

STATE OF NORTH CAROLINA
COUNTY OF MONTGOMERY

ACKNOWLEDGEMENT,
AGREEMENT AND BOAT SLIP
ASSIGNMENT

THIS ACKNOWLEDGEMENT, AGREEMENT, AND BOAT SLIP ASSIGNMENT, entered into this _____ day of _____, 2002, by and between Heron Bay Homeowners Association, Inc. (the "Association", hereinafter), a North Carolina non-profit corporation with its principal place of business in Montgomery County, North Carolina; and KEJ Marketing Co., Inc., a North Carolina corporation with a principal place of business in Mecklenburg County, North Carolina (the "Developer", hereinafter), (the Association and the Developer being sometimes referred to hereinafter as the "Assignors"); and _____ and _____, both citizens and residents of _____ County, _____, (the "Owners", or the "Assignees", hereinafter);

WITNESSETH:

WHEREAS, the Owners own certain real property located in Heron Bay Subdivision in Montgomery County, North Carolina; and

WHEREAS, the Developer developed said subdivision in Montgomery County, North Carolina and continues to be involved in its development; and

WHEREAS, the Association is an organization which was created for the purpose of allowing the owners in Heron Bay Subdivision to regulate certain matters of common interest to them in regard to their property; and

WHEREAS, Alcoa Power Generating, Inc., Yadkin Division, (formerly known as Yadkin, Inc., "Yadkin") owns the majority of the property adjoining Narrows Reservoir, generally to an elevation of 545.0 feet (Yadkin Datum), approximately 4 vertical feet above the normal full-pool elevation, which abuts the Heron Bay Subdivision; and

WHEREAS, APGI, under the Federal Power Act, is licensed by the Federal Energy Regulatory Commission (FERC) to operate hydroelectric Project No. 2197.

Yadkin is the division of APCI responsible for operating the Project. Narrows Reservoir (locally known as Badin Lake) is in one of the developments of the Project. APCI owns the land under the normal full pool (541.1' contour, Yadkin datum) of Narrows Reservoir along with a buffer strip of land between the 541.1' contour and the 545' contour between the Reservoir and the Heron Bay Subdivision. Under its license, Yadkin may only exercise certain authority "if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project." In order to ensure that these values are maintained, Yadkin has adopted a Shoreline Management Plan, including a Shoreline Stewardship Policy, which was approved by FERC on November 9, 2000; and

WHEREAS, in exchange for Yadkin's agreement to allow the construction, maintenance and operation of marina facilities for the use of owners of lots in the Heron Bay subdivision, the Association and the Developer have agreed to certain terms and conditions regarding their construction, maintenance, operation and use. These terms and conditions are contained in a Letter Agreement dated July 13, 2000, a Letter Agreement dated November 9, 2000 and an Operating Permit dated November 30, 2001; ("Terms and Conditions," hereinafter); and

WHEREAS, accordingly, in order for the Association and the Developer to be in a position to enforce the Terms and Conditions imposed by Yadkin, in exchange for assigning the right to use boat slips, it is appropriate for the Association and the Developer to provide the relevant owners of tracts in Heron Bay Subdivision with copies of requirements to be followed, and secure their agreement to follow them; and

WHEREAS, accordingly, the within Acknowledgement, Agreement, and Boat slip Assignment is intended for use in securing an acknowledgement that the Terms and Conditions have been provided to the owners and that the owners agree to follow the relevant requirements, in exchange for receiving an assignment of rights to use a certain boat slip;

NOW, THEREFORE, based upon the mutual covenants contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

I. ACKNOWLEDGEMENT

1. Receipt of Documents. By virtue of their execution of the within document the Owners acknowledge that, as of the date of their said execution, they have received from the Association and the Developer complete copies of each of the following documents:

(a) That certain Letter Agreement entered by and between KEJ Marketing Company, Inc. (executed by the Developer on its own behalf and on behalf of the Association) and Alcoa Power Generating Inc. through its Yadkin Division, dated July 13, 2000; and

(b) That certain Letter Agreement entered by and between KEJ Marketing Company, Inc. (executed by the Developer on its own behalf and on behalf of the Association) and Alcoa Power Generating, Inc., through its Yadkin Division, dated November 9, 2000; and

