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FOR REGISTRATION REGISTER OF DEEDS
JENNIFER H. MACNEISH
NEW HANOVER COUNTY, NC
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Prepared by
and
Returned to:

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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

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

This **SECOND AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MASON HARBOUR YACHT CLUB** (this "Second Amendment") is made and executed effective as of the 19th day of October, 2012, 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 Phase One recorded 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, the Declaration authorized Declarant to annex "Additional Property" as set forth in Article II of the Declaration;

WHEREAS, on September 25, 2008, Mason Landing Yacht Club, LLC, as then 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 Page 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 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 (hereinafter referred to as 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. (hereinafter referred to as the "Association" or "Master Association");

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

WHEREAS, pursuant to Article II of the Declaration, the Boatslip Condominium is submitted to the Declaration governing this Development to the extent that such submission is not inconsistent with the Boatslip Declaration and Chapter 47C of the North Carolina General Statutes;

WHEREAS, pursuant to the terms and conditions of Special Use Permit No. S-566 issued by New Hanover County, which specifically governs the entire Development, each Lot in the Development must be permanently juxtaposed to a corresponding Boatslip Unit (with its Boatslip Slip limited common elements);

WHEREAS, by reason of Special Use Permit No. S-566, each Lot Owner must have a corresponding Boatslip Unit, but some of the Boatslip Owners will not be Lot Owners;

WHEREAS, upon the first conveyance of each Lot by Declarant, Declarant shall join with that conveyance a Boatslip Unit, which conveyance must remain so aligned until realignment is permitted by Declarant or its successors or assigns;

WHEREAS, pursuant to Article II and Section 3.4 of the Declaration, each Boatslip Owner is member of the Association and the Boatslip Association, and as a member of the Association by this submission, each Boatslip Owner is entitled to enjoy the benefits of the Amenity Package as defined in the Declaration and this Second Amendment, and each Boatslip

Owner is required to pay assessments provided for in the Declaration as imposed by the Association and the Boatslip Association;

WHEREAS, for purposes of this Development and pursuant to Section 2.3 and Section 3.4 of the Declaration, the Board of Directors or Executive Board of the Association shall at all times have a majority of members as directors who own both a Lot and a Boatslip Unit and not just a Boatslip Unit, and this requirement shall be a voting limitation upon the voting rights of the Boatslip Owners who do not own a Lot;

WHEREAS, pursuant to Section 2.3 and Section 3.4 of the Declaration, the Association and the Boatslip Association shall coordinate the assessments for the Development, including the Boatslip Condominium, to avoid a double imposition of assessments for the same item or costs;

WHEREAS, pursuant to Section 2.3 of the Declaration and subject to foregoing limitation upon the composition of the Board of Directors or the Executive Board of the Association, each member of the Association, including each Boatslip Owner, shall have the same voting rights either as a Class A or Class B member as provided for in the Articles of Incorporation of the Association and its By-Laws;

WHEREAS, by General Warranty Deed dated December 30, 2011 and recorded on December 30, 2011 in Book 5608 at Pages 2661-2665 of the New Hanover County Registry, Declarant conveyed to the Association the Clubhouse Tract that constitutes the "Amenity Package" and, according to the Declaration, the Amenity Package constitutes recreational improvements or amenities, if any, constructed within the Development for the mutual use and benefit of all the Owners;

WHEREAS, the Amenity Package includes a pool, the Yacht Club facility, parking and other facilities, all of which shall be maintained by the Association; however, as stated in the

Declaration, the Amenity Package shall not include the Boatslip Condominium constructed upon the Marina Property, which Marina Property shall be subject to the Boatslip Declaration and controlled by the Boatslip Association;

WHEREAS, the Association shall adopt rules and regulations for the use and enjoyment of the Amenity Package by all members of the Association, specifically including the members of the Boatslip Association;

WHEREAS, in the event of a dispute governing the Amenity Package between the Boatslip Association and the Association, the Association shall have ultimate control over the Amenity Package; and,

WHEREAS, in view of the economic problems of the last several years, the Declarant Control Period shall be extended to December 31, 2022 as provided below.

NOW THEREFORE, Declarant hereby declares that the Boatslip Condominium is hereby annexed to the Development as Additional Property and shall be held, sold, and conveyed subject to the covenants, conditions, restrictions and easements contained in the Declaration, as amended by the First Amendment and this Second Amendment, to the extent that such Declarations and Amendments do not conflict with the Boatslip Declaration and the provisions of Chapter 47C of the North Carolina General Statutes, all of which 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 and First Amendment.

2. **Amendments.** The Declaration is hereby amended as follows:

(a) Article I Paragraph (o) of the Original Declaration (entitled “Declarant”) is amended as follows:

“(o) “Declarant” shall mean and refer to TCRK Properties, LLC, a North Carolina limited liability company, its successors and assigns, including those persons or entities to which the rights of Declarant are expressly transferred in whole or in part in accordance with the Planned Communities Act.”

(b) Article I Paragraph (p) of the Original Declaration (entitled “Declarant Control Period”) is amended as follows:

“(p) “Declarant Control Period” shall mean that period which commences with the recordation of this Declaration and terminating upon the earlier to occur of the following: (i) December 31, 2022, or (ii) voluntary termination by Declarant provided that Declarant shall give the Association written notice of such termination not less than sixty (60) days prior to the effective date of termination of the Declarant Control Period.”

