

DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
EMERALD BAY SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EMERALD BAY SUBDIVISION AND HOMEOWNERS ASSOCIATION, hereinafter referred to as "Declaration" is made this 15<sup>th</sup> day of September, 1995 by KEJ Marketing Company, Inc., hereinafter referred to as "Declarant", and any and all persons, firms, of corporations hereinafter acquiring any of the within described property or any of the property hereinafter made subject to this Declaration.

WITNESSETH:

WHEREAS, Declarant is the owner of certain Property in Rowan County, North Carolina know as Emerald Bay Subdivision, Phase I of which is more particularly described by plat(s) thereof recorded in the following Plat Books and Pages: in the Office of the Register of Deeds for Rowan County to which reference is hereby made for more complete descriptions; 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 this Declaration for the benefit of the present and the future owners thereof; and

WHEREAS, Declarant intends to subject to this Declaration additional portions of Emerald Bay Subdivision for the purpose of extending the general scheme of development to such additional Property and accordingly declares that Emerald Bay Subdivision may be expanded to include additional property; and

WHEREAS, Declarant desires to provide for the preservation of the values of Emerald Bay Subdivision as expanded hereby and hereinafter made subject to this Declaration and for the preservation and maintenance of the Common Property established by the Declaration and by the supplements hereto.

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 on said recorded plats and all of the property hereinafter made subject to this Declaration by recorded supplements hereto referencing subsequently recorded plats, 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 Emerald Bay Subdivision as it now exists and is hereafter expanded and that such easements, restrictions, covenants, and conditions shall burden and run with said real Property and their heirs, successors and assigns having any right, title, of interest in the Properties now or hereafter subjected to this Declaration or any part thereof, and shall inure to the benefit of each owner thereof and burden each owner's real Property that is subjected to this Declaration.

ARTICLE I

DEFINITIONS

"Association" shall mean and refer to Emerald Bay Homeowners Association, Inc., a not for profit North Carolina corporation, its successors and assigns.

"Owner" shall mean and refer to any contract buyer and/or the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of any of the Property made subject to this Declaration, but excluding those having such interest merely as security for the performance of an obligation, provided however, the Declarant shall not be deemed an Owner.

"Property" shall mean and refer to that certain property shown on plat(s) recorded in Plat Books and Pages: \_\_\_\_\_ in the Office of the Register of Deeds for Rowan County, North Carolina and any additional

property which Declarant may make a part of this Subdivision, as provided for in the Declaration of Restrictive Covenants of Emerald Bay Subdivision, recorded separately. The terms "Property," "Subdivision," and "Emerald Bay" are interchangeable.

"Lot" shall mean and refer to any improved or unimproved building lot shown upon any recorded subdivision plat of this Subdivision.

"Dwelling Unit" shall mean and refer to the completed single family home located upon a Lot, except as may refer to a condominium unit later developed.

"Declarant" shall mean KEJ Marketing Company, Inc. a North Carolina corporation, and its successors and assigns if such successors and assigns acquire two or more undeveloped lots from the Declarant for the purpose of development and if the rights and obligations of the Declarant hereunder are expressly assigned to and assumed by such successors and assigns.

"Common Property" shall mean all property owned by the Association for the common use and enjoyment of all or a designated class of members. Common Property includes without limitation all existing and future roads and right-of-ways including the easement from the subject property to Black Road and all greenways, median strips, cul-de-sac centers, planting areas, and recreational areas, and facilities, open space, walking trails, easements, boat ramps, community boat slips, and community piers that are developed on the Common Property (it being understood that this enumeration is by way of description of the type of facilities that may be developed and in no way shall bind or obligate the Declarant to provide any of the described facilities) and all entry way, directional, and informational signs ( and the areas set aside for their location) and any other property as may be purchased or provided for the common use and benefit of the Declarant, the Owners, and any member in the Association, including without limitation such Common Property. Except by the Declarant, the Common Property shall not be used for public commercial purposes, but may be used for enjoyment of the Association's members for fund-raising activities to support the purposes of the Association.

"Committee" shall mean the Architectural Review Committee established by the Declarant for the purpose of administering control over architectural, landscaping, and related matters, as provided in Article V of this Declaration.

