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BOOK 296 PAGE 861

DECLARATION OF
RESTRICTIVE COVENANTS
OF
HERON BAY SUBDIVISION

THIS DECLARATION OF RESTRICTIVE COVENANTS OF HERON BAY SUBDIVISION is made this 24th day of October, 1994 by KEJ Marketing Co., Inc., hereinafter referred to as "Declarant", and any and all persons, firms, or corporations hereinafter acquiring any of the within described property or any of the property hereinafter made subject to this Declaration of Restrictive Covenants of Heron Bay Subdivision, hereinafter "Restrictions."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Montgomery County, North Carolina known as Heron Bay Subdivision; and

WHEREAS, Phase 1 of Heron Bay Subdivision is more particularly described by plat(s) thereof recorded in the following Plat Book(s) and Page(s), Cabinet C, Slides 79D, 80A, 80B of the Register of Deeds for Montgomery County to which reference is hereby made for a more complete description; and plat(s) for additional phases made a part of this subdivision will be recorded at a later date; and

WHEREAS, said lots are so situated as to comprise a neighborhood unit and it is the intent and purpose of the owner to convey the aforesaid lots to persons who will erect thereon residences to be used for family purposes, subject to the provisions hereinafter set forth; and

WHEREAS, Declarant has agreed to establish a general plan of development as herein set out to restrict the use and occupancy of the property made subject to these Restrictions, and the Declaration of Covenants, Conditions and Restrictions of Heron Bay Subdivision and Homeowners Association, hereinafter "Declaration", recorded separately in the Office of the Register of Deeds for Montgomery County for the benefit and protection of the property and for the mutual protection, welfare and benefit of the present and the future owners thereof; and

WHEREAS, Declarant desires to provide for the preservation of the values of Heron Bay Subdivision made subject to these Restrictions and the Declaration and for the preservation and maintenance of the Common Property established by the Declaration and by the supplements thereto.

NOW, THEREFORE, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that all of the property described herein on above said recorded plat(s) is made subject to these Restrictions and the Declaration and shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of Heron Bay Subdivision as it now exists and is hereafter expanded and that such easements, restrictions, covenants and conditions shall burden and run with said property and be binding on all parties now or hereafter owning said real property and their respective heirs, successors and assigns, having any right, title or interest in the properties now or hereafter subjected to these Restrictions and the Declaration, or any part thereof, and shall insure to the benefit of each owner thereof and their respective heirs, successors and assigns.

PROPERTY SUBJECT TO THESE RESTRICTIONS AND THE DECLARATION
AND ADDITIONS THERETO

1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to these Restrictions and the Declaration, irrespective of whether there may be additions thereto as hereinafter provided, is located in Montgomery County, North Carolina, and is shown on maps recorded in Map Book(s) and Page(s) Cabinet C, Slides 79D, 80A + 80B in the Office of the Register of Deeds for Montgomery County.

See Record Book 311 Page 194
" " " 311 " 196
124017 " " " 311 " 198
" " " 312 Page 497
See " " 318 Page 708
See " " 320 " 375 + 377

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See Record Book 355 Page 240
" " " 446 " 693 7-30-02

BOOK 296 PAGE 862

2. Additions to Existing Property. Additional property may be brought within the scheme of these Restrictions and the Declaration and the jurisdiction of the Association in the following ways:

(a) Additional land within the area described in the metes and bounds description attached hereto as Schedule A and incorporated herein by reference may be annexed to the properties by Declarant and brought within the scheme of these Restrictions and the Declaration and within the jurisdiction of the Association, in future stages of development without the consent of the Association or its members; provided, however, that said annexations, if any, must occur within ten (10) years after the date of this instrument.

(b) Additional residential property and common area, consisting of not more than eight hundred (800) acres, outside of the area described in the aforementioned Schedule A may be annexed to the properties and brought within the scheme of these Restrictions and the Declaration and the jurisdiction of the Association in future stages of development without the consent of the Association or its members; provided, however, that said annexations, if any, must occur within ten (10) years after the date of this instrument.

