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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
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STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND
RESTRICTIONS FOR MASON
LANDING YACHT CLUB

**THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND
RESTRICTIONS FOR MASON LANDING YACHT CLUB, PHASE ONE** (this
“Declaration”) is made as of the 25th day of June, 2008, by **MASON LANDING YACHT
CLUB LLC**, a North Carolina limited liability company (“Declarant”).

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located on the Intracoastal
Waterway in New Hanover County, North Carolina known as Mason Landing Yacht Club (the
“Development”) which is being developed as a residential subdivision with private marina
facilities; and,

WHEREAS, Declarant has recorded a map entitled Mason Landing Yacht Club, Phase One, prepared by Michael Underwood and Associates recorded in Map Book 52 at Page 321 in the Office of the Register of Deeds of New Hanover County, North Carolina (the "Map") which depicts the initial phase of the Development ("Phase One"); and,

WHEREAS, Declarant desires to subject Phase One to the covenants, conditions and restrictions as hereinafter set forth; and,

WHEREAS, Declarant reserves the right but not the obligation to submit additional Lots in additional phases to the terms of this Declaration as set forth herein; and,

WHEREAS, the Declarant intends that the Association referenced herein shall own and control the Common Areas as shown on the Map, excluding the Lots, and shall ultimately own additional Common Areas as they are submitted and annexed to the terms of this Declaration, which may include an Amenity Package comprised of a clubhouse (the "Yacht Club") as well as parking and access facilities serving the Development; and,

WHEREAS, Declarant intends to construct boatslips within the riparian areas of the Development and intends to record a Declaration of Condominium for Mason Landing Boatslip Condominium (the "Boatslip Declaration") which shall create condominium units (the "Boatslip Units") within the Development, each of which will have a boatslip designated as a limited common element appurtenant to the Boatslip Unit (the condominium regime to be established thereunder, including any and all common elements and limited common elements described therein or subsequently annexed as provided therein are hereinafter referred to as the "Marina Property"); and,

WHEREAS, upon completion of the construction of the Boatslip Units and submission of the Marina Property to the Boatslip Declaration, the Association may provide certain services to the Marina Property and the Marina Association as set forth herein; and,

WHEREAS, the development and maintenance of the Development (including any additional phases to the extent they have been submitted as provided in this Declaration) and the Marina Property and all other property included within the Development is best facilitated by the grant and reservation of mutual access and parking easements and by the common maintenance of access and utility easements, drainage facilities (including stormwater facilities), common areas, roads, entryways and the restrictions on use contained herein for the mutual benefit of the owners of Lots and, upon creation and submission, the owners of the Boatslip Units and their successors and assigns; and,

WHEREAS, the Development and the Association shall be governed by the provisions of Chapter 47F of the General Statutes of the State of North Carolina entitled “The North Carolina Planned Community Act” (except to the extent that the Boatslip Units and Marina Property are subsequently subjected to the provisions of Chapter 47C of the General Statutes of the State of North Carolina entitled “The North Carolina Condominium Act”).

NOW, THEREFORE, the parties hereto hereby declare that Phase One shall be held, developed, improved, leased, sold, transferred, conveyed and occupied subject to the following covenants, reservations, easements, conditions and restrictions, all of which are for the purpose of protecting the value and desirability of and which shall run with title to the Lots contained in Phase One and shall be binding upon all parties having any right, title or interest therein, their heirs, successors and assigns, and which shall inure to the benefit of each Owner.

ARTICLE I

Definitions

- (a) “Additional Property” shall have the meaning set forth in Section 2.2 hereof.
- (b) “Amenity Package” shall mean those certain recreational improvements or amenities, if any, constructed or placed upon the Development for the mutual use and benefit of the Owners. The Amenity Package may include a pool, the Yacht Club, parking and other facilities, all of which shall be maintained by the Association. The Amenity Package shall not include the Marina Property.
- (c) “Annual Budget” shall mean and refer to the budget as described in Section 5.1 hereof.
- (d) “Architectural Review Board” or “ARB” shall mean that board described in Article VI hereof.
- (e) “Association” shall mean and refer to The Mason Landing Yacht Club Association, Inc., a North Carolina nonprofit corporation, formed for the operation and management of the Development as set forth herein.
- (f) “Boatslip Condominium” shall mean and refer to the condominium regime which shall be established pursuant to The Condominium Act and the Boatslip Declaration which shall create and regulate the Boatslip Units.
- (g) “Boatslip Declaration” shall mean and refer to the Declaration of Condominium for the Boatslip Condominium to be recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, as the same may be amended from time to time.

