

7
269



FOR REGISTRATION REGISTER OF DEEDS
TAMMY THEUSCH BEASLEY
NEW HANOVER COUNTY, NC
2015 JUN 24 11 36 13 AM
BK 5898 PG 2691-2698 FEE \$26 00

INSTRUMENT # 2015018811

Prepared by
and
Returned to: Kenneth A Shanklin, Esq.
Mathew A. Nichols, Esq.
SHANKLIN & NICHOLS, LLP
214 Market Street
Post Office Box 1347
Wilmington, NC 28402
Telephone: (910) 762-9400

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

**FOURTH AMENDMENT TO
DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE MASON HARBOUR YACHT CLUB**

This **FOURTH AMENDMENT TO DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MASON HARBOUR
YACHT CLUB** (this "Fourth Amendment") is made and executed effective as of the 23rd
day of June, 2015, by **TCRK PROPERTIES, LLC**, a North Carolina limited liability company
("Declarant")

WITNESSETH:

WHEREAS, Mason Landing Yacht Club, LLC, as Declarant, executed the Declaration
of Easements, Covenants, Conditions and Restriction for Mason Landing Yacht Club recorded

on June 26, 2008, in Book 5326 at Pages 1817-1869 of the New Hanover County Registry (the "Declaration"), by which Phase One of Mason Landing Yacht Club ("Phase One") was submitted to the Declaration;

WHEREAS, on September 25, 2008, Mason Landing Yacht Club, LLC, as the original declarant, executed the First Amendment to Declaration of Easements, Covenants, Conditions and Restrictions for Mason Landing Yacht Club recorded on September 26, 2008, in Book 5348 at Pages 2843-2854 of the New Hanover County Registry (the "First Amendment"), by which Phase Two was annexed as Additional Property. Phase Two consisted of those seventeen (17) residential lots designated as Lots 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 on that map entitled Mason Landing Yacht Club, Phase Two, prepared by Michael Underwood & Associates and recorded in Map Book 53 at Pages 202-203 of the New Hanover County Registry ("Phase Two"),

WHEREAS, Mason Landing Yacht Club, LLC was the original Declarant of the Mason Landing Yacht Club Development (the "Development") as provided in the Declaration;

WHEREAS, subsequent to the filing of the Declaration, the Development was foreclosed upon by David T Phillips, Substitute Trustee (11 SP 0563; New Hanover County), who recorded his Notice of Foreclosure of Deed of Trust Pursuant to N.C GEN. STAT § 45-38 on July 20, 2011, in Book 5575 at Pages 1215-1217 of the New Hanover County Registry;

WHEREAS, by that certain Substitute Trustee's Deed dated July 20, 2011 and recorded July 20, 2011, in Book 5575 at Pages 1209-1214 of the New Hanover County Registry, David T. Phillips, Substitute Trustee, conveyed the Development and all rights associated with the Development to TCRK Properties, LLC;

WHEREAS, pursuant to the aforementioned foreclosure and N.C. GEN. STAT. § 47F-3-104, TCRK Properties, LLC is now the developer and recognized Declarant of the Development and shall be referred to hereinafter as Declarant,

WHEREAS, TCRK Properties, LLC as the new Declarant has changed the name of Mason Landing Yacht Club to The Mason Harbour Yacht Club (the "Development"),

WHEREAS, on August 20, 2012, TCRK Properties, LLC as the new Declarant caused Articles of Amendment to be recorded in the Office of the North Carolina Secretary of State to change the name of *The Mason Landing Yacht Club Association, Inc* to *The Mason Harbour Yacht Club Association, Inc.*,

WHEREAS, pursuant to the Declaration, The Mason Harbour Yacht Club Association, Inc., a North Carolina nonprofit corporation (the "Association" or "Master Association"), is the Association or Master Association for the Development,

WHEREAS, pursuant to Article II of the Declaration, Declarant has submitted the Marina Property and its riparian areas of the Development to a Boatslip Condominium regime with the filing of a Declaration of Condominium for The Mason Harbour Boatslip Condominium on October 8, 2012, in Book 5678 at Pages 1059-1157 of the New Hanover County Registry (the "Boatslip Declaration");

WHEREAS, pursuant to the Declaration, Declarant has created The Mason Harbour Boatslip Condominium Owners Association, Inc. (the "Marina Association"), which is a North Carolina nonprofit corporation established to manage the Boatslip Condominium pursuant to the Boatslip Declaration;

WHEREAS, on October 19, 2012, TCRK Properties, LLC as Declarant executed the Second Amendment to Declaration of Easements, Covenants, Conditions and Restrictions for the

Mason Harbour Yacht Club recorded on October 23, 2008, in Book 5682 at Pages 828-840 of the New Hanover County Registry (the "Second Amendment"), by which certain terms and provisions of the Declaration were amended, and pursuant to Article II of the Declaration, the Boatslip Condominium was submitted to the Declaration governing this Development to the extent that such submission was not inconsistent with the Boatslip Declaration and Chapter 47C of the North Carolina General Statutes;