(c) The additions authorized under subsections (a) and (b) shall be made by filing of record Supplementary Declarations of Declaration of Restrictive Covenants of the Heron Bay Subdivision and by filing of record Supplementary Declarations of Declaration of Covenants, Conditions and Restrictions of Heron Bay Subdivision and Homeowners Association, with respect to the additional properties which shall extend the scheme of these Restrictions and the Declaration and the jurisdiction of the Association to such properties and thereby subject such additions to assessments for their just share of the Association's expenses. Said Supplementary Declarations may contain such complementary additions and modification of these Restrictions and the Declaration as may be necessary to reflect only the different character and density of housing planned on the added properties and as are not inconsistent with the provisions of this Declaration. Condominiums may be permitted in a future phase if properly zoned.

GENERAL USE RESTRICTIONS

Declarant does hereby covenant and agree with all persons, firms or corporations hereafter acquiring title to any portion of the Property that the Property is hereby subject to these Restrictions as to the use thereof and do agree, publish and declare that the deeds hereinafter made by it to purchasers of the Property shall be made subject to the Declaration and to the following Restrictions:

1. Except as otherwise provided in these Restrictions, the lots shall be used for residential purposes only, and no structure shall be erected, placed, altered or permitted to remain on any lot other than one detached, single-family dwelling and related structures incidental to the residential use of the lot, such as garages and boat houses, which otherwise comply with these Restrictions, except that Declarant reserves the exclusive right to construct a roadway over any lot owned by it in order to grant access to other property acquired by Declarant and in such cases the remainder of any such lot not used for the roadway shall still be subject to these Restrictions. All single family lots fronting on Badin Lake, as shown by the record maps thereof shall have a minimum size of 20,000 square feet.

2. Each single-family dwelling shall have an enclosed, heated living area (exclusive of open porches, garages, and other unheated spaces) not less than One Thousand Eight Hundred (1,800) square feet on the waterfront and One Thousand Six Hundred (1,600) square feet otherwise, regardless of the number of stories. The design, location, and construction of all improvements on each lot (regardless of when such improvements are made) and the landscaping of each lot must be approved in advance by the Architectural Review Committee, hereinafter referred to as the "Committee", which Committee is established pursuant to the Declaration.

3. All improvements to the lot must comply with Montgomery County setback requirements. All structures shall be at least 10 feet from the side property line of any lot, except that they shall be at least 20 feet from the side property line abutting a street. The front setback line (facing Heron Bay Drive and Waterside Drive) shall meet or exceed Montgomery County subdivision regulations, however notwithstanding anything herein to the contrary, said front setback line shall not be closer than fifty (50) feet to any existing or newly constructed road, unless with prior written approval of the Declarant, or if Declarant so designates, by the Committee. Setback lines for fences and walls shall require written approval of the Committee. Declarant, or if Declarant so designates, the Committee, shall have the right to approve deviations from each of these setback requirements upon application of an individual lot owner if, for reasons of topography or well or septic approvals, strict compliance creates a hardship.

4. More than one lot (as shown on said plat(s)) or portions thereof, may be combined to form one or more lots by (or with the written consent of) Declarant, its successors and assigns. No lot may be subdivided by sale or otherwise, except by (or with the written consent of) Declarant, its successors and assigns. Upon combination or subdivision of lots, the building line requirements prescribed herein shall apply and the easements reserved herein shall be applicable to the rear, side and front lot lines of such lot as combined or subdivided. The resulting building site and structures erected thereon must otherwise comply with these Restrictions and the new property line of the resulting building site shall be used to compute the set-back lines as set forth herein.

5. All connections of private driveways to the Heron Bay road system, and all connections of private easements and right-of-ways to that road system shall be constructed and maintained in accordance with the rules, regulations and specifications as approved by The Architectural Review Committee on Heron Bay Homeowners Association.

6. There shall be no signs, fencing, or parking permitted within the road right-of-way.

7. No building, fence, wall, pool, outbuilding, driveway, or any other accessory feature to the dwelling or any other structure upon any lot shall be commenced, erected, placed, maintained or altered on any lot or combination of contiguous lots until the Complete Construction Plans (hereinafter "Plans") are approved in writing by the Committee or its designated agents. The Committee's refusal or approval of plans may be based upon purely aesthetic considerations, which in its sole discretion the Committee shall deem sufficient, but approval shall not unreasonably be withheld. One copy of all plans and related data shall be furnished to the Committee for its records. If no action is taken by the Committee within thirty (30) days after plans are submitted to it, the owner may proceed to build without approval.