(h) "Boatslip Owner" shall mean and refer to the record owner, whether one or more persons or entities, of title to any Boatslip Unit as subsequently described in the Boatslip Declaration.

(i) "Boatslip Unit" or "Boatslip Units" shall mean and refer to any one or more of the non-residential condominium units as defined in the Boatslip Declaration, which include boatslips as limited common elements appurtenant thereto.

(j) "Building" shall mean and refer to a detached, free-standing dwelling or place of residence and attached or detached garage, and other outbuildings as may be approved by the ARB and constructed upon a Lot.

(k) "Bylaws" shall mean and refer to the Bylaws of the Association as the same may be amended from time to time.

(l) "Common Areas" or "Common Elements" shall mean and refer to all real property within the Development owned by the Association, along with facilities and improvements erected or constructed thereon, as shown on the Map or as may be shown on Maps of Additional Property submitted or annexed to this Declaration. In addition, all private streets (if any), water lines located outside public rights-of-way and individual Lots, all sewer lines located outside public rights-of-way, public sanitary sewer easements located outside and within the boundaries of individual Lots, which water or sewer lines serve the Development are declared to be Common Areas, including but not limited to the Disposal System, subject to the rights of the utility providers and the municipalities providing such utilities. Declarant reserves the right to alter and amend the Map to revise, delete or relocate Common Areas as Declarant, in its sole discretion, deems appropriate. Declarant further reserves the right to designate and

convey other real property as Common Areas which shall be accepted as such by the Association.

(m) "Common Expenses" shall mean and include:

- (i) Expenses of administration, maintenance, repair or replacement of the Common Areas, (specifically including the Amenity Package). Without limiting the foregoing, such expenses shall extend to the administration, maintenance repair and replacement of any private streets, detention and/or retention ponds, swimming pools, community buildings, walkways and any and all expenses relating to installation and maintenance of landscaping in the Common Areas and within the rights of ways of public streets (to the extent permitted by law);
- (ii) Expenses incurred as a result of the design and maintenance of any community signage located within or neighboring the Property; and,
- (iii) Expenses associated with Declarant's and/or the Association's installation and maintenance of lighting structures and/or street lighting within the Development as directed by the Declarant or the Association, as well as the payment of any and all ongoing fees and expenses relating to the operation and maintenance of the lighting structures.
- (iv) Expenses related to security and traffic control, which may include without limitation maintenance of entrances, the employment of police and security guards and the maintenance of electronic and other security devices for the protection of persons and property within the Development. Notwithstanding the foregoing, neither Declarant nor Association shall have any obligation to provide any such security services or devices.

- (v) Expenses relating to the maintenance of any and all stormwater drainage and facilities in accordance with the terms of the Stormwater Permit as amended and the performance of those duties and obligations set forth in Article X and Article XI hereto.
- (vi) Expenses related to the maintenance, repair and replacement of any and all utility installations and facilities owned by the Association or used by the Association, including but not limited to water and sewer lines.
- (vii) Expenses related to garbage and trash collection and disposal for Common Areas including the Amenity Package.
- (viii) Expenses relating to the provision and/or operation of recreational or other facilities (including the Amenity Package) or programs of any nature serving the Owners.
- (ix) Expenses relating to the payment of insurance premiums for any insurance required or permitted under the terms of this Declaration or the Planned Community Act.
- (x) Any reserves required or allowed pursuant to the terms of this Declaration or, which, in the reasonable opinion of the Executive Board, are necessary to provide for the repair and/or replacement of Common Areas including the Amenity Package.
- (xi) Payment of ad valorem taxes and other taxes assessed against any and all Common Areas including, but not limited to, the Amenity Package.
- (xii) Any and all other expenses which are reasonably necessary for the fulfillment of those obligations set forth in Section 3.3 hereof which shall

specifically include the employment and/or retention of an association or property manager or management company as allowed therein.

(n) “Condominium Act” shall mean and refer to Chapter 47C of the General Statutes of the State of North Carolina entitled “The North Carolina Condominium Act”.

(o) “Declarant” shall mean and refer to Mason Landing Yacht Club 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 provisions of the Planned Community Act.

(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, 2018, 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.

(q) “Disposal System” shall mean and refer to the wastewater collection system, including any pumps, treatment works and/or disposal facilities which may be completed by Declarant in order to provide sanitary sewage disposal for the Lots and Common Areas within the Development.