(c) Yadkin's "Shoreline Stewardship Policy"; and

(d) "Multi-Use Facility Operating Permit, Permit Number 9004," between Alcoa Power Generating, Inc., Yadkin Division and Heron Bay Homeowners Association, dated November 30, 2001; and

(e) "Declaration of Covenants, Conditions, and Restrictions of Heron Bay Subdivision", executed by the Developer as the Declarant, dated October 24, 1994; and

(f) "Declaration of Restrictive Covenants of Heron Bay Subdivision," executed by the Developer as the Declarant, dated October 24, 1994; and

(g) "Supplementary Declarations of Declaration of Restrictive Covenants of Heron Bay Subdivision and Covenants, Conditions, and Restrictions of Heron Bay Subdivision" executed by the Declarant, dated November 2, 1995, relating to Heron Bay Subdivision, Phase II; and

(h) "Supplementary Declarations of Declaration of Restrictive Covenants of Heron Bay Subdivision and Covenants, Conditions, and Restrictions of Heron Bay Subdivision," executed by the Developer as the Declarant, dated November 2, 1995, relating to Heron Bay Subdivision, Phase III; and

(i) "Supplementary Declarations of Declaration of Restrictive Covenants of Heron Bay Subdivision and Covenants, Conditions, and Restrictions of Heron Bay Subdivision," executed by the Developer as the Declarant, dated November 2, 1995, relating to Heron Bay Subdivision, Phase IV; and

(j) "Supplementary Declarations of Declaration of Restrictive Covenants of Heron Bay Subdivision and Covenants, Conditions, and Restrictions of Heron Bay Subdivision," executed by the Developer as the Declarant, dated November 2, 1995, relating to Heron Bay Subdivision, Phase V; and

(k) "Supplementary Declarations of Declaration of Restrictive Covenants of Heron Bay Subdivision and Covenants, Conditions, and Restrictions of Heron Bay Subdivision," executed by the Developer as the Declarant, dated April 25, 1996, relating to Heron Bay Subdivision, Phase VI; and

(l) "Supplementary Declarations of Declaration of Restrictive Covenants of Heron Bay Subdivision and Covenants, Conditions, and Restrictions of Heron Bay Subdivision," executed by the Developer as the Declarant, dated May 30, 1996, relating to Heron Bay Subdivision, Phase VII; and

(m) "Supplementary Declarations of Declaration of Restrictive Covenants of Heron Bay Subdivision and Covenants, Conditions, and Restrictions of Heron Bay Subdivision," executed by the Developer as the Declarant, dated May 30, 1996, relating to Heron Bay Subdivision, Phase VIII; and

(n) "Supplementary Declarations of Declaration of Restrictive Covenants of Heron Bay Subdivision and Covenants, Conditions, and Restrictions of Heron Bay Subdivision," executed by the Developer as the Declarant, dated _____, relating to Heron Bay Subdivision, Phase IX; and

(o) "Supplementary Declarations of Declaration of Restrictive Covenants of Heron Bay Subdivision and Covenants, Conditions, and Restrictions of Heron Bay Subdivision," executed by the Developer as the Declarant, dated May 28, 1998, relating to Heron Bay Subdivision, Phase X.

II. AGREEMENT.

In consideration for the assignment by the Assignors to the Assignees of rights to use of a particular boat slip (which assignment is set forth in the within document, hereinafter), the Assignees, intending to be legally bound to the Assignors, agree to perform the following terms and conditions:

1. The Assignees have read, are aware of, and hereby certify that they have an understanding of those certain provisions contained in Section 3 of the aforesaid Letter Agreement between the Assignors and Alcoa Power Generating Inc., Yadkin Division dated November 9, 2000, and Exhibit B attached thereto, specifically, Section 1(c) of the said Exhibit B. Accordingly, the Assignees are aware that a consequence of any failure by those making recreational use of Narrows Reservoir to take all appropriate measures to protect the aquatic vegetation in Narrows Reservoir may be a loss of the rights of all owners of lots in Heron Bay Subdivision to use of boat slips, and other marina facilities.