8. Construction of new residential buildings only shall be permitted, it being the intent of this covenant to prohibit the moving of any existing building or portion thereof on a lot and remodeling or converting the same into a dwelling unit in this subdivision, excepting however, Declarant's mobile offices provided for hereinbelow.

9. With the exception of construction which is interrupted or delayed due to physical damage to the work in progress (such as damage due to fire, lightning, windstorm, hail, riot or civil commotion, explosion, or theft), any dwelling constructed upon a lot must be completed within one (1) year subsequent to commencement of construction, except with the written consent of Declarant, its successors or assigns, or, if the Declarant so designates, by the Committee. The normal period of completion time for outbuildings or other improvements shall be presumed to be four (4) months from the issue date of the building permit. In the event that completion of the dwelling, outbuildings, or other improvements on any lot is not completed within one year, and it is determined that construction progress has diminished to such an extent that completion of the dwelling, outbuildings, or other improvements is unlikely within 120 days, the Heron Bay Homeowners Association, hereinafter referred to as the "Association", will be advised of this determination. The Association shall then have the right to give notice to the owner that the owner has the obligation, within 30 days, to complete the removal of all the construction work in progress, including without limitation, the foundation and all building

improvements and all stored building materials, and fill and grade the lot so that it is restored to its natural grade level, and the Association shall have the right to undertake this work upon owner's failure to do so and charge the cost to the owner and place a lien upon the lot upon owner's failure to pay these charges.

10. No trailer, truck, van, mobile home, tent, camper, barn, garage, or other outbuilding or temporary structure parked or erected on lots in this Subdivision shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence; provided, however, that this prohibition shall not apply to shelters used by the contractors during the construction of the main dwelling house, it being clearly understood that these temporary shelters will not be permitted to remain on any lot after completion of construction. The Committee shall have the right to approve or disapprove these temporary construction shelters or vehicles. The Committee, upon approval of a temporary construction shelter or vehicle, will issue a letter stating the length of time such shelter will be allowed to remain upon such lot and where such shelter is to be located upon such lot. Modular homes are permissible if approved by the Committee.

11. All homes constructed in Heron Bay Subdivision must be supplied with water for normal domestic use from individual privately drilled wells, or from a public utility company, if available. Each individual owner shall locate the well drilled on such owner's lot so as to comply with all the governmental regulations regulating the minimum distance between such well and septic fields proposed or approved for owner's lot and all lots adjoining such owner's lot.

12. Exposed exterior walls composed of the following materials shall be prohibited from Heron Bay Subdivision: concrete block, imitation asphalt brick siding, imitation asphalt stone siding, tar paper.

13. Declarant shall be permitted to erect one mobile office on any lot that it owns for the purpose of maintaining a sales information center and construction office.

14. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No animals or poultry of any kind may be kept or maintained on any of said lots, except a reasonable number of dogs and cats and other indoor household pets. Each owner must see to it that all of the owner's dogs are kept on the owner's property unless leashed. No dogs shall be permitted to roam the property and the Association may have strays and dogs that are not leashed and are found off their owner's lot picked up by governmental authorities. The throwing or dumping of trash, garbage, and waste materials shall not be permitted. The interference of any stream or future waterways so as to cause pollution or stagnation in these waterways is prohibited. There shall be no excavation which does not pertain to the building or construction of a home. Bottled gas containers and oil tanks shall be screened from public view. There shall be no above-ground swimming pools, unless approved by the Committee.

15. No portion or part of any lot shall be used or maintained as a dumping ground for rubbish or other refuse. Trash, garbage, or other waste shall not be kept, except in sanitary containers screened from view from all roads, all other lots, and from the Common Property provided that the Declarant, prior to the sale of such lot, may use portions of such lot as a burial pit in accordance with governmental regulations.

16. In addition to the easements that are shown on the recorded plats of Heron Bay Subdivision, easements ten (10) feet in width along the lot lines of all lots are reserved by Declarant for installation, repair, replacement and maintenance of utilities, including the right to keep said easements free and clear of all obstructions. An easement of twenty (20) feet is reserved for such purposes along the rear lines of all lots that do not adjoin other lots or properties within Heron Bay Subdivision. As between the easements reserved by these Restrictions and the easements that are located in the same areas as shown on the record maps, the easements that are greater in width shall be the easements that are in effect. Furthermore, there shall exist a 10 foot easement for the purpose of a foot path to group piers designated by plat. The easement shall be for the common use of only the lot owners grouped together for the

respective group piers.