(r) “Easements” shall mean and refer to the easements established pursuant to Article IV of this Declaration, as well as any and all easements established and shown on any Map.

(s) “Executive Board” shall mean and refer to the body designated to act on behalf of the Association in accordance with the terms of the Bylaws, this Declaration and as set forth in Section 47-F-103.

(t) "Lot" and "Lots" shall mean any tract or parcel of land designated as such upon the Map which is intended for residential use and additions or supplements thereto including such Lots as are annexed by the Declarant as provided herein.

(u) "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot.

(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 of the New Hanover County Registry, as the same may be modified or supplemented from time to time. 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.

(w) "Marina Association" shall mean and refer to Mason Landing Boatslip Owners Association, Inc., a North Carolina non-profit corporation to be formed by Declarant for the operation and management of the Boatslip Condominium.

(x) "Master Association" shall mean and refer to a master association as referenced in the Planned Community Act, and the Condominium Act and/or the Boatslip Declaration. The Association may be the Master Association for the Marina Association for the purposes set forth in the Boatslip Declaration.

(y) "Member" shall mean and refer to each Lot Owner and each Boatslip Owner.

(z) "Membership" shall mean and refer to that interest granted to each Lot Owner and Boatslip Owner as a Member of the Association.

(aa) "Mortgage" shall mean a mortgage, deed of trust, deed to secure debt or other security instrument encumbering one or more Lots and which has been recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

(bb) "Mortgagee" shall mean and refer to the mortgagee, beneficiary, trustee or other holder of a Mortgage on a Lot.

(cc) "Occupant" shall mean and refer to an Owner (but excluding any person holding such interest merely as security for the performance or satisfaction of any obligation), and (ii) any lessee or tenant of an Owner.

(dd) "Owner" and "Owners" shall mean and refer to Lot Owners and Boatslip Owners but such term shall not include a Mortgagee.

(ee) "Planned Community Act" shall mean The North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes, as the same presently exists and as may be amended from time to time.

(ff) "Property" shall mean and collectively refer to Phase One. Upon annexation of any Additional Property as provided herein, such Additional Property shall be deemed Property hereunder.

(gg) "Special Declarant Rights" shall mean and refer to those rights set forth in Article XII hereof.

(hh) "Special Assessment" or "Special Assessments" shall have the meaning set forth in Section 5.3 hereof.

(ii) "Stormwater Permit" shall mean Permit SW8 060720 issued by the North Carolina Division of Water Quality as the same may be amended from time to time.

(jj) “Supplemental Declaration” shall have the meaning set forth in Section 2.2 hereof.

ARTICLE II

Submission to Declaration

Section 2.1 Description. The Lots are hereby made subject to this Declaration and shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Lot Owner subject to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2.2 Additional Property. Declarant may add or annex additional real property which may include Lots and Common Areas (“Additional Property”) to the provisions of this Declaration. It may so annex by executing and recording a “Supplemental Declaration” which may extend the provisions of this Declaration to such Additional Property and by the recordation of a supplemental Map showing the property to be annexed. In the event a person or entity other than Declarant desires to annex and subject Additional Property to the terms of this Declaration, such Additional Property may only be annexed with the written consent of the Declarant or by the complete or partial assignment of Declarant Rights as set forth in this Declaration or the Planned Community Act. Furthermore, Declarant may subject the Marina Property, including the Boatslip Units, to such portions of this Declaration as the Declarant, in its sole discretion, deems appropriate and may require the owners of the Boatslip Units to be Members of the Association.

Section 2.3 Contents and Recording of Supplemental Declaration. Supplemental Declarations may subject the Additional Property to controls, covenants, conditions, restrictions,

easements, charges and liens and may contain additions, deletions and modifications from those contained in this Declaration. The Supplemental Declaration shall designate the voting rights of Owners (including Boatlip Owners upon completion of the development of the Marina Property) and the assessment obligations to be paid by each Owner in a manner consistent with this Declaration. The Supplemental Declaration must be recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

ARTICLE III

Association

Section 3.1 Membership. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Boatlip Unit.

Section 3.2 Voting.

(a) **Voting.** The voting rights of the Members shall be appurtenant to the ownership of the Lots and Boatlip Units. There shall be two classes of Members with respect to voting rights:

(i) **Class A Membership.** All Owners (except the Declarant for so long as it shall be a Class B Member) shall be Class A Members. Each Class A Membership shall entitle the Owner to one (1) vote for each Lot or Boatlip Unit owned.