## ARTICLE II

### RIGHTS AND DUTIES OF THE ASSOCIATION AND PROPERTY OWNERS ASSESSMENTS

Section 1. Owner's Easements of Enjoyment. The Declarant and, to the extent provided by this Declaration, every Owner shall have a right and easement of ingress, egress, and regress over the Common Property and over the roads within the Property, to be used in common with others, for the purpose of providing access to lots(s) owned or dwelling unit(s) owned by the owner for himself, his family, agents, licensees and invitees, and for his and their non-exclusive use and enjoyment of the Common Property, subject however to the limitations on such use and enjoyment of the Common Property as provided for in reside this Declaration. It is understood that the private roads may be used to gain access to land behind the phases in the development if the same is not developed by the Declarant. Every Owner, and the members of such Owner's family who reside with such Owner or are overnight guests of such Owner, shall have the right to use the recreational areas within the Common Property, subject however to such Owner paying when due the dues and assessments of the Association and abiding by all rules and regulations of the Association, including without limitation those governing the use of the recreational areas and the Common Property. Non-Owners shall only be entitled to use the recreational areas on such terms and conditions as the Association may select.

#### Section 2. Annual Assessments.

(a) The Association shall have the duty to repair, replace, and maintain all recreational areas and improvements located thereon, and all streets, roads, road right-of-

ways, and other Common Property. The Association shall have the right, from time to time, to establish a reasonable assessment, which assessment shall be paid by each Owner in such periodic installments as the Association may determine, to be used to pay: (1) the operating and administrative expenses of the Association; (2) the costs of maintenance, upkeep, replacement and repair of all recreational areas, and improvements located thereon, and all streets, roads, road right-of-ways, and other Common Property; and (3) other expenses necessary or useful to maintain and operate the Association and the recreational facilities (including, without limitation, the procuring, maintenance and paying the costs of insurance relate to the Common Property and of surety and other bonds relate to the management of the Common Property and the Association). It is understood (by way of example and without limitation) that the assessment funds shall be used for such matters concerning Common Property as the following: maintenance, repair and replacement of improvements within the recreational areas, the seeding and re-seeding road right-of-ways and Common Areas, erosion control, repairing of road shoulders, surfacing, patching and resurfacing of parking lot and road pavement, placement of gravel, and planting and maintenance of shrubs, trees and seasonal flowers.

(b) The annual assessments may also be used by the Association for the purpose of adding to the recreational facilities.

(c) The annual assessment payable by each Owner shall be ~~\$195.00~~ per lot per calendar year. The annual assessment shall be due and payable on January 31 of each year, commencing January 31, 1997, provided the board of directors may elect to permit payment in such installments and at such times as it shall determine. This assessment shall be deferred as to any lot purchased by a builder with the intent to build a house for resale to the public at large. This assessment will be payable as to any lot purchased by a builder who purchases a lot for the purpose of building a custom home under contract with the ultimate residents. This assessment will be prorated on a calendar year basis from the date title to each lot for which an assessment is payable is transferred to the Owner. The assessment will be due though construction may be ongoing and not get completed.

(d) The annual assessment may be increased or decreased by the board of directors of the Association without a vote of the membership to an amount not more than fifteen percent (15%) in excess of the annual assessment for the previous year. A majority vote of each class of voting members of the Association must approve an increase or decrease in the yearly assessment if the increase or decrease exceeds the assessment for the previous year by more than fifteen percent (15%).

(e) Annually the board of directors of the Association shall have determined and shall have given written notice to each Owner of the annual assessment affixed against each owner for the immediately succeeding calendar year.

### Section 3. Special Assessments.

(a) In addition to the assessments specified hereinabove, the Association may levy special assessments for the purpose of supplementing the annual assessment if the same are inadequate to pay the reasonable maintenance expenses and operating costs of the Association as described in Section 2 hereof, provided that any such special assessments shall have the assent of a majority of each class of the voting members of the Association at a duly called meeting.

(b) For lot owners assigned slip rights on a group pier in Subdivision, there will be an annual special assessment of \$50.00 per lot for the purpose of reasonable maintenance expenses and operating costs of a group pier with a cluster of boat slips and said slips shall be for the exclusive benefit of those lot owners, their families, agents, licensees and invitees and for their exclusive use and enjoyment. (See Article II, Section 5). The operation, funding and maintenance of this group pier and this cluster of boat slips shall not be the responsibility of the Association.

#### Section 4. Removal of Obstructions and Unsightly Growth, Debris, and Materials.

(a) The Association may remove any obstructions of any nature located within road right-of-ways or other Common Property (including but not limited to trees, shrubs and mailboxes) which, in the opinion of the Association, either might produce a hazard or might interfere with the ability or willingness of the State of North Carolina (or agency or department thereof) to take over the responsibility for maintenance of the roads.

(b) The Association shall have the right, in its sole discretion, to charge back the actual cost to it of removing obstructions against the Owner who directly, or throughout his agents, contractors or invitees caused or permitted the obstruction to be placed in the road right-of-way or other Common Property, an such Owner shall indemnify and save the Association harmless from all liability, claims, damages and expense imposed upon the Association, at law or in equity, caused by or resulting from the placement of the obstruction in the road right-of-ways or other Common Property. In the event the Owner responsible for such charge or liability as aforesaid fails and refuses after demand by the Association to pay said charge or liability, then the Association shall have a lien against his lot thereon and may enforce collection of the charge or liability, together with reasonable attorneys' fees, by any and all remedies afforded by law or in equity, including without limitation, the filing of a notice of lien and perfecting the same as by law provided, to the end and that such charge or liability shall become a charge against the said lot or dwelling unit.

(c) If the Association, in its sole discretion, determines that any lot has become unsightly due to grass or weeds that have not been mown, or due to debris of any nature having accumulated on the lot, then the Association shall have the right from time to time to enter the said lot for the purpose of mowing the grass or removing the debris. At least ten (10) days prior to entering a lot for said purpose, the Association shall advise the Owner by letter, sent to his last known address, of the action to be taken if the Owner does not remedy the problem within the said ten (10) day period. The Association shall take reasonable steps to avoid damage to any trees planted on such lot, to the extent that the Association has been put on written notice in advance by the Owner of the approximate location on a chart or map of such lot showing the location of planted trees to be avoided.

#### Section 5. Duty to Make Repairs

(a) Until accepted for maintenance by governmental authority, the obligation for the repairs, maintenance and improvements of the roads as shown the aforesaid plat(s) or any other common property shall be the responsibility of the Association with the Owner of each lot except as provided herein, being responsible for payment of the assessments levied by the Association, which assessments shall be the personal obligation of the Owner of each lot.

(b) The decision to expend Association funds to repair and maintain the roads or other Common Property shall be made by a majority of the board of directors of the Association. By such vote, the board may delegate such authority to any committee of the board. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his lot.

(c) Notwithstanding the foregoing, each Owner of a lot shall be solely responsible for any repairs to a road right-of-way or other Common Property caused by the negligent act or acts of said owner, his or her invitees, agents, licensees, or guests. For these purposes, it shall be a negligent act for any building material to be unloaded on any road or road right-of-way.

#### Section 6. Late Charges and Interest on Unpaid Assessments.

Any assessment not paid within thirty (30) days after the due date shall be subject to such late charges and shall bear interest at a rate per annum as shall be determined by the

board of directors of the Association, which interest rate shall not exceed the highest rate of interest allowed by law. The initial late charge imposed for late payment of any assessment is \$25.00 and shall be charged as to any assessment that is not paid within 30 days of its due date. The initial interest rate for late payment is 18% per year (1.5% per month) which shall commence to accrue on any assessment or other account balance that is not paid within thirty (30) days of the date due. The initial date upon which liens may be filed for failure to make payment of assessments and other charges is thirty (30) days after the due date. The board of directors may change the initial late charge, interest rate, due dates and lien assessment date by majority vote of the directors.

#### Section 7. Lien for Unpaid Assessments

(a) In the event the Owner of any lot fails and refuses, after demand by the Association, to pay any annual or special assessment then the Association shall have a lien against said lot and may enforce collection of said assessment in law or in equity, including without limitation, the filing of a notice of lien and perfecting the same as by law provided to the end that such unpaid assessment together with the costs and expenses of collection, including without limitation, reasonable attorneys' fees, shall be a charge and lien against the said lot.

(b) To secure the payment of the annual and special assessments as are levied by the Association, together with the cost of collection including attorney's fees, all such charges shall be a continuing lien upon the lot against which the assessments are made. Such charges shall also be their personal obligation of the person(s) who were the owner or owners of such lot at the time the assessment came due. Their personal obligation shall remain a lien upon the lot upon transfer of title but shall not become the personal obligation of the purchasers thereof unless expressly assumed by them.

(c) Neither the assessments nor the costs of collection shall be a lien upon any Common Property nor shall the lien upon any lot for such charges be senior to any first lien mortgage or first lien deed of trust regardless of the fact the lien arose prior to the date and time of recording of any such first lien mortgage or deed of trust.

### ARTICLE III

#### MEMBERSHIP, VOTING RIGHTS, OFFICERS AND MEETINGS

Section 1. Membership Every owner of a lot which is subject to this Declaration shall be a member of the Association. Membership is appurtenant to and may not be assigned. If and when Declarant develops additional phases in the Subdivision, the Owners of those lots shall be members of the Association. The Declarant shall also be a member so long as it owns property within this expandable Subdivision.

Section 2. Class Membership Voting. The Association shall have two (2) classes of membership:

##### Class A

Class A members shall be all lot Owners with the exception of Declarant, and shall be entitled to one vote for each lot owned. When more than one (1) person owns an interest in a lot all such persons shall be members by the vote for such lot shall be exercised as they, among themselves, shall determine in writing, which writing shall be filed with the Secretary of the meeting prior to voting, but in no event shall more than one vote be cast with respect to any lot.

##### Class B

(a) Class B members shall be entitled to vote then (10) votes for each lot owned. Class B membership shall consist of the Declarant, or its successors or assigns, until the happening of eight of the following events whichever occurs earlier.

1. The earlier of four months after ninety percent (90%) of all the lots and undeveloped land in the Subdivision are sold as well as all adjacent undeveloped acreage sold and conveyed by the Declarant to unrelated third parties; or

2. Twelve (12) years from date of recordation of this Declaration; or

3. At such time as Declarant voluntarily relinquishes Majority control of the Association by a duly recorded instrument.

(b) Upon the happening of the earlier of either the three above described events, Class B membership shall cease and terminate and shall be converted to Class A membership.

Section 3. Board of Directors. There shall be three (3) members of the board of directors of the Association who shall serve until such time as their successors are duly elected and agree to serve. The directors shall have annual meetings and other such meetings as may be called at the request of the president of the Association or by any three (3) directors.

Section 4. Suspension of Voting Rights. The Association shall have the right to:

(a) Suspend the voting rights (if any) of any Owner for any period during which assessment on his lot remains unpaid and enforce collection of the same; and

(b) Suspend the voting rights (if any) of each Owner who is a contract buyer for any period of time during which payments to the Declarant pursuant to terms of said contract are delinquent, during which period of time the Declarant shall succeed to the voting rights of said contract buyer.

Section 5. Limited Common Area (Boat Slips).

(a) Lot Owners with slips assigned on a group pier in Phase 1 of Emerald Bay as shown on the aforesaid plot(s), together with their family members, agents, licensees, and invitees, shall be eligible for the exclusive use and enjoyment, in common with each other, of a group pier with a cluster of boat slips as approved by Yadkin, Inc. It is understood that the other Owners in Emerald Bay shall not have the right to the use of said pier and boat slips, nor shall they have any obligations with respect to the maintenance and upkeep thereof.

(b) Each Owner shall pay an annual assessment of \$50.00 on January 1 of each year, commencing January 31, 1997, for the purpose of providing necessary funds for the maintenance and upkeep of the group pier and boat slips and on slips on the community pier. This annual assessment may be increased only with a majority vote of the Owners entitled to the use of said pier and boat slips. The Owner of each lot sharing the group pier slips shall be entitled to one vote for said purpose.

(c) The Owners eligible to the use of said pier and boat slips shall among themselves elect a designated Owner to act as treasurer for said Owners, who shall have the responsibility of opening and maintaining a bank account on behalf of said Owners. The treasurer shall receive the annual assessments, deposit the same in the Owners' bank account, and keep records of all receipts and expenditures. The treasurer shall provide such records to all of the Owners of said lots annually in January of each year, and also upon the request of any Owner of said lots.

(d) All maintenance, upkeep, and repairs to the group pier and boat slips shall require approval of a majority of the Owners entitled to the use thereof.

(e) Any Owner of said lots who does not pay the annual assessment as provided herein shall lose the privilege of the use and enjoyment of the group pier and boat slips for so long as said assessments shall remain unpaid. If the slip becomes a hazard, the Home Owner's Association may remove it and bill the Owner for the expense.

## Section 6. Additional Phases

The Declarant intends (but is not obligated) to develop one or more additional phases of Emerald Bay Subdivision and incorporate the same within the provisions of this declaration. Such phases may include condominiums which if developed will have one vote each and will pay the same dues as a lot owner.

### ARTICLE IV

#### CONVEYANCE OF COMMON PROPERTY

Within twelve (12) years from the date of recording of this Declaration, Declarant will convey by deed its right, title, and interest in and over the road right-of-ways and any other Common Property within the Subdivision to the Association.

### ARTICLE V

#### ARCHITECTURAL CONTROL

(a) In order to control design and location of the houses and other improvements to be constructed, erected, placed, or installed (hereinafter "improvement") upon the lots in the Subdivision, the Declarant hereby creates an Architectural Review Committee (hereinafter "Committee") for the purpose of reviewing, approving, suggesting changes to, and rejecting plans and specifications for such improvements (regardless of when such Improvements are made), and the landscaping of each lot. This Committee is also created for the purpose of reviewing, approving, suggesting changes to, and rejecting swimming pools, out buildings, boat houses, ramps, piers, driveways, enclosures for satellite dishes, and if Declarant so desires, for mailbox design. This Committee will be responsible for the control of size, color, materials, and content of rental and sales signs in this Subdivision, and for the approval or disapproval of boats, boat trailers, house trailers, motor homes, tractor trailer trucks, or any other such vehicle, that are kept or maintained or located upon any lot unless within enclosed garages. The Committee will also be responsible for the control of temporary construction shelters or vehicles in this Subdivision.

(b) The Committee shall consist of three persons designated or appointed from time to time by the Declarant, its successors or assigns, one of whom shall be appointed from among lot owners. After 90% of the lots and undeveloped land in subdivision are sold by the Declarant, its successors or assigns, said Committee shall be elected by a majority vote of the Board of Directors; provided, however, Declarant, its successors or assigns, shall be entitled to at least one Committee member until all of its lots in this Subdivision have been sold.

(c) Except within the building site (unless within 20' 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. No building, fence, wall, outbuilding, 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.

(d) The Plans include the complete construction plans, the plot plan (showing proposed location and elevation of such building, fences, walks, drives, parking area, etc.) proposed building plans and specification, exterior color, finish, and materials. The areas over which the approval shall be required shall include but shall not be limited to the size and plan of the principal residential structure, and all accessory buildings, structures and improvements on the lot, the location of the well, the size and plan of the garage or carport, location and manner of construction of each driveway, swimming pool, utility building, patio, tennis court, and other improvements for athletic, recreational, or gymnastic purposes, and all other exterior improvements, the composition and color of raw and finished materials used on the exterior of all structures, and the location and type of any landscaping, shrubbery, and other plantings.

(e) The Committee or its designated agents shall have thirty (30) days after physical receipt of the plans to accept or reject the same in whole or in part. If no response by the Committee has been made in writing within said 30 days, the plans shall be deemed to be approved as submitted. After the plans are approved and after the Committee gives written permission for construction to begin, the actual construction shall be commenced and completed in accordance with the approved Plans, together with the requirements of the Declaration and, in this regard each Owner shall provide the Committee with the foundation survey as soon as it is made. The Committee shall have the right to waive setback violations when the remedial costs of correcting such violation, in the Committee's opinion, would impose undue hardship upon the violator.

(f) The actual construction shall be the responsibility of the Owner of the lot and his builder. Any permission granted for construction under this covenant and any designation of approved licensed contractors shall not constitute or be construed as an approval, warranty or guaranty, expressed or implied, by the Declarant or the Committee or its designated agent of the structural stability, design or quality of any building or other improvement or of the contractor who constructs such buildings or other improvements.

## ARTICLE VI

### 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 shown on the recorded plat(s) herein referred to, and all Property presently owned as part of Emerald Bay Subdivision which plat(s) are to be recorded, and all Property which may be acquired in the future to be made a part of Emerald Bay Subdivision, is made subject to the Declaration of Restrictive Covenants of Emerald Bay Subdivision (hereinafter referred to as "Restrictions") which Restrictions shall be recorded separately and shall refer to this Declaration and incorporate it by reference.

## ARTICLE VII

### CAPTIONS, ENFORCEMENT AND INVALIDATION

Section 1. Whenever the context and construction so require, all words used in the singular number herein shall be deemed to have been used in the plural, and vice versa, and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine.

Section 2. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provisions hereof.

Section 3. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. In the event it is necessary to enforce this Declaration by appropriate legal or equitable proceedings, the party or parties violating or attempting to violate the same shall be liable for the cost of such proceedings including reasonable attorneys' fees.

Section 4. Invalidation of any one or more of these covenants by judgment or court shall not adversely affect the balance of this Declaration, which shall remain in full force and effect.

Section 5. The Declarant reserves the right to amend this Declaration from time to time without joinder of any of the Owners for the following purposes:

(a) To clarify the meaning of or to correct clerical errors in the Declarations.



Commission expires: \_\_\_\_\_