17. Declarant reserves a temporary construction easement of twenty-five (25) feet in width along both sides and running parallel to streets or roads, which easements shall expire the earlier of twelve months after the particular road construction commences, or December 31, 1999, or upon the acceptance of such streets or roads for maintenance by governmental authority.

18. No outside clotheslines shall be permitted. No satellite dishes shall be permitted unless concealed from view from all lots and open spaces. The design of such enclosures must be approved prior to erection by the Committee. Mailboxes shall be of a design, color and choice of materials as designated by the Declarant or, if the Declarant so designates, by the Committee, and may not violate North Carolina Department of Transportation standards.

19. There shall be no junk automobiles, junk of any sort, unserviceable vehicles, or salvage stored or placed or allowed to remain on or in any portion of this Subdivision. Unless located within enclosed garages, no large boat and/or boat trailer (over 28 feet in length), travel trailer, motor home, tractor trailer truck, or any other such vehicle shall be kept or maintained or located upon any lot unless and except with prior approval of the Committee. Other boats and/or boat trailers (less than 28 feet in length) must be stored behind the building set back line. No vehicles that are disabled or under repair shall be kept upon any lot unless located within enclosed garages. Unlicensed automobiles, including antique cars, if present must be stored out of sight in a garage. Large trucks shall not be parked on a regular basis within this Subdivision. No lot shall be used for storage of building materials prior to the issuance of the building permit for the Primary Residence. Large truck shall be defined as any non-passenger vehicle larger than a pick-up truck.

20. No billboards or signs of any description shall be displayed upon any lot with the exception of those approved by the Declarant or if the Declarant designates, by the Committee, the Declarant reserves the right to place and maintain appropriate development signs at the entrance to this Subdivision. All sign colors must be brown or tan, unless otherwise approved by Declarant, or if Declarant so designates, by the Committee. Declarant also reserves the right to erect and maintain signs designating streets, boat landings, recreational areas, and any other sign that will aid in the development of Heron Bay Subdivision.

21. Except within the building site or within 20 feet of the main dwelling, no trees of any kind in excess of 6 inches in diameter at ground level may be removed from any lot without prior approval of the Committee.

22. Declarant, or its successors and assigns, will designate a right-of-way to the Association which will provide access for lot owners to a community pier, boat slips, and a boat ramp or other amenities which will be maintained by the Association. Notwithstanding anything herein to the contrary, Declarant will also deed to the Association at least one half (1/2) acre fenced for dry boat storage, or for any other use permitted in these Restrictions, for its use and maintenance. Declarant will, if permitted by Montgomery County, provide a security gate across the entrance road, Heron Bay Drive, Phase I of Heron Bay Subdivision to be maintained by the Association.

23. As provided for herein (see Section 2 of "Property Subject To These Restrictions and Declaration and Additions Thereto"), it is understood that Declarant, its successors and assigns, may develop, subdivide or sell additional tracts or parcels of land. Declarant reserves the right for its successors or assigns to connect such additional property to this Subdivision and to grant easements to use the roads and community access to Badin Lake and recreational areas of this Subdivision.

24. Definitions: Reference to "this subdivision" in this document is intended to refer only to Lots 1 through 31, Phase I of Heron Bay Subdivision and the Additions to Existing Property as provided for herein. Reference to "Association" in this document is intended to refer only to the Heron Bay Homeowners Association.

25. Nothing herein contained shall be construed as imposing any covenants and restrictions on any property of the owner of this Subdivision other than the Property that is subjected to these Restrictions. The Property herein described is also made subject to the Declaration of Covenants, Conditions and Restrictions of Heron Bay Subdivision and Homeowners Association recorded separately, which Declaration is incorporated herein by reference.

26. Enforcement of these Restrictions may be at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction herein contained. In the event of enforcement of these Restrictions at law or in equity and a violation hereof is judicially determined, then the violator shall be assessed with the costs of such action, including without limitation reasonable attorneys fees.

