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**DECLARATION OF CONDOMINIUM FOR
THE MASON HARBOUR BOATSLIP CONDOMINIUM**

A NORTH CAROLINA CONDOMINIUM

**STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER**

DECLARANT: TCRK PROPERTIES, LLC

DATED SEPTEMBER 24, 2012

Prepared by Kenneth A. Shanklin
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EXHIBIT A, REAL PROPERTY LEGAL DESCRIPTION

EXHIBIT B-1, DESIGNATION OF UNITS AND ALLOCATED INTEREST FOR UNITS SEVENTEEN THROUGH FIFTY-SIX

EXHIBIT B-2, DESIGNATION OF UNITS AND ALLOCATED INTEREST FOR A TOTAL OF 56 UNITS UPON COMPLETION OF ALL UNITS AND BOATSLIPS

EXHIBIT C, LISTING OF APPLICABLE PERMITS

EXHIBIT D, INITIAL BY-LAWS OF THE ASSOCIATION

NOTE: THIS IS A NON-RESIDENTIAL CONDOMINIUM DEVELOPMENT.

**DECLARATION OF CONDOMINIUM FOR
THE MASON HARBOUR BOATSLIP CONDOMINIUM**

TCRK PROPERTIES, LLC, a North Carolina limited liability company, with an address at 526 Works Farm Road, Warsaw, NC 28398 (hereinafter defined as "Declarant"), does hereby make, declare and establish this Declaration of Condominium as, and for, the plan of ownership of **THE MASON HARBOUR BOATSLIP CONDOMINIUM**, being the property and improvements hereinafter described.

W I T N E S S E T H:

WHEREAS, Declarant is the Owner of certain real property located in Harnett Township, New Hanover County, North Carolina, known as The Mason Harbour Marina, which is being developed as a boatominium, a non-residential development; and,

WHEREAS, Declarant is also the Declarant of that certain performance residential subdivision that is known as The Mason Harbour Yacht Club (formerly known as Mason Landing Yacht Club) (the "Development") composed of residential lots in multiple sections upon certain real property located in Harnett Township, New Hanover County, North Carolina, and,

WHEREAS, pursuant to the approved plans for the The Mason Harbour Yacht Club Development, Declarant has constructed boatslips upon the riparian areas of the Development and has constructed upon the upland and adjoining waters described within **Exhibit A**, attached hereto (the "Property"), condominium units as hereinafter described to which said boatslips are appurtenant (Limited Common Elements) as set forth herein; and,

WHEREAS, the condominium consists of fifty-six (56) non-residential Condominium Units (subject to Declarant's right to combine Units and other reserved Declarant rights) together with Common Elements and Limited Common Elements which include boatlips, all established in accordance with the provisions of the North Carolina Condominium Act (Chapter 47C, North Carolina General Statutes); and,

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

WHEREAS, upon the recordation of this Declaration of Condominium for The Mason Harbour Boatslip Condominium, Declarant will submit the Boatslip Condominium to the general scheme of development for The Mason Harbour Yacht Club Development; and,

WHEREAS, Declarant wishes to sell and convey said Units and the appurtenants thereto subject to the covenants, conditions and restrictions herein reserved.

NOW, THEREFORE, Declarant hereby declares that all of the Property described on **Exhibit A** attached hereto shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, uses, limitations, and obligations in furtherance of a plan for the division of the Property into Condominium Units and which shall be deemed to run with the land and be binding on all parties having any rights, title, or interest in the land or any part thereof, their heirs, successors and assigns.

1.

ESTABLISHMENT OF CONDOMINIUM OWNERSHIP

1 01 **Submission** Declarant does hereby submit that the Property described in **Exhibit A** attached hereto and the improvements and appurtenances thereto to the form of Condominium ownership pursuant to the provisions of Chapter 47C of the General Statutes of North Carolina (North Carolina Condominium Act) as the same now exists or may be hereafter amended, and hereby declares that the Property shall be subject to the uses, restrictions, covenants, easements, limitations, obligations, and governing authority set forth in the Declaration of Condominium and as the same may be hereafter amended

1.02 **Name.** The Property and improvements thereof shall be known as **The Mason Harbour Boatslip Condominium** (hereinafter referred to as the "Condominium") The name of the Association shall be **The Mason Harbour Boatslip Condominium Owners Association, Inc.** (hereinafter referred to as the "Association").

1 03 **Division of Property into Separately Owned Units.** Declarant, pursuant to the North Carolina Condominium Act (Chapter 47C, North Carolina General Statutes), and to establish a plan of condominium ownership for the Condominium, does hereby divide the Property into a total upon completion of fifty-six (56) Units At this submittal, Declarant does hereby designate Boatslip Units Seventeen through Fifty-Six for separate ownership and creation, subject, however, to the provisions of this Declaration Furthermore, upon completion of the Limited Common Elements for Boatslip Units One through Sixteen in accordance with the provisions of the Declarant's Special Reserved Rights pursuant to Article 5 of this Declaration, Declarant will at that time submit and designate Boatslip Units One through Sixteen for separate ownership and creation, subject, however, to the provisions of this Declaration.

2.

DESCRIPTION OF PROPERTY AND IMPROVEMENTS

2 01 **Property** The legal description of the Property, including easements, on which the Improvements are to be located is set forth in **Exhibit A** to this Declaration

The Unit designation of the Condominium Unit, location, plan and description are set forth in the Plans (as hereafter defined) for this condominium filed in the New Hanover County Register of Deeds in Condominium Plat Book 18 at Pages 240 through 243 The Unit designation for Units Seventeen through Fifty-Six is further set forth on **Exhibit B-1**,

attached hereto and incorporated by reference herein. The Unit designation for all Fifty-Six Units upon completion of Boatslip Common Elements for Units One through Fifty-Six, is further set forth on **Exhibit B-2**, attached hereto and incorporated by reference herein, which will become effective upon the submission of Units One through Sixteen to this Declaration by a Supplemental Declaration document upon completion of Boatslip Common Elements for Units One through Sixteen.

2.02 **Other Descriptions.** Actual Improvement locations, Common Elements, Limited Common Elements, easements, ground elevations, Improvement elevations, and other land and construction information is shown on a plat prepared by Michael Underwood and Associates, PA, dated September 2012 and recorded on October 9, 2012 in Condominium Plat Book 18, at Pages 240 through 243 in the Office of the Register of Deeds of New Hanover County

The Condominium is not subject to any code, real estate use law, ordinance, charter provision, or regulation (i) prohibiting the Condominium form of ownership, or (ii) imposing conditions or requirements upon a Condominium which are not imposed upon substantially similar developments under a different form of ownership. This statement is made pursuant to N.C GEN. STAT. § 47C-1-106 of the Act for the purpose of providing marketable title to the Units in the Condominium

3. **DEFINITIONS**

THE FOLLOWING SHALL BE DEFINITIONS APPLICABLE TO THIS DECLARATION:

3 01 “**Allocated Interest**” means the undivided interests in the Common Elements, the Common Expense Liability and the votes in the Association allocated to each Unit

3 02 “**Association**” or “**Unit Owners Association**” means that non-profit corporation, the name of which shall be The Mason Harbour Boatslip Condominium Owners Association, Inc , and which shall manage the Common Elements of the Condominium as specified in this Declaration and its corporate By-Laws

3 03 “**Board of Directors**” or “**Board**” means those persons elected or appointed and acting collectively as the Directors of the Association, and on behalf of the Association, as prescribed in its By-Laws. The Board of Directors shall be the Executive board as defined in N C GEN STAT. § 47C-1-103 (13) and N.C GEN STAT. § 47C-3-103

3 04 “**Boatslip**” means the Limited Common Elements appurtenant to a designated Unit as shown on **Exhibit B-1** attached hereto. A Boatslip is located within the marina basin upon navigable waters, and the Boatslips are depicted on the Plans as defined herein. Upon completion of the Limited Common Elements for Units One through Sixteen pursuant to Article 5 of this Declaration, “Boatslip” shall mean the Limited Common Elements appurtenant to a designated Unit as shown on **Exhibit B-2** attached hereto.

3.05 “**By-Laws**” means the By-Laws of the Association as they now or hereafter exist, the initial By-Laws being attached hereto and marked as **Exhibit D**.

3.06 “**Common Elements**” shall mean and comprise all portions of the Condominium except Units Without limiting the foregoing, Common Elements shall extend to all riparian rights including rights to surface waters and sub-surface lands which are held by the Association or the Unit Owners.

3.07 “**Common Expenses**” means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including but not limited to

- (A) All sums lawfully assessed against the Unit Owners by the Association,
- (B) Expenses of administration, maintenance, repair, or replacement of the Common Elements,
- (C) Expenses agreed upon as Common Expenses by the Association,
- (D) Expenses declared to be Common Expenses by the provisions of the North Carolina Condominium Act, by the Declaration or by the By-Laws,
- (E) Hazard and such other insurance premiums as Declaration and/or By-Laws may require the Association to purchase;
- (F) Taxes and public assessments levied against the Common Elements not otherwise assessed against the Units, and,
- (G) Any utilities which are Common Expenses as determined by the Association;

3.08 “**Common Expense Liability**” means the liability for Common Expenses allocated to each Unit.

3.09 “**Common Surplus**” means all funds and other assets of the Association, including excess receipts of the Association from assessments, rents, profits and revenues from whatever source in excess of the Common Expenses

3.10 “**Condominium**” shall mean all Condominium Units, the Common Elements and any Limited Common Elements, as said terms are hereinafter defined, and all appurtenances, all comprising the Property located on **Exhibit A** attached hereto

3.11 “**Condominium Unit**” or “**Unit**” or “**Boatslip Unit**” as the term is used herein shall mean and comprise the numerically identified Unit which is designated in **Exhibit B-1** for Units Seventeen through Fifty-Six attached hereto and which shall be the physical portion of the Condominium designated on that Exhibit for separate ownership or occupancy. Upon completion of the Limited Common Elements (Boatslip) for Units One through Sixteen pursuant to Article 5 of this

Declaration by the Declarant and recordation of a Supplemental Declaration, "**Condominium Unit**" or "**Unit**" or "**Boatslip Unit**" as the term is used herein shall mean and comprise the numerically identified Unit which will be then designated in **Exhibit B-2** for Units One through Fifty-Six attached hereto and which shall be the physical portion of the Condominium designated on that Exhibit for separate ownership or occupancy

3.12 "**Declarant**" means the named Declarant on page one (1) hereof, and its successors and assigns to whom any of its rights hereunder are expressly transferred, in whole or in part, or who succeeds to any Special Declarant Right

3.13 "**Declarant Control Period**" or "**Period of Declarant Control**" means the period commencing on the date hereof and continuing until the earlier of (i) two (2) years after Declarant has ceased to offer all fifty-six (56) Units for sale in the ordinary course of business, or (ii) the date one hundred twenty (120) days after Declarant has conveyed seventy-five percent (75%) of the fifty-six (56) Units to Unit Owners other than Declarant, or (iii) the date four (4) years after any development right to add new units or to add a Boatslip Limited Common Elements for Units One through Sixteen for creation of Boatslip One through Sixteen as shown on the Plans was last exercised by Declarant

3.14 "**Declaration**" means this instrument, as amended and duly recorded, by which the Property is submitted to the provisions of the North Carolina Condominium Act, and as it, from time to time, may be amended

3.15 "**Development Rights**" or "**Declarant Reserved Rights**" or "**Declarant's Special Reserved Rights**" means those rights reserved by Declarant herein to create Units, Common Elements, Limited Common Elements within the Condominium, to implement the Bulkhead Repair Agreement dated December 21, 2006, annex additional property to satisfy the required parking for the Condominium, to annex additional units and properties, to add a Boatslip Limited Common Elements for Units One through Sixteen for creation of Boatslip One through Sixteen as shown on the Plans or other rights as may be provided in the North Carolina Condominium Act, including the specific right to readjust or recalibrate the Allocated Interest set forth in **Exhibit B-1** upon any formula permitted by the North Carolina Condominium Act Upon completion and dedication of Units One through Sixteen, pursuant to this Declaration, the Allocation Interest for each Unit shall be set forth in **Exhibit B-2**