(c) Article I Paragraph (u) of the Original Declaration (entitled “Lot Owner”), which was incorrectly amended by the First Amendment, is restored to its original wording for the definition of a “Lot Owner.”

(d) Article I Paragraph (v) of the Original Declaration (entitled “Map”), which was incorrectly stated as (u) in the First Amendment, is hereby deleted in its entirety, and the following is substituted in its place and stead:

“(v) “Map” shall mean and refer to that map entitled Mason Landing Yacht Club, Phase One, prepared by Michael Underwood & Associates recorded in **Map Book**

52 at Page 321-322 of the New Hanover County Registry; as well as that map entitled Mason Landing Yacht Club, Phase Two, prepared by Michael Underwood & Associates recorded in **Map Book 53 at Page 202-203** of the New Hanover County Registry; that map entitled Mason Landing Yacht Club, Clubhouse and Common Area Tract as prepared by Michael Underwood & Associates recorded in **Map Book 56 at Page 222-223** of the New Hanover County Registry; that map entitled Mason Landing Yacht Club, Phase Two, Lot 15 and Future Development Tract (Revision) as prepared by Michael Underwood & Associates recorded in **Map Book 57 at Page 26-27** of the New Hanover County Registry; that map entitled The Mason Harbour Yacht Club, Phase Two, Lot 13 and Lot 14 as prepared by Michael Underwood & Associates recorded in **Map Book 57 Pages 151-152** of the New Hanover County Registry; that map entitled The Mason Harbour Boatslip Condominium 2.46 Acres +/- as prepared by Michael Underwood & Associates recorded in **Condominium Book 18 Page 240-243** of the New Hanover County Registry; and as the same will be modified or supplemented from time to time. Map shall also include any map recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, for Additional Property or as a revision of any existing maps. Upon annexation of Additional Property, Map shall also include any map recorded in the Office of the Register of Deeds of New Hanover County, North Carolina for Additional Property in accordance with Section 2.2 of the Declaration.”

(e) Article I Paragraph (ee) of the Original Declaration (entitled “Planned Community Act”), which was incorrectly amended by the First Amendment, is restored to its original wording for the definition of the “Planned Community Act.”

(f) Article I Paragraph (ff) of the Original Declaration (entitled “Property”), which was incorrectly stated as (ee) in the First Amendment, is hereby deleted in its entirety, and the following is substituted in its place and stead:

“(ff) “Property” shall mean and collectively refer to Phase One; Phase Two; the Phase Two, Lot 15 and Future Development Tract (Revision); the Phase Two, Lot 13 and Lot 14; The Mason Harbour Clubhouse and Common Area Tract; and The Mason Harbour Boatslip Condominium 2.46 Acres +/- as annexed by this Second Amendment into the Development. Upon annexation of any Additional Property as provided herein, such Additional Property shall be deemed Property hereunder.”

(g) Section 3.2(a) Voting of the Original Declaration is hereby amended by adding the following sentence at the conclusion of the first sentence in Section 3.2(a):

“Each Lot Owner and each Boatslip Unit Owner shall be a Member of the Association, and each Member shall have one vote voting right per Lot and one voting right per Boatslip Unit.”

(h) Article X, Section (e) of the First Amendment is hereby amended to include the following maximum allowable built-upon area per Lot as follows:

<u>Lot</u>	<u>“Maximum Built Upon Area” (square feet)</u>
13	2,513
14	2,550

3. **Submission of Boatlip Condominium to the Declaration, as Amended.**

Pursuant to the authority reserved in Declarant in the Declaration, especially in Article II and Article III, the Marina Property as described in the Boatlip Declaration is submitted to Declaration, as amended, and hereby annexed to The Mason Harbour Yacht Club Development with all of the rights, privileges, obligations, voting rights in the Association, easements and benefits of the Development, especially including the benefits of The Amenity Package. Pursuant to Section 3.5 of the Declaration, the Marina Association shall retain all of its powers, authority, and jurisdiction as set forth in its Articles of Incorporation, By-Laws, and Boatlip Declaration. In the event of a conflict between the Declaration, as amended, and the Boatlip Declaration as to the Marina Property, the Boatlip Declaration, and Boatlip Association, the Boatlip Declaration shall control as to the Marina Association.

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

5. **Ratification.** All of the terms of the Declaration, and the First 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 and the First Amendment, as modified by this Second Amendment, are hereby ratified, confirmed, and reaffirmed by Declarant.

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

7. **Successors and Assigns.** This Second Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective 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)

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

TCRK PROPERTIES, LLC

By: M. Craig Quinn (SEAL)
M. Craig Quinn, Manager

NORTH CAROLINA, Duplin 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:
M. CRAIG QUINN, MANAGER OF TCRK PROPERTIES, LLC,
a North Carolina Limited Liability Company

Date: October 19, 2012

Annette R. Evans
Official Signature of Notary Public
(Please sign exactly as Commissioned)

Print Name exactly as Commissioned:

Annette R. Evans

My Commission expires: 9/17/2016

END OF DOCUMENT



JENNIFER H. MACNEISH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 10/23/2012 12:41:50 PM

Book: RE 5682 Page: 828-840

Document No.: 2012036679

13 PGS \$26.00

Recorder: CRESWELL, ANDREA

State of North Carolina, County of New Hanover

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