27. The Declarant and purchasers of lots in Heron Bay Subdivision understand that the vesting of rights relating to proposed piers, docks, boat access ramps, or disturbance of the shoreline buffer is subject to the terms and conditions set out by Yadkin, Inc.

28. Declarant reserves the right to assign its rights to a successor who also assumes the Declarants responsibilities.

29. Judicial invalidation of one or more of the provisions hereof shall not adversely affect the remainder hereof which shall remain in full force and effect.

THESE RESTRICTIONS RUN WITH THE LAND

This Declaration of Restrictive Covenants of Heron Bay Subdivision and the Declaration of Covenants, Conditions and Restrictions of Heron Bay Subdivision and Homeowners Association compose the general plan of development for the Property herein described and run with the land and shall benefit and be binding on all parties and persons (and their respective heirs, representatives, successors and assigns) claiming title to any of the Property herein described for a period of thirty (30) years from the date these Restrictions are recorded, after which time said Restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a sixty-six percent (66%) majority of the then owners of the lots or condominiums and the Declarant has been recorded agreeing to change said Restrictions in whole or in part. These Restrictions may be amended by the affirmative vote of the owners representing sixty-six percent (66%) of the lots or condominiums and the Declarant at the time of the vote.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Restrictive Covenants of Heron Bay Subdivision to be duly executed this 24th day of October, 1994.



(CORPORATE SEAL)

KEJ MARKETING CO., INC.

By: Rita A. Collins
Rita A. Collins, President

Maxine W. Turner
Assistant Secretary

STATE OF NORTH CAROLINA)
COUNTY OF Montgomery)

I, a Notary Public of the County and State aforesaid, certify that Rita A. Collins personally came before me this day and acknowledged that she is the President of KEJ Marketing Co., Inc., a North Carolina corporation, and that by authority duly given and as the act and deed of the said corporation the foregoing instrument was signed in its name by her as its President, sealed with its corporate seal and attested by Maxine W. Turner as its Assistant Secretary.

Witness my hand and seal this 24th day of October, 1994.

Jammy L. Crosier
Notary Public

My Commission Expires Nov. 11, 1995
Commission expires: _____



STATE OF NORTH CAROLINA
COUNTY OF MONTGOMERY

The foregoing certificate(s) of Jammy L. Crosier
is (are) certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the Office of the Register of Deeds of MONTGOMERY County, N. C. in Book 296 at Page 861
This the 2nd day of November, 1994, at 3:27 o'clock P M.
Sally M. Morris by Dianne M. Duncan, Deputy
REGISTER OF DEEDS

SUBDIVISION STREET DISCLOSURE STATEMENT

SUBDIVISION: Heron Bay, Phase I, County of Montgomery, State of North Carolina, consisting of all lots as shown on plat recorded in the Montgomery, County Public Registry, North Carolina in Plat Book Cabinet C at Page (s) Slides 79D, 80A, 80B, said recording shall hereinafter be referred to as "Recording."

The undersigned Developer and Seller does hereby certify that there are various 50-foot private road(s) shown on said Recording and that said 50-foot private road (s) are designed and are to be built to Montgomery County and State of North Carolina standards and have been approved as proposed, as it relates to stone and pavement width and depths.

The undersigned Developer and Seller further certifies that said 50-foot private road(s) aforesaid will be dedicated as private road(s) under the Montgomery County Subdivision Ordinance and that said road(s) is/are defined as a private road(s) for the purposes of maintenance as related to the County and/or State Highway Department.

The undersigned Developer certifies and represents that certified funds in an amount satisfactory to the Planner and Supervisor of Subdivision Approval for Montgomery County have been placed with Montgomery County, said sum equalling more than 100% of the projected cost of the construction of said road(s) in the judgement of the County Planner.

Until such time as said 50-foot private road(s) shall meet the minimum standards adopted by the County and/or State Highway Department for acceptance in the Highway System, the responsibility for maintenance and repair to said private road(S) shall be borne by the Heron Bay Homeowner Association.

This the 24th day of October, 1994.

DEVELOPER AND SELLER:

KEJ MARKETING CO., INC.

Mageline M. Turner
Asst. Secretary

By: *Rita A. Collins*
Rita A. Collins, President

I hereby acknowledge receipt of the above Subdivision Street Disclosure Statement, this the _____ day of _____, 19 ____.

BUYER: _____

BUYER: _____

Address of Buyer: