including decking. The built upon area for each lot shall not exceed N.C. Department of Natural Resources regulations, unless and until, the State of North Carolina shall revise its stormwater runoff regulations to permit a greater built upon area for each lot.

b. Built upon area, restricted: No more than the square footage, designated by the N.C. Department of Natural Resources, of any lot in POINTE SANTA MARIA, shall be covered by structures and/or paved surfaces, including walkways, driveways or patios of brick, stone, slate or similar materials, all of which constitute effective impervious cover which is controlled by North Carolina Coastal Stormwater Regulations. This covenant is intended to insure continued compliance with stormwater runoff rules adopted by the State of North Carolina.

Section 3: Use of Property: Each lot, building, and the home thereon shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the By-Laws:

(a) All lots, and buildings shall be used for residential and related purposes. No lot may be subdivided. The Developer may use one or more homes for offices and/or models for sales purposes. The foregoing shall not be construed to limit or prohibit offices within the home provided said offices are not open to the public or held out to be for public visitation, use or convenience.

(b) No immoral, improper, offensive or unlawful use shall be made of the property, or any part thereof, and all valid laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations, or requirements of any government agency having jurisdiction thereof, relating to any portion of the property, shall be complied with, by and at the sole expense of the owner or

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the Association, whichever shall have the obligation to maintain or repair such portion of the property.

(c) No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained or permitted on any part of the property, except that Developers, Contractors or their agents may use up to two homes for sales or display purposes. This section shall not prohibit offices within the home related to personal business pursuant to subsection (a) hereof.

(d) No person shall undertake, cause, or allow any alteration or erection of buildings in or upon any portion of the common area except at the direction and with the express written consent of the Association, subject to Article VIII.

(e) The common area shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the dwelling units, subject to any rules or regulations that may be adopted by the Association pursuant to its By-Laws, and subject to any other uses permitted herein.

(f) It shall be the obligation of each property owner to maintain, to the original construction depth, all drainage ditches located upon his or her lot. Any construction of culverts or other construction along or across said ditches must be done so that the free flow of water from subsurface drainage is not interrupted or interfered with. If a property owner elects to tile the entire ditch running along his or her property, then such property owner must install a catch basin at one of his or her property lines.

(g) All buildings, structures and their appurtenances shall be maintained in a suitable state of repair; and in event of destruction by fire or other casualty, premises are to be cleared and debris removed within 90 days from date of such casualty.

ARTICLE VIII

EASEMENTS

Section 1: Walks, Drives, Parking Areas and Utilities:

The common area shall be subject to a perpetual non-exclusive

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easement or easements in favor of all Owners of lots for their use and the use of their immediate families, guests, invitees, tenants or lessees for all proper and normal purposes and for ingress and egress and regress and to such easements for streets, driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, and other public utilities as shall be established prior to subjecting the property to this Declaration. The Association shall have the power and authority to grant and to establish in, over, upon and across the common area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the property. The Association and Declarant does hereby retain a fifteen foot easement along the front line of each lot for the purpose of running underground utilities, underground sewage or water lines for the benefit of one or more lots.

Section 2: Easements in Favor of Declarant: An easement is hereby established in favor of Declarant, assigns and the Association over all common areas for access to adjacent properties for the purposes of future development and the installation of streets and public utilities.

Section 3: Sideline easements: Each lot is hereby subjected to a 15 foot easement along the front line of said lot for installation and maintenance of utilities. Each lot is also hereby subjected to a 15 foot easement along each sideline for underground utilities, wells, water lines, and sewer drainfield, in favor of the Declarant who may only convey said easement for the benefit of the adjacent property owners.

Section 4: Reservation of Easements for Piers, docks, boat slips and water access over and through Lot 4, Pointe Santa Maria:

An easement in favor of each lot owner is hereby reserved within the 30 foot access easement for ingress and egress to the waters of Page's Creek and an additional sixty three (63) foot access easement is hereby reserved along the southeasternmost sixty-three feet of Lot 4, Pointe Santa Maria, at the high water line of Page's Creek said easement lying fifty feet on either

side of a line that begins at the southeasternmost corner of Lot 4, Pointe Santa Maria as shown in Map Book 31 at page 131 and running thence in a northerly direction along Page's Creek with the southernmost line of Lot 4, North 49 degrees, 12 minutes, 40 seconds West, sixty three feet to a point in the southern line of Lot 4, together with the non-exclusive easement, license and right to all littoral and riparian rights along said line and within the easement described herein. The purpose of this reservation being to subject Lot 4 to an easement and charge in favor of the Home Owners Association to enable the Home Owner Association to construct, maintain, operate, improve, repair and reconstruct a pier with four boat slips within the area defined herein and the area shown on the Map of said Subdivision as a thirty (30) foot access and utility easement.

ARTICLE IX

GENERAL PROVISIONS

Section 1: Enforcement: The Association, or any owner, shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2: Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3: Amendment: The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than all of the lots, and