(ii) **Class B Membership.** Declarant shall be the sole Class B Member and shall be entitled to one Class B Membership for each Lot and Boatlip Unit owned by it. The Declarant as a Class B Member shall be entitled to four (4)

votes for each Class B Membership. Class B Memberships shall cease to exist and shall be converted to Class A Memberships upon the first to occur of the following:

(a) when the total number of votes appurtenant to the Class A Memberships equals or is greater than the total number of votes appurtenant to the Class B Memberships, provided that the Class B Memberships shall be reinstated if thereafter such Additional Property (including the Marina Property) is annexed or new Lots and/or Boatslip Units are created such that the total votes outstanding of the Class B Memberships again exceeds the total votes of Class A Memberships or

(b) when Declarant, in its sole discretion, elects to terminate the Class B memberships and to convert them to Class A Memberships; provided, however, Declarant shall give the Association not less than thirty (30) days written notice of its intention to terminate prior to the effective date of termination.

(b) Multiple Owners. In any case where a Lot has more than one Owner, the multiple Owners must designate one such Owner to exercise the vote(s) applicable to such Lot, and such exercise shall be conclusive and binding with respect to all other persons having any interest in the Lot owned by said Owner(s). In the event the Owners are unable to agree upon one such Owner to exercise the vote applicable to the Lot, the vote(s) attributable to the Lot shall not be cast or recognized. In no event shall the vote or votes with respect to any jointly-owned Lot be cast separately. Any action taken in accordance with the provisions of this Declaration shall be binding upon all Owners and Mortgagees and their respective heirs, successors and assigns.

Section 3.3 Powers of Association. The Association shall have all powers reasonable and necessary to operate and manage the Development in accordance with the provisions of this Declaration. Without limiting the foregoing, the Association shall have the power to take the following actions:

- (a) To exercise any and all powers set forth in GS 47F-3-102 of the Planned Community Act.
 - (b) To install, maintain and replace any and all landscaping within the Common Areas, including any landscaping within public rights of ways and easements.
 - (c) To install, maintain and replace lighting in and around the Common Areas.
 - (d) To maintain the Yacht Club, the Amenity Package, the Common Areas and all their appurtenances including driveways, parking areas, and landscaping and to repair any damage to such facilities as reasonably necessary.
 - (e) To insure the Common Areas, including the Amenity Package, and any other property of any nature owned or controlled by the Association, any and all improvements located upon the real property owned by the Association, and to obtain other insurance as allowed or required under the terms this Declaration, the provisions of the Planned Community Act or the Condominium Act.
 - (f) To make assessments as set forth herein and collect said assessments as allowed by the terms of this Declaration and the Planned Community Act.
 - (g) To enter into management agreements with an independent property/association manager to manage the Development, the fees of which shall be a Common Expense.
- Alternatively, or in addition to the foregoing, the Association may enter into one or more service contracts with independent contractors to fulfill the rights and obligations of the

Association. Any such contract or agreement must comply with and be subject to the terms of the Planned Community Act.

(h) To bill for and collect assessments on behalf of the Marina Association and to exercise all rights available to an association under the Condominium Act as to the assessments for the Boatslip Units established under the Boatslip Declaration including the power to file and enforce liens as a Master Association under the terms of the Condominium Act.

(i) To serve as a Master Association for the purposes set forth herein, more specifically for the purpose of collecting assessments for the Marina Association including the powers set forth in Article V hereof.

Section 3.4 Annexation of the Marina Property. Declarant anticipates that the Marina Property will be annexed to this Declaration to the extent that the owners of the Boatslip Units will become Members of the Association and shall have access to the Common Areas including the Amenity Package. Upon such annexation, Declarant anticipates that it will file a Supplemental Declaration to confirm that all Boatslip Owners shall be deemed Owners hereunder and Class B Memberships shall extend to Boatslip Units owned by Declarant. Said Supplemental Declaration shall be in addition to the Boatslip Declaration to be filed by Declarant.

Section 3.5 Powers Reserved to the Marina Association. Upon annexation as provided above, the Marina Association shall retain the powers and obligations to establish budgets, maintain all Boatslip Units, limited common elements and Boatslip common elements (each as shall be described in the Boatslip Declaration) and to establish rules and regulations relating to the use of the Boatslip Units and their common elements by the owners thereof.