In light of the said knowledge and awareness by Assignees, Assignees hereby agree to take all reasonable steps to protect aquatic vegetation in Narrows Reservoir, as long as they are owners in Heron Bay Subdivision, such efforts at protection to extend not only to the area surrounding the boat slip to which rights are being assigned to the Assignees but also to the aquatic vegetation throughout Narrows Reservoir. Assignees agree not only to take reasonable precautions, themselves, to protect the said aquatic vegetation, but also to affirmatively inform any and all relevant family members, friends, guests, and invitees of the necessity to take reasonable steps to ensure such protection and agree to require them to do so.

Protective measures to be taken by the Assignees shall include, but not be limited to, the following: the Assignees (and their family members, friends, guests, and invitees) shall: (1) avoid docking boats other than at their assigned boat slip, itself; (2) avoid boating in shallow areas, adjacent to the shoreline, where aquatic vegetation naturally grows near the surface of the water.

2. The Assignees have read, are aware of, and hereby certify that they have an understanding of Yadkin's "Shoreline Stewardship Policy." Further, being also familiar with the aforesaid Letter Agreement of November 9, 2000, the Owners are aware that a consequence of any failure by them to comply with the aforesaid Stewardship

Policy and related policies, procedures, and requirements may be a loss of the rights of all owners of lots in Heron Bay Subdivision to use of boat slips, and other marina facilities.

In light of the said knowledge and awareness by Assignees, Assignees hereby agree to comply with Yadkin's Stewardship Policy and related policies, procedures, and requirements, including all requirements regarding setbacks and vegetation removal on the lot itself and, if applicable, the Yadkin Managed Buffer adjoining the lot that are applicable to homeowners who have a permit to maintain a private pier as long as they are owners in Heron Bay Subdivision. Assignees agree to affirmatively inform all relevant family members, friends, guests, and invitees of the necessity to take reasonable steps to follow said Policy and agree to require them to do so.

3. The Assignees have read, are aware of, and hereby certify that they have an understanding of Yadkin's "Multi-Use Facility Operating Permit, Permit No. 9004," including, specifically, Exhibit B. Further, being also familiar with the aforesaid Letter Agreement of November 9, 2000, the owners are aware that a consequence of any failure by them to comply with said Permit may be a loss of the rights of all owners of lots in Heron Bay Subdivision to use of boat slips and other marina facilities.

In light of the said knowledge and awareness by Assignees, Assignees hereby agree to comply with the said Permit, as long as they are owners in Heron Bay Subdivision. Assignees agree to affirmatively inform all relevant family members, friends, guests, and invitees of the necessity to take reasonable steps to comply with said Permit and agree to require them to do so.

4. Assignees, recognizing the severe consequences possible not only for themselves, but for others, of violation of any of the aforesaid commitments made by them to follow the aforesaid agreements, conditions, policies, procedures, regulations, and requirements, recognize and agree that Assignors shall be empowered to take any or all of the following steps to prevent or punish, or both, a violation of the said commitments:

(a) Assignors may withdraw, temporarily or permanently, Assignees' assignment of rights to use a boat slip;

(b) Assignors may enter the property of Assignees, as necessary, to investigate any perceived or reported violation of a commitment, and take and

corrective measures, or direct Assignee to take any corrective measures, deemed by Assignors to be reasonably necessary;

(c) Assignors may apply for and obtain injunctive relief from a court of competent jurisdiction, to restrain any further activity by Assignees (or any of their family members, friends, guests, or invitees) in violation of said commitment, with the costs reasonably incurred by Assignors, to apply for and obtain such relief, to be taxed to the Assignees;

(d) Assignors may tax to and collect from Assignees any and all costs incurred by Assignors as a result of material breach by Assignees of any term or condition of the within Agreement, including reasonable attorneys' fees incurred by Assignors as a result thereof;

(e) Assignors may seek and obtain through a court of competent jurisdiction monetary damages from Assignees incurred by Assignors, (or incurred by homeowners with any such claim subject to being brought by the Association, by and on behalf of other owners in Heron Bay Subdivision), resulting, directly or indirectly, from any revocation of rights to use boat slips or other marine facilities resulting in part or as a whole from violation by Assignees of said commitment, including any reasonable attorneys' fees incurred by Assignors or homeowners as a result thereof;