3.16 "**Improvement**" means a structure constructed or erected on the Property which contains one or more Condominium Units

3.17 "**Kiosk**" means the Kiosk structure containing the Units as shown on the Plans—see Sheet 1 and Sheet 4 of 4 of the Plans Each Unit contains 0 6650 square foot There is one Kiosk structure, which will contain the Units

3.18 "**Lessee**" means any person entitled to present possession of a leased Unit, whether lessee, sublessee or assignee

3.19 “**Limited Common Elements**” means those Common Elements allocated for the exclusive use of one but fewer than all of the Units by this Declaration including but not limited to the following

(A) Any bearing wall, bearing column, or any other fixture lying partially within and partially outside of the designated boundaries of a Unit and serving only that Unit. If such structures serve more than one Unit, or the Common Elements, they are Common Elements. Subject to the preceding sentence, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit

(B) Any other area designated on the Plans as Limited Common Elements

(C) Any Boat slip(s) to be owned by the Unit Owner, as designated on the Plans as Limited Common Elements.

Common Elements not designated or allocated as Limited Common Elements may not be so allocated to Unit Owners except upon written consent of sixty percent (60%) of the Unit Owners in the Condominium. Any such allocation shall be evidenced by an amendment as set forth above

3.20 “**Majority**” or “**Majority of Unit Owners**” means the Owners of more than fifty percent (50%) of the aggregate allocated interests in the Common Elements, as established by this Declaration, assembled at a duly called meeting of the members of the Association.

3.21 “**Marina**” means all of the Property made subject to this Declaration and the Marina amenities and facilities that are intended for the use and enjoyment of some or all of the Boatslip Unit Owners.

3.22 “**Mortgage**” means a mortgage or deed of trust.

3.23 “**Mortgagee**” means a mortgagee or the owner and holder of a promissory note or other evidence of indebtedness and deed of trust or mortgage which describe a Unit or Units as the security property

3.24 “**North Carolina Condominium Act**” or the “**Act**” or “**Condominium Act**” means the provisions of Chapter 47C of the North Carolina General Statutes as the same now exists or may hereafter be amended, or any new enactment in substitution or replacement thereof as the same by law may be applied to this Condominium

3.25 “**Permits**” means the applicable governmental agencies—local, state and federal—that govern the Condominium Property and the function of the Condominium as a non-residential marina. Permits include applicable stormwater permits, CAMA Major Permits, U S Army Corps of Engineers Permit and easements from the State of North Carolina. The Permits are defined in part on **Exhibit C**

3.26 “**Persons**” means any individual, limited liability company or entity, corporation, partnership, Association, business trust, estate, trust, joint venture, government or any subdivision or agency thereof, or other legal or commercial entity

3.27 “**Plans**” means the plats and plans of the Improvements and Property filed with this Declaration and recorded in the Office of the Register of Deeds of New Hanover County showing thereon graphically all particulars of the Improvements, Common Elements, Limited Common Elements and the Units

3.28 “**Property**” means the real estate described on **Exhibit A**, together with all improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate

3.29 “**Rules and Regulations**” means those certain rules and regulations promulgated by the Board of Directors from time to time pertaining to use of the Condominium Property The Rules and Regulations shall be maintained in the official records of the Association and made available to the Unit Owners upon request The Rules and Regulations shall also specific rules that must be adhered to for compliance with New Hanover County Special Use Permit No S-556, dated May 2007, as amended

3.30 “**Special Declarant Rights**” means those rights, including Development Rights, permitted by the Condominium Act and specified in Article 5 herein.