WHEREAS, as a result of certain stormwater issues in the Development and changes to the Stormwater Permits, Declarant restated the maximum built-upon areas within the Development with the recordation of the Third Amendment to the Declaration recorded on August 5, 2014 in Book 5830 at Page 2741 of the New Hanover County Registry (the "Third Amendment");

WHEREAS, during the initial operation of The Mason Harbour Yacht Club Development since last year, an issue has arisen regarding the calculation of the homeowners assessments between the residential single family component of the Development in conjunction with the Boatowners Condominium, particularly as the assessments relate to the Boatslip Condominium unit owners who do not own a residential lot in the Development; and,

WHEREAS, Declarant elects to amend the Declaration in accordance with the provisions of this Fourth Amendment to address the assessments for The Mason Harbour Yacht Club Development.

NOW THEREFORE, Declarant hereby amends and supplements the Declaration, the First Amendment, the Second Amendment and the Third Amendment, which said documents along with this Fourth Amendment shall run with the land and be binding upon all parties having

any right, title or interest therein, along with their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

1 **Definitions.** As applied herein, as well as Capitalized terms, unless otherwise defined herein, shall have the meanings ascribed to each term in the Declaration, the First Amendment, the Second Amendment and the Third Amendment

2. **Amendments** Article V of the original Declaration (entitled "Budget and Assessments"), is hereby amended to include a new Section 5.8 as follows.

Section 5.8 Calculation of Base Assessment Applicable to All Owners and Supplemental Residential Lot Assessment: The Executive Board of the Association shall establish a base assessment that shall apply to the Annual Assessment each year in the Annual Budget (the "Base Assessment"). This Base Assessment shall apply equally to both (i) Boatslip Owners who also own a residential lot in the Development (the "Residential Lot Owners") and (ii) Boatslip Owners who do not own a residential lot in the Development (the "Non-Residential Boatslip Owners"). The Non-Residential Boatslip Owners shall not be obligated to pay for common expenses that solely benefit or apply only to the residential lots and Residential Lot Owners. To this end, the Executive Board of the Association shall also establish a supplemental annual assessment each year in the Annual Budget that shall apply to Residential Lot Owners whose residential lots receive additional services or benefits from the Association (the "Supplemental Residential Lot Assessment") The Executive Board shall invoice the Annual Assessment and the Supplemental Residential Lot Assessment according to the billing frequency schedule and policies set by the Executive Board from time to time in the Board's discretion (*e.g.*, monthly, quarterly, semiannually, annually) No Owner can opt out of or exempt him or herself from liability for any assessments by waiver of the use or enjoyment of any of the common areas or facilities, or by abandonment of his or her property or in any other way.

3 **Incorporation of Recitals.** The above recitals are incorporated herein by this reference, and this Fourth Amendment shall be construed in light thereof.

4. **Ratification** All of the terms of the Declaration, the First Amendment, the Second Amendment and the Third Amendment, whether or not expressly modified hereby, shall be construed so as to give effect to the modifications contained herein, and any such

modifications shall supersede any conflicting terms in the Declaration, as amended. The Declaration, the First Amendment, the Second Amendment and the Third Amendment, as modified by this Fourth Amendment, are hereby ratified, confirmed, and reaffirmed by Declarant.

5. **Authority to Amend.** Declarant has the authority to prepare and record this Fourth Amendment by virtue of the reservations set forth in Articles XII and XIII of the Declaration.

6 **Governing Law** This Fourth Amendment shall be governed by and construed in accordance with the laws of North Carolina.

Successors and Assigns. This Fourth Amendment shall inure to the benefit of and be binding upon all parties having any right, title or interest in The Mason Harbour Yacht Club Development, along with their respective heirs, successors, assigns and legal representatives

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed effective as of the date first above written.

(SIGNATURE AND ACKNOWLEDGEMENT PAGE FOLLOWS)

**SIGNATURE PAGE
TO
FOURTH AMENDMENT TO
DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE MASON HARBOUR YACHT CLUB**