(f) Assignees must be and remain current in their homeowners dues, assessments, pro-rata share of insurance costs relating to boat slips and other marina facilities, and any other financial obligation owed to the Association, default of any one or more of which may result in revocation of Assignees' rights to use their assigned boat slip temporarily or permanently;

(g) Assignors may tax to and collect from Assignees any and all costs incurred by virtue of any damage resulting to property owned by or maintained by the Association, by virtue of any act or omission by Assignees or any of their family members, friends, guests, or invitees;

(h) Assignees, on a continuing basis, will be responsible for staying informed about and complying with all relevant rules, regulations, policies, and procedures adopted by Yadkin or the Assignors hereafter relating to the boat slips,

marina facilities, shoreline maintenance and other topics of relevance to owners in Heron Bay Subdivision.

(i) Assignees understand that all of the aforesaid terms and conditions of the within Agreement constitute continuing obligations which will not only apply throughout their status as owners in Heron Bay Subdivision, but will apply to any subsequent owners of their lot in Heron Bay Subdivision. Accordingly, Assignees also hereby agree to affirmatively disclose to and inform all subsequent owners of said lot, at or before the time any contract of sale is entered by and between Assignees and any said prospective owners, of the existence and significance of the within Acknowledgement, Agreement, and Boat Slip Assignment; of the existence and significance of the documents listed in the Acknowledgement portion hereof and any amendments to any said documents entered hereafter; of any subsequently created relevant rules, regulations, policies, and procedures adopted by Yadkin or the Assignors relating to the boat slips, marina facilities, shoreline maintenance, or other topics of relevance to homeowners in Heron Bay Subdivision; and of the fact that such subsequent owners will be deemed to be subject to the terms of the within document and that its terms will be enforceable against them.

5. Assignees hereby agree to allow Assignor to record, at Assignors' expense, the within Acknowledgement, Agreement, and Boat slip Assignment, with the Montgomery County Public Registry, such that this document shall become a part of the chain of title for their lot in Heron Bay Subdivision, namely: Lot _____, Phase _____ of Heron Bay Subdivision.

It is, accordingly, specifically understood and agreed by the Assignees that the terms and conditions contained herein shall thereby, and by its terms, be binding upon not only themselves, but all subsequent owners of the aforesaid lot, and shall run with the land thereafter.

III. BOAT SLIP ASSIGNMENT.

Based upon the aforesaid Acknowledgement and Agreement (with all terms and conditions being incorporated herein by reference as fully as if set forth hereinafter again), Assignors hereby assign to Assignees and subsequent owners of Lot ___ of Heron Bay Subdivision, Phase ___, rights to use the boat slip located at _____ unless subsequently revoked by Assignors, or either of them, by virtue of violation by the Assignees or subsequent owners of the aforesaid lot, of any of the terms and conditions set forth hereinbefore.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

ASSIGNEES:

_____ (Seal)

_____ (Seal)

ASSIGNORS:

KEJ Marketing Company, Inc.

By: _____, President

ATTEST:
(Corporate Seal)

Secretary

Heron Bay Homeowners Association, Inc.

By: _____, President

ATTEST:
(Corporate Seal)

Secretary

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of the county and state aforesaid, certify that _____ personally appeared before me this day and acknowledged that he/she is _____ Secretary of _____, a North Carolina corporation, and by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attested by _____ as its Secretary. Witness my hand and official stamp or seal, this the ____ day of _____, 2002.

Notary Public

My commission expires: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of the county and state aforesaid, certify that _____ personally appeared before me this day and acknowledged that he/she is _____ Secretary of _____, a North Carolina corporation, and by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attested by _____ as its Secretary. Witness my hand and official stamp or seal, this the ____ day of _____, 2002.

Notary Public

My commission expires: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of the county and state aforesaid, certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the ____ day of _____, 2002.

Notary Public

My commission expires: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of the county and state aforesaid, certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the ____ day of _____, 2002.

Notary Public

My commission expires: _____