3.31 “**Unit Boundaries**” means the boundaries of each Unit, both as to vertical and horizontal planes, as shown on the Plans, which are the interior surfaces of the Units

3.32 “**Unit Designation**” means the identifying number, letter, symbol or combination thereof designating a Condominium Unit and set forth in this Declaration and the Plans

3.33 “**Unit Owner**” or “**Owner**” means Declarant or any other person, or any combination thereof, who owns a Condominium Unit, but excludes any person having an interest in a Unit solely for security purposes Each Owner of a Unit, by acceptance of a deed therefor, hereby waives all rights of Unit Owners under Article 4 of the Act

3.34 “**Vessel**” means and refers to any Boatslip Unit Owner’s leisure or recreational motor boat, sailboat, yacht or other water craft which is self-propelled, in a seaworthy condition; provided, however, that this term shall exclude any houseboat, floating home, house-like barge, seaplane, non-displacement (*i e.*, air cushion) or commercial marine vessels In the event of any dispute as to whether a particular vessel or boat is permitted to be kept in a Boatslip Unit’s Limited Common Elements or otherwise operated within the Condominium Property, the determination of a majority of the Board of Directors made in its sole discretion shall be dispositive The term “Vessel” shall include all vessels kept in a Boatslip Unit’s Limited Common Elements or otherwise operated within the Property

4.

**OWNERSHIP OF CONDOMINIUM UNITS AND
APPURTENANT ALLOCATED INTEREST IN COMMON ELEMENTS**

4.01 **Ownership Interest** Each Condominium Unit shall be held, conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each Unit shall also own, as an appurtenance to the ownership of each Condominium Unit, an allocated individual interest in the Common Elements. The undivided allocated interest appurtenant to each Condominium Unit shall be as set out in **Exhibit B-1** attached hereto and made a part hereof. The Allocated Interest in the Common Elements that is appurtenant to each Condominium Unit is the percentage the area of each Unit bears to the area of all Units. Upon completion of the Limited Common Elements for Boatslip Units One through Sixteen and the filing of a Supplemental Declaration pursuant to Article 5 herein, the undivided allocated interest appurtenant to each Condominium Unit shall then be set forth in **Exhibit B-2** attached hereto and made a part hereof, unless otherwise altered by Declarant pursuant to its Reserved Declarant Rights in Article 5 herein.

4.02 **Change in Allocated Interests.** Changes in the allocated ownership interest shall occur in the case of condemnation as set forth in Article 34 herein, as may result from a casualty loss as specified in Article 19 hereof, as may occur because of exercise of Development Rights reserved by Declarant herein including but not limited to the right to annex additional Units as hereinafter provided, or as otherwise permitted by this Declaration as more particularly defined in Article 5 herein. The destruction or loss of a Boatslip Unit's Limited Common Elements (Boatslip) shall automatically be deemed the destruction or loss of the Unit, notwithstanding the fact that the physical Unit in the Kiosk facility remains and is not actually lost. To that end, the Boatslip Limited Common Elements is deemed appended to the Unit for purposes of this Declaration. Furthermore, it is specifically provided that upon annexation and the addition of other Units to this Declaration, the undivided interest shall be reduced to the end that each Unit with its Boatslip then subjected to this Declaration shall have the Allocated Interest in the Common Area which is equal to the percentage the linear footage of the Boatslip appurtenant to the Unit bears to the aggregate linear footage of all Boatslips then subject to the Declaration. For example under **Exhibit B-1**, Unit 20 is entitled to the use of a Boatslip which is 40 feet in length. The aggregate length of Boatslips for Units Seventeen through Fifty-Six (**Exhibit B-1**) is 1,351 linear feet, therefore, Unit 20 has a 2.9607% Allocated Interest in the Common Area. Upon completion of the remaining Boatslip Limited Common Elements for Units One through Sixteen and the submission of Units One through Sixteen to this Declaration by a Supplemental Declaration, the allocations set forth in **Exhibit B-2** shall control. In the event that a Unit is destroyed, condemned or reallocated, any adjustment to the Allocated Interest shall be predicated upon the impact or affect upon the Boatslip-Limited Common Elements. For example, if Boatslip Unit 20 is condemned, then the actual Unit in the Kiosk shall be deemed condemned for purposes of this Declaration.

4.03 **No Division of Common Elements.** Other than Declarant's Special Reserved Right to construct and install Boatslips One through Sixteen as herein created and reserved in Declarant, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common