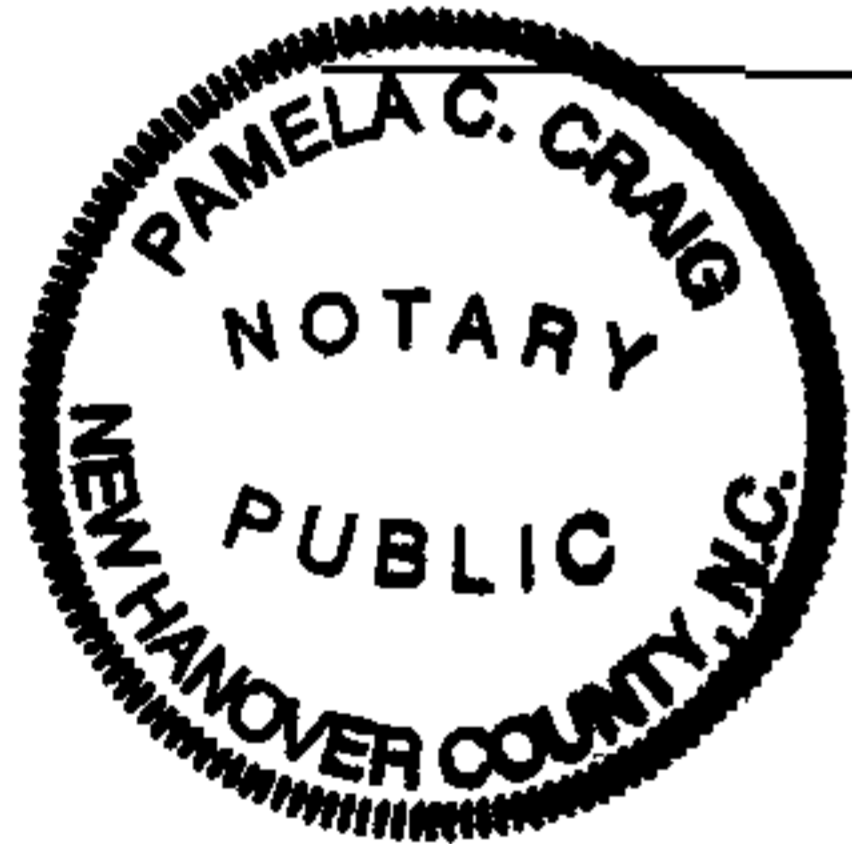
TCRK PROPERTIES, LLC

By:  (SEAL)
Kim Quinn, Manager

NORTH CAROLINA, New Hanover COUNTY.

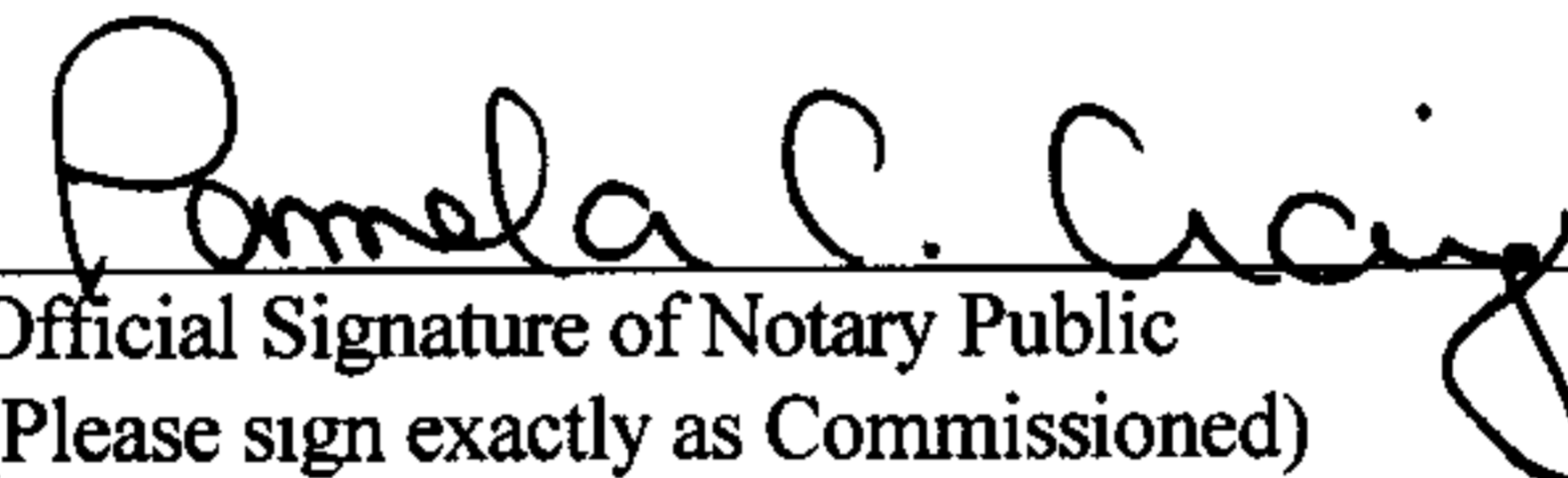
I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:
KIM QUINN, MANAGER OF TCRK PROPERTIES, LLC, a
North Carolina Limited Liability Company

*Place Official
Seal below
this line*



Use Blue Ink

Date: June 23, 2015


Official Signature of Notary Public
(Please sign exactly as Commissioned)

Print Name exactly as Commissioned:

Pamela C. Craig

My Commission expires. 11/05/2017

END OF DOCUMENT



TAMMY THEUSCH BEASLEY
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 06/24/2015 11:36:13 AM

Book: RE 5898 Page: 2691-2698

Document No.: 2015018811

8 PGS \$26.00

Recorder: CRESWELL, ANDREA

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

2015018